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

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Presidential Documents

Title 3—

The President

Executive Order 13409 of July 3, 2006

Establishing an Emergency Board To Investigate a Dispute Between Southeastern Pennsylvania Transportation Authority and Its Locomotive Engineers Represented by the Brotherhood of Locomotive Engineers and Trainmen

A dispute exists between Southeastern Pennsylvania Transportation Authority (SEPTA) and its employees represented by the Brotherhood of Locomotive Engineers and Trainmen (BLET).

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended, 45 U.S.C. 151–188 (RLA).

A party empowered by the RLA has requested that the President establish an emergency board pursuant to section 9A of the RLA (45 U.S.C. 159a).

Section 9A(c) of the RLA provides that the President, upon such request, shall appoint an emergency board to investigate and report on the dispute.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States, including section 9A of the RLA, it is hereby ordered as follows:

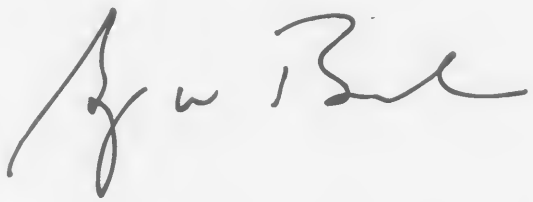
Section 1. *Establishment of Emergency Board (Board).* There is established, effective 12:01 a.m. eastern daylight time on July 8, 2006, a Board of three members to be appointed by the President to investigate and report on this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The Board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The Board shall report to the President with respect to this dispute within 30 days of its creation.

Sec. 3. *Maintaining Conditions.* As provided by section 9A(c) of the RLA, from the date of the creation of the Board and for 120 days thereafter, no change in the conditions out of which the dispute arose shall be made by the parties to the controversy, except by agreement of the parties.

Sec. 4. *Records Maintenance.* The records and files of the Board are records of the Office of the President and upon the Board's termination shall be maintained in the physical custody of the National Mediation Board.

Sec. 5. *Expiration.* The Board shall terminate upon the submission of the report provided for in section 2 of this order.



THE WHITE HOUSE,
July 3, 2006.

[FR Doc. 06–6101
Filed 7–6–06; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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FEDERAL ELECTION COMMISSION

11 CFR Part 104

[Notice 2006–11]

Statement of Policy; Recordkeeping Requirements for Payroll Deduction Authorizations

AGENCY: Federal Election Commission.

ACTION: Statement of policy.

SUMMARY: The Commission has previously sought copies of original signed payroll deduction authorization forms as the sole adequate proof that contributors intended to authorize payroll deduction to make contributions to the separate segregated fund of a corporation, labor organization, or trade association. As a matter of general policy, the Commission intends to accept certain other forms of documentation as proof of payroll deduction authorization, which are described in the supplementary information below.

DATES: *Effective Date:* July 7, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Richard T. Ewell, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Corporations, labor organizations, and trade associations may use a payroll deduction system to collect and forward voluntary contributions from certain persons to their separate segregated funds ("SSFs"), which are political committees they establish. 11 CFR 114.2(f)(4)(i). Political committees must maintain records that provide sufficient detail to enable the Commission to verify that the source and amount of contributions received by the committee are accurately and completely reported. *See* 11 CFR 104.14(b)(1); *see also* 11 CFR 104.8(b) (reporting contributions received through payroll deductions). For contributions collected by payroll deduction, the Commission's past practice had been to request copies of original signed payroll deduction authorization ("PDA") forms as proof that the SSF satisfied the recordkeeping requirements of 11 CFR 104.14(b)(1). Through this statement of policy, the Commission announces that signed PDA forms are not the only adequate form of proof for meeting the recordkeeping requirements of 11 CFR 104.14(b)(1).

As a matter of general policy, the Commission intends to accept other evidence that the requirements of 11 CFR 104.14 have been satisfied, which may include records of the transmittal of funds from employers or collecting agents, including spreadsheets or other computerized records, wire transfer records, or other written or electronic records.

SSFs are advised, however, that the Commission considers the retention of signed PDA forms to be a sound recordkeeping practice, and in many cases, signed PDA forms may serve as the best documentation that a deduction was authorized at a particular time for a particular amount. Additionally, some SSFs are subject to independent PDA recordkeeping requirements under State law. The Commission's policy does not alter or affect a committee's recordkeeping obligations under any applicable State law.

This **Federal Register** notice represents a general statement of policy announcing the general course of action that the Commission intends to follow. This policy statement does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay in effective date under 5 U.S.C. 553 of the Administrative Procedure Act ("APA"). As such, it does not bind the Commission or any member of the general public. The provisions of the Regulatory Flexibility Act, which apply when notice and comment are required by the APA or another statute, are not applicable.

Dated: June 30, 2006.

Michael E. Toner,

Chairman, Federal Election Commission.

[FR Doc. E6–10629 Filed 7–6–06; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM340; Special Conditions No. 25–318–SC]

Special Conditions: Airbus Model A380–800 Airplane, Design Roll Maneuver

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Airbus A380–800 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. Many of these novel or unusual design features are associated with the complex systems and the configuration of the airplane, including its full-length double deck. For these design features, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for design roll maneuvers. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Airbus Model A380–800 airplane.

DATES: *Effective Date:* The effective date of these special conditions is June 29, 2006.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1357; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

Airbus applied for FAA certification/validation of the provisionally designated Model A3XX–100 in its letter AI/L 810.0223/98, dated August 12, 1998, to the FAA. Application for certification by the Joint Aviation Authorities (JAA) of Europe had been

made on January 16, 1998, reference AI/L 810.0019/98. In its letter to the FAA, Airbus requested an extension to the 5-year period for type certification in accordance with 14 CFR 21.17(c). The request was for an extension to a 7-year period, using the date of the initial application letter to the JAA as the reference date. The reason given by Airbus for the request for extension is related to the technical challenges, complexity, and the number of new and novel features on the airplane. On November 12, 1998, the Manager, Aircraft Engineering Division, AIR–100, granted Airbus' request for the 7-year period, based on the date of application to the JAA.

In its letter AI/LE–A 828.0040/99 Issue 3, dated July 20, 2001, Airbus stated that its target date for type certification of the Model A380–800 had been moved from May 2005, to January 2006, to match the delivery date of the first production airplane. In a subsequent letter (AI/L 810.0223/98 issue 3, dated January 27, 2006), Airbus stated that its target date for type certification is October 2, 2006. In accordance with 14 CFR 21.17(d)(2), Airbus chose a new application date of December 20, 1999, and requested that the 7-year certification period which had already been approved be continued. The FAA has reviewed the part 25 certification basis for the Model A380–800 airplane, and no changes are required based on the new application date.

The Model A380–800 airplane will be an all-new, four-engine jet transport airplane with a full double-deck, two-aisle cabin. The maximum takeoff weight will be 1.235 million pounds with a typical three-class layout of 555 passengers.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Airbus must show that the Model A380–800 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–98. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Airbus A380–800 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A380–800 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. In addition, the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 93–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with 14 CFR 11.38 and become part of the type certification basis in accordance with 14 CFR 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101.

Discussion of Novel or Unusual Design Features

The A380 is equipped with an electronic flight control system. In this system, there is not a direct mechanical link between the airplane flight control surface and the pilot's cockpit control device as there is on more conventional airplanes. Instead, a flight control computer commands the airplane flight control surfaces, based on input received from the cockpit control device. The pilot input is modified by the flight control computer—based on the current airplane flight parameters before the command is given to the flight control surface. Therefore, there is not a direct mechanical relationship between the pilot command and the command given to the control surface.

The formulation of airplane design load conditions in 14 CFR part 25 is based on the assumption that the airplane is equipped with a control system in which there is a direct mechanical linkage between the pilot's cockpit control and the control surface. Thus for roll maneuvers, the regulation specifies a displacement for the aileron itself, and does not envision any modification of the pilot's control input. Since such a system will affect the airplane flight loads and thus the structural strength of the airplane, special conditions appropriate for this type of control system are needed.

In particular, the special condition adjusts the design roll maneuver requirements specified in § 25.349(a), so that they take into account the effect of the A380's electronic flight control computer on the control surface deflection. The special condition requires that the roll maneuver be performed by deflection of the cockpit roll control, as opposed to specifying a deflection of the aileron itself as the current regulation does. The deflection of the control surface would then be determined from the cockpit input, based on the computer's flight control laws and the current airplane flight parameters.

Discussion of Comments

Notice of Proposed Special Conditions No. 25–06–01–SC, pertaining to design roll maneuver for the Airbus A380 airplane, was published in the **Federal Register** on March 29, 2006. A single comment which supports the intent and language of the special conditions, as proposed, was received from the Airline Pilots Association (ALPA). Accordingly, the special conditions are adopted, as proposed.

Applicability

As discussed above, these special conditions are applicable to the Airbus A380–800 airplane. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features of the Airbus A380–800 airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

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

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Airbus A380–800 airplane.

In lieu of compliance with 14 CFR 25.349(a), the following special condition applies:

The following conditions, speeds, and cockpit roll control motions (except as the motions may be limited by pilot effort) must be considered in combination with an airplane load factor of zero and two-thirds of the positive maneuvering factor used in design. In determining the resulting control surface deflections, the torsional flexibility of the wing must be considered in accordance with § 25.301(b):

a. Conditions corresponding to steady rolling velocities must be investigated. In addition, conditions corresponding to maximum angular acceleration must be investigated for airplanes with engines

or other weight concentrations outboard of the fuselage. For the angular acceleration conditions, zero rolling velocity may be assumed in the absence of a rational time history investigation of the maneuver.

b. At V_A, sudden movement of the cockpit roll control up to the limit is assumed. The position of the cockpit roll control must be maintained, until a steady roll rate is achieved and then must be returned suddenly to the neutral position.

c. At V_C, the cockpit roll control must be moved suddenly and maintained so as to achieve a roll rate not less than that obtained in paragraph b. above.

d. At V_D, the cockpit roll control must be moved suddenly and maintained so as to achieve a roll rate not less than one third of that obtained in paragraph b. above.

Issued in Renton, Washington, on June 29, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–10673 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24367; Directorate Identifier 2006–NM–041–AD; Amendment 39–14677; AD 2006–14–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 F4–600R Series Airplanes and Model A300 C4–605R Variant F Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A300 F4–600R series airplanes and Model A300 C4–605R Variant F airplanes. This AD requires modifying certain structure in the fuselage zone at the lavatory venturi installation in the nose section, and performing a related investigative action and corrective action if necessary. This AD results from an analysis that revealed that airplanes equipped with Airbus Modification 08909 had a concentration of loads higher than expected in the fuselage zone (high stress) at the lavatory venturi installation in the nose section, which could be the origin of cracks that developed in the fuselage skin and propagated from the edge of the air vent hole. We are issuing this AD to prevent fatigue cracking of the fuselage skin, which could result in loss of the structural integrity of the fuselage and consequent rapid depressurization of the airplane.

DATES: This AD becomes effective August 11, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 11, 2006.

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

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

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Airbus Model A300 F4–600R series airplanes and Model A300 C4–605R Variant F airplanes. That NPRM was published in the **Federal Register** on April 11, 2006 (71 FR 18237). That NPRM proposed to require modifying certain structure in the fuselage zone at the lavatory venturi installation in the nose section, and performing a related investigative action and corrective action if necessary.

Comments

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

Request To Add Revised Service Information

The manufacturer, Airbus, advises that the service bulletin specified in the NPRM has been revised. Airbus notes that Airbus Service Bulletin A300–53–6151, Revision 01, dated April 21, 2006, contains minor changes and that no additional work is required.

We agree with Airbus. We have reviewed Revision 01 of the service bulletin and agree that it does not necessitate additional work. We have revised paragraphs (f) and (g) of the AD to reflect the revised service bulletin. In addition, we have added a new paragraph (h) to this AD specifying that accomplishment of the actions specified in paragraph (f) of the AD in accordance with the original issue of the service bulletin is considered to be an acceptable method of compliance. Subsequent paragraphs of the AD have been re-identified accordingly.

Revision 01 also includes a reduced cost for parts and we have revised the Costs of Compliance section of the AD to reflect that reduced cost.

Explanation of Change to This Final Rule

Paragraph (g) of the NPRM specifies making repairs using a method approved by either the FAA or the Direction Générale de l'Aviation Civile (or its delegated agent). The European Aviation Safety Agency (EASA) has assumed responsibility for the airplane models subject to this AD. Therefore, we have revised paragraph (g) of this AD to specify making repairs using a method approved by either the FAA or the EASA (or its delegated agent).

Conclusion

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

Costs of Compliance

This AD affects about 86 airplanes of U.S. registry. The modification (including the inspection) takes about 28 work hours per airplane, at an average labor rate of $80 per work hour. Required parts cost about $399 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is $226,954, or $2,639 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–14–06 Airbus: Amendment 39–14677. Docket No. FAA–2006–24367; Directorate Identifier 2006–NM–041–AD.

Effective Date

(a) This AD becomes effective August 11, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 F4–605R and F4–622R airplanes and Model A300 C4–605R Variant F airplanes, certificated in any category; on which Airbus Modification 08909 has been done in production; except airplanes on which Airbus Modification 12980 has been done in production.

Unsafe Condition

(d) This AD results from an analysis that revealed that airplanes equipped with Airbus Modification 08909 had a concentration of loads higher than expected in the fuselage zone (high stress) at the lavatory venturi installation in the nose section, which could be the origin of cracks that developed in the fuselage skin and propagated from the edge of the air vent hole. We are issuing this AD to prevent fatigue cracking of the fuselage skin, which could result in loss of the structural integrity of the fuselage and consequent rapid depressurization 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.

Modification/Investigative Action

(f) Before the accumulation of 16,900 total flight cycles since first flight of the airplane: Modify the fuselage zone at the lavatory venturi installation area between frame (FR) 12 and FR 12A on the left-hand side of the nose section and do the related investigative action by accomplishing all the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A300–53–6151, Revision 01, dated April 21, 2006.

Corrective Action

(g) If any crack is found during the inspection required by this AD and Airbus Service Bulletin A300–53–6151, Revision 01, dated April 21, 2006, specifies to contact Airbus for crack repair: Before further flight, repair the crack using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (or its delegated agent).

Acceptable for Compliance

(h) Accomplishment of the actions required by paragraph (f) of this AD before the effective date of this AD in accordance with Airbus Service Bulletin A300–53–6151, dated December 2, 2005, is acceptable for compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(j) French airworthiness directive F–2006–030, dated February 1, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use Airbus Service Bulletin A300–53–6151, Revision 01, dated April 21, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on June 28, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–6003 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20551; Airspace Docket No. 06–AAL–18]

RIN 2120–AA66

Re-Designation of VOR Federal Airway V–431; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends VOR Federal Airway V–431, Alaska. Specifically, the FAA is re-designating V–431 as V–593 because the V–431 designation is a duplicate number in the National Airspace System (NAS) and is causing problems with the Flight Data processors during route validation at the Anchorage Air Route Traffic Control Center.

DATES: *Effective Date:* 0901 UTC, September 28, 2006.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by re-designating V–431 as V–593 because the V–431 designation is duplicated in the NAS and causes problems with the Flight Data processors during route validation at Anchorage Air Route Traffic Control Center. The route number change will coincide with the effective date of this rulemaking action. Since this action merely involves editorial change in the route number of the legal description of a Federal Airway, and does not involve a change in the dimensions or operating requirements of that airway, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Alaskan VOR Federal Airways are published in paragraph 6010(b) of FAA Order 7400.9O dated September 1, 2006, and effective September 16, 2006, which is incorporated by reference in 14 CFR 71.1. The Federal Airways listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9O, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 16, 2006, is amended as follows:

Paragraph 6010(b)) Alaskan VOR Federal Airways.

* * * * *

V–431 [Remove]

* * * * *

V–593 [New]

From Sisters Island, AK, INT Sisters Island 204° and Biorka Island 355° radials; Biorka Island, AK.

* * * * *

Issued in Washington, DC, on June 29, 2006.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E6–10676 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No.: FAA–2004–19835: Amendment No. 61–114, 63–34, 65–47, 67–19, 91–291, 121–325, 135–105]

RIN 2120–AH82

Disqualification for Airman and Airman Medical Certificate Holders Based on Alcohol Violations or Refusals to Submit to Drug and Alcohol Testing; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to the final rule published in the **Federal Register** on June 21, 2006 (71 FR 35760). That rule changed the airman medical certification standards to disqualify an airman based on an alcohol test result of 0.04 or greater breath alcohol concentration (BAC) or a refusal to take a drug or alcohol test required by the Department of Transportation (DOT) or a DOT agency.

DATES: These amendments become effective July 21, 2006.

FOR FURTHER INFORMATION CONTACT: Sherry M. de Vries, (202) 267–8693.

Correction

In the final rule FR Doc. E6–9814, on page 35765, correct the second paragraph from the bottom of the second column to read as follows:

Appendix J to Part 121 [Corrected]

■ 22. Amend section V of Appendix J to Part 121 by revising paragraph D.1 to read as follows and removing and reserving paragraph D.2:

D. Notice of Refusals

1. Each covered employer must notify the FAA within 2 working days of any employee who holds a certificate issued under part 61, part 63, or part 65 of this chapter who has refused to submit to a drug test required under this appendix. Notification must be sent to: Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM–800), 800 Independence Avenue, SW., Washington, DC 20591, or by fax to (202) 267–5200.

* * * * *

Issued in Washington, DC, on June 30, 2006.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

[FR Doc. E6–10588 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD 07–06–107]

RIN 1625–AA08

Special Local Regulations: Suncoast Offshore Grand Prix; Gulf of Mexico, Sarasota, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: This rule temporarily suspends the permanent special local

regulations for the Suncoast Offshore Challenge and the Suncoast Offshore Grand Prix in the Gulf of Mexico near Sarasota, Florida. By existing permanent special local regulations, these two race events have nearly identical course and time characteristics, however one event is held annually on the first Saturday of July and the other event is held annually on the first Sunday of July. This year, the sponsor has decided to combine the events into a single day, reduce the length of the racecourse, and modify the times of the event. Therefore, this rule also adds new temporary special local regulations to account for the changes and provide for the safety of life for the participating vessels, spectators, and mariners on the navigable waters of the United States during the event.

DATES: This rule is effective from 10 a.m. until 5 p.m. on July 2, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [CGD 07–06–107] and are available for inspection or copying at Coast Guard Sector St. Petersburg, Prevention Department, 155 Columbia Drive, Tampa, Florida 33606–3598 between 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jennifer Andrew at Coast Guard Sector St. Petersburg, Prevention Department, (813) 228–2191, Ext. 8307.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The exact location and dimensions of the race area were not provided to the Coast Guard with sufficient time to publish an NPRM. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to minimize potential danger to the public transiting the area.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners and will place Coast Guard or local law enforcement vessels in the vicinity of this area to advise mariners of the restriction.

Background and Purpose

The Annual Suncoast Offshore Challenge and Annual Offshore Grand Prix in the Gulf of Mexico near Sarasota, Florida are governed by permanent regulations at 33 CFR 100.719 and 33 CFR 100.720, respectively, and are normally held on the first Saturday and Sunday of July between 10 a.m. and 4 p.m. Event coordinators have decided to combine the two events to take place on Sunday, July 2, 2006, between 10 a.m. and 5 p.m. Event coordinators are also reducing the length of the racecourse which would allow for Big Sarasota Pass channel to remain open during the event.

Discussion of Rule

This temporary rule is necessary to accommodate the rescheduling of the Annual Suncoast Offshore Challenge onto the date of the Annual Suncoast Offshore Grand Prix race date and to modify the regulated area to account for changes in the length of the racecourse. This rule will temporarily suspend 33 CFR 100.719 and 33 CFR 100.720, and temporarily add a new regulation, 33 CFR 100.T07–107, which is a combination of the suspended regulations. The Coordinates of the regulated area will be modified to reflect a reduced length in the racecourse and the opening of Big Sarasota Pass to vessel traffic, which is blocked under the existing special local regulations. This temporary regulation will be in effect from 10 a.m. until 5 p.m. on July 2, 2006.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed 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 rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The regulation would be in effect for a limited time and is located in an area where vessel traffic is limited.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit near to shore at Lido Key in Sarasota, FL in the vicinity of Big Sarasota Pass and New Pass annually from 10 a.m. to 5 p.m. on the first Sunday in July. This rule would not have a significant economic impact on a substantial number of small entities since it will be in effect for a limited time in an area where vessel traffic is limited.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 the person identified in the **FOR FURTHER INFORMATION CONTACT.** 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 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 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 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 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 rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This 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 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 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

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

Under figure 2–1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" is not required for this rule.

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 amends 33 CFR part 100 as follows:

PART 100—MARINE EVENTS & REGATTAS

■ 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.

§ 100.719 [Suspended]

■ 2. From 10 a.m. until 5 p.m. on Sunday, July 2, 2006, suspend § 100.719.

§ 100.720 [Suspended]

■ 3. From 10 a.m. until 5 p.m. on Sunday, July 2, 2006, suspend § 100.720.

■ 4. From 10 a.m. until 5 p.m. on Sunday, July 2, 2006, add a new temporary § 100.T07–107 to read as follows:

§ 100.T07–107 Suncoast Offshore Grand Prix; Gulf of Mexico, Sarasota, FL.

(a) *Regulated Area.* The regulated area encompasses all waters within the following positions (All coordinates referenced use datum: NAD 83):

27°19′47″ N, 82°35′28″ W
27°19′47″ N, 82°36′23″ W
27°15′39″ N, 82°36′23″ W
27°15′39″ N, 82°32′43″ W
27°17′53″ N, 82°33′59″ W
27°19′47″ N, 82°35′28″ W

(b) *Spectator Area.* The spectator area is established within the following positions (All coordinates referenced use datum: NAD 83):

27°18′19″ N, 82°36′13″ W
27°16′53″ N, 82°35′58″ W
27°16′56″ N, 82°35′35″ W
27°18′23″ N, 82°35′48″ W

(c) *Race Area.* The race area is established within the following positions (All coordinates referenced use datum: NAD 83):

27°16′30″ N, 82°35′17″ W
27°16′30″ N, 82°35′02″ W
27°18′17″ N, 82°34′45″ W
27°18′53″ N, 82°35′01″ W
27°18′47″ N, 82°35′39″ W

(d) *Special local regulations.* (1) The regulated area as defined in paragraph (a) is an idle speed, "no wake" zone.

(2) Vessels may transit but may not loiter within the regulated area as defined in paragraph (a), but may not transit within 1,000 feet of the race area as defined in paragraph (c).

(3) Anchoring for spectators will be permitted within the spectator area only as defined in paragraph (b).

(4) All vessel traffic not involved with the Suncoast Offshore Grand Prix, entering and exiting New Pass between 10 a.m. and 5 p.m. EDT must exit at New Pass Channel day beacon #3 (27°26′28″ N, 82°41′42″ W, LLNR 18100) and #4 (27°26′24″ N, 82°41′41″ W, LLNR 18105), and must proceed in a northerly direction, taking action to avoid a close-quarters situation until finally past and clear of the racecourse. All coordinates referenced use datum: NAD 83.

(5) All vessel traffic not involved with the Suncoast Offshore Grand Prix, entering and exiting Big Sarasota Pass Channel will be allowed to transit only within the marked channel at Big Sarasota Pass Channel, taking action to

avoid a close-quarters situation until finally past and clear of the racecourse.

(6) Entry within the race area as defined in paragraph (c) is prohibited for all vessels not officially registered with the sponsor and displaying colored pennants to aid in their identification.

(e) *Effective Period.* This section will be enforced from 10 a.m. until 5 p.m. EDT, Sunday, July 2, 2006.

Dated: June 20, 2006.

D.W. Kunkel,

RADM, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. E6–10584 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–06–033]

RIN 1625–AA08

Special Local Regulations for Marine Events; Pamlico River, Washington, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the "SBIP—Fountain Powerboats Kilo Run and Super Boat Grand Prix", a marine event to be held August 4 and August 6, 2006, on the waters of the Pamlico River, near Washington, North Carolina. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Pamlico River during the event.

DATES: This rule is effective from 6:30 a.m. on August 4, 2006 to 4:30 p.m. on August 6, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD05–06–033) and are available for inspection or copying at Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Inspections and Investigations Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 1, 2006, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Pamlico River, Washington, NC in the **Federal Register** (71 FR 25523). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

On August 4 and August 6, 2006, Super Boat International Productions will sponsor the "SBIP—Fountain Powerboats Kilo Run and Super Boat Grand Prix", on the Pamlico River, near Washington, North Carolina. The event will consist of approximately 40 high-speed powerboats racing in heats along a 5-mile oval course on August 4 and 6, 2006. Preliminary speed trials along a straight one-kilometer course will be conducted on August 4, 2006. Approximately 20 boats will participate in the speed trials. Approximately 100 spectator vessels will gather nearby to view the speed trials and the race. If either the speed trials or races are postponed due to weather, they will be held the next day. During the speed trials and the races, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of the Pamlico River, Washington, North Carolina.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 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 temporary rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Pamlico River, near Washington, North Carolina during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local commercial radio stations and area newspapers so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this section of the Pamlico River, Washington, North Carolina during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced for only a short period, from 6:30 a.m. to 12:30 p.m. on August 4, 2006, and from 10:30 a.m. to 4:30 p.m. on August 6, 2006. Affected waterway users may pass safely around the regulated area with approval from the patrol commander. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

This rule 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 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 rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

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

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 amends 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. From 6:30 a.m. on August 4, 2006 until 4:30 p.m. on August 6, 2006, add a temporary section, § 100.35–T05–033 to read as follows:

§ 100.35–T05–033, Pamlico River, Washington, NC.

(a) *Regulated area.* The regulated area is established for the waters of the Pamlico River including Chocowinity Bay, from shoreline to shoreline, bounded on the south by a line running northeasterly from Camp Hardee at latitude 35°28′23″ North, longitude 076°59′23″ West, to Broad Creek Point at latitude 35°29′04″ North, longitude 076°58′44″ West, and bounded on the north by the Norfolk Southern Railroad Bridge. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector North Carolina.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector North Carolina with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the "Fountain Super Boat Grand Prix" under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector North Carolina.

(c) *Special local regulations.* (1) Except for participating vessels and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Enforcement period.* This section will be enforced from 6:30 a.m. to 12:30 p.m. on August 4, 2006, and from 10:30 a.m. to 4:30 p.m. on August 6, 2006. If either the speed trials or the races are postponed due to weather, then the temporary special local regulations will be enforced during the same time period the next day.

Dated: June 16, 2006.

Larry L. Hereth,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E6–10593 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–06–037]

RIN 1625–AA08

Special Local Regulations for Marine Events; Atlantic Ocean, Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for "Thunder Over the Boardwalk Airshow", an aerial demonstration to be held over the waters of the Atlantic Ocean adjacent to Atlantic City, New Jersey. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This proposed action would restrict vessel traffic in portions of the Atlantic Ocean adjacent to Atlantic City, New Jersey during the aerial demonstration.

DATES: This rule is effective from 10:30 a.m. to 3 p.m. on August 23, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD05–06–037) and are available for inspection or copying at Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Inspections and Investigations Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 1, 2006, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Atlantic Ocean, Atlantic City, NJ in the **Federal Register** (71 FR 25526). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

On August 23, 2006, the Atlantic City Chamber of Commerce will sponsor the "Thunder Over the Boardwalk Airshow". The event will consist of high performance jet aircraft performing low altitude aerial maneuvers over the waters of the Atlantic Ocean adjacent to Atlantic City, New Jersey. A fleet of spectator vessels is expected to gather nearby to view the aerial demonstration. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of the Atlantic Ocean, Atlantic City, New Jersey.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 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 temporary rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Atlantic Ocean adjacent to Atlantic City, New Jersey during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local commercial radio stations and area newspapers so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this section of the Atlantic Ocean adjacent to Atlantic City, New Jersey during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, from 10:30 a.m. to 3 p.m. on August 23, 2006. Affected waterway users may pass safely around the regulated area with approval from the patrol commander. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

This rule 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 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 rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a marine event permit are specifically excluded from further analysis and documentation under those sections. 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.

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 amends 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. Add a temporary section, § 100.35–T05–037 to read as follows:

§ 100.35–T05–037 Atlantic Ocean, Atlantic City, NJ.

(a) *Regulated area.* The regulated area is established for the waters of the Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: southeasterly from a point along the shoreline at latitude 39°21′31″ N, longitude 074°25′04″ W, thence to latitude 39°21′08″ N, longitude 074°24′48″ W, thence southwesterly to latitude 39°20′16″ N, longitude 074°27′17″ W, thence northwesterly to a point along the shoreline at latitude 39°20′44″ N, longitude 074°27′31″ W, thence northeasterly along the shoreline to latitude 39°21′31″ N, longitude 074°25′04″ W. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Delaware Bay.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Delaware Bay with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations.* (1) Except for participating vessels and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(d) *Enforcement period.* This section will be enforced from 10:30 a.m. to 3 p.m. on August 23, 2006.

Dated: June 16, 2006.

Larry L. Hereth,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E6–10589 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–06–071]

RIN 1625–AA–09

Drawbridge Operation Regulations; Potomac River, Between Maryland and Virginia

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the new Woodrow Wilson Memorial (I–95) Bridge, mile 103.8, across Potomac River between Alexandria, Virginia and Oxon Hill, Maryland. This deviation allows the new drawbridge to remain closed-to-navigation each day from 10 a.m. to 2 p.m. beginning on June 26, 2006 until and including August 25, 2006, to facilitate completion of the Outer Loop portion for the new Woodrow Wilson Bridge construction project.

DATES: This deviation is effective from 10 a.m. on June 26, 2006, until 2 p.m. on August 25, 2006.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222. Commander (dpb), Fifth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: On June 11, 2006, the southernmost portion of the bascule spans for the new Woodrow Wilson Memorial Bridge, at mile 103.8, across Potomac River between Alexandria, Virginia and Oxon Hill, Maryland was publicly placed into service, switching I–95 Northbound traffic onto the new Outer Loop portion of the bridge. The newly-constructed portion of bridge will be required to open for vessels in accordance with the current drawbridge operating regulations set out in 33 CFR 117.255(c).

While the drawbridge is operational, coordinators for the construction of the new Woodrow Wilson Bridge Project indicated that the bascule span is not yet fully commissioned and the work continues through the rigorous testing phase. Opening the new bascule span for a vessel at this time would take approximately 45 minutes in a best case scenario. This has the potential to have a significant impact upon I–95 traffic, especially during the 10 a.m. to 2 p.m. bridge-opening time frame currently available for commercial vessels, in accordance with 33 CFR 117.255(c).

Coordinators requested a temporary deviation from the current operating regulation for the new Woodrow Wilson Memorial (I–95) Bridge set out in 33 CFR 117.255(c). The coordinators requested that the new Outer Loop portion of the new drawbridge not be available for openings for vessels each day between the hours of 10 a.m. to 2 p.m. from Monday, June 26 through August 25, 2006 or until the bridge is properly commissioned, whichever comes first. The temporary deviation will only affect vessels with mast heights of 75 feet or greater as the existing drawbridge is able to open in accordance with the current operating regulations set out in 33 CFR 117.255(a). Management of the Federal and auxiliary channels will continue to be closely coordinated between the coordinators for the construction of the new Woodrow Wilson Bridge Project, the Coast Guard and vessels requesting transit through the construction zone. Furthermore, all affected vessels with mast heights greater than 75 feet will be able to receive an opening of the new drawbridge in the "off-peak" vehicle traffic hours (evening and overnight) in accordance with 33 CFR 117.255(c). Maintaining the existing drawbridge in the closed-to-navigation position each day from 10 a.m. to 2 p.m. beginning on June 26, 2006 through August 25, 2006 will help reduce the impact to vehicular traffic during this phase of new bridge construction.

The Coast Guard has informed the known users of the waterway of the closure period for the bridge so that these vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 23, 2006.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. E6–10590 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–06–070]

RIN 1625–AA09

Drawbridge Operation Regulations; Potomac River, Between Maryland and Virginia

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is issuing temporary regulations that govern the operation of the new Woodrow Wilson Memorial (I–95) Bridge, mile 103.8, across Potomac River between Alexandria, Virginia and Oxon Hill, Maryland. This temporary final rule establishes the same operating requirements for the new drawbridge that is currently in effect for the existing-to-be-removed drawbridge.

DATES: This rule is effective midnight on June 20, 2006 to 11:59 on June 12, 2007.

ADDRESSES: Documents, indicated in this preamble as being available in the docket, are part of docket CGD05–06–070 and are available for inspection or copying at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Fifth Coast Guard District maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Good Cause for Not Publishing an NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This temporary final rule establishes the same operating requirements for the new drawbridge that is currently in effect for the existing-to-be-removed drawbridge.

The new bridge will be required to open on signal as per 33 CFR 115.255(a). Since the new drawbridge has to be opened for all vessels requiring an opening that may exceed the present vertical clearance in the closed-to-navigation position at 75 feet, above mean high water (MHW), the establishment of this regulation does not place more constraint on the waterway users than the old regulation governing the existing-to-be-removed drawbridge.

Good Cause for Making Rule Effective in Less Than 30 Days

Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because this rule merely establishes the same requirements as the current operating regulations for the existing-to-be-removed drawbridge. Accordingly, the primary waterway users will not be required to change their current practices of transiting the waterway. Thus, no negative impact on vessel traffic in the area is anticipated.

Background and Purpose

Construction is ongoing for the new bascule-type Woodrow Wilson Memorial (I–95) Bridge, mile 103.8, across Potomac River between Alexandria, Virginia and Oxon Hill, Maryland. On June 11, 2006, the southern most portion of the bascule spans for the new bridge was publicly placed into service, allowing vehicular traffic and will be required to open for vessels in accordance with the current drawbridge operating regulations set out in 33 CFR 117.255(a). The new drawbridge, when fully-constructed around 2010, is being constructed on essentially the same alignment, in close proximity of the existing-to-be-removed drawbridge. In the closed-to-navigation position, the existing-to-be-removed drawbridge provides a vertical clearance of 50 feet, above MHW. In the closed-to-navigation position, the newly-constructed southernmost spans of the new drawbridge provide a vertical clearance of 75 feet, above MHW, which allows a greater flow of vessels to pass through. Therefore, this temporary final rule will be identical to the current regulation governing the operation of the existing-to-be-removed drawbridge providing the same or less constraint for primary waterway users than were formerly in effect with the existing-to-be-removed drawbridge.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed 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 temporary final rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. We reached this conclusion based on the fact that during the many years that the existing-to-be-removed drawbridge was operating under the identical regulation, the Coast Guard had not received any complaints regarding the drawbridge operating schedule. Also, the southernmost spans of the new drawbridge has been constructed on essentially the same alignment with a higher vertical clearance above MHW than the existing-to-be-removed drawbridge and the numbers of opening requests are anticipated to be less for the new bridge.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule will have no impact on any small entities because the regulation will apply to a new bridge, which replaces a bridge on which the same regulation already exists.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. No assistance was requested from any small entity.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This 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 rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From midnight on June 20, 2006, to 11:59 p.m. on June 12, 2007, in § 117.255 add a new paragraph(c) to read as follows:

§ 117.255 Potomac River.

* * * * *

(c) From midnight on June 20, 2006, to 11:59 p.m. on June 12, 2007, the draw of new Woodrow Wilson (I–95) Bridge, mile 103.8, between Alexandria, Virginia and Oxon Hill, Maryland shall operate in accordance with the same provisions outlined at paragraph (a) of this section.

Dated: June 20, 2006.

L.L. Hereth,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E6–10595 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP St. Petersburg 06–115]

RIN 1625–AA00

Safety Zone; Sanibel Island Bridge, Ft. Myers Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of San Carlos Bay, Florida in the vicinity of the Sanibel Island Bridge span "A" while bridge construction is conducted. This rule is necessary to ensure the safety of the construction workers and mariners on the navigable waters of the United States.

DATES: This rule is effective from 6 a.m. on May 30, 2006 through 9 p.m. on September 30, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP 06–115] and are available for inspection or copying at Coast Guard Sector St. Petersburg, Prevention Department, 155 Columbia Drive, Tampa, Florida 33606–3598 between 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Waterways Management Division at Coast Guard Sector St. Petersburg (813) 228–2191, Ext. 8307.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The information for the bridge construction was not given with sufficient time to publish an NPRM. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to minimize potential danger to the construction workers and mariners transiting the area.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners and local law enforcement vessels will be in the vicinity of this zone to advise mariners of the restriction.

Background and Purpose

Boh Brothers Construction will be performing construction work on the Sanibel Island Bridge between June and September, 2006. This work will involve installing a new fendering system, and pouring the deck and setting girders on the Sanibel Island Bridge span "A". These operations will require placing two barges in the Navigational Channel. The nature of this work and the close proximity of the channel present a hazard to mariners transiting the area. This safety zone is being established to ensure the safety of life on the navigable waters of the United States.

Discussion of Rule

The safety zone encompasses the following waters of San Carlos Bay, Florida: All waters from surface to bottom, within a 400 foot radius of the following coordinates: 26°28′59″ N, 082°00′52″ W. Vessels are prohibited from anchoring, mooring, or transiting within this zone, unless authorized by the Captain of the Port St. Petersburg or his designated representative.

This rule is effective from 6 a.m. until 9 p.m., May 30 2006 through September 30, 2006. However, the safety zone will only be enforced from 6 a.m. until 9 p.m. on certain dates during that time, while construction operations are

occurring. The Coast Guard does not know the exact dates of the construction operations at this time, but Coast Guard Sector St. Petersburg will give notice of the enforcement of the safety zone by issuing Broadcast Notice to Mariners 24 to 48 hours prior to the start of enforcement. On-Scene notice will be provided by Coast Guard or other local law enforcement maritime units enforcing the safety zone as designated representatives of Captain of the Port St. Petersburg.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit near the Sanibel Island Bridge span "A" from 6 a.m. on May 30 2006 through 9 p.m. on September 30, 2006. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will only be enforced when vessel traffic is expected to be minimal. Additionally, traffic will be allowed to enter the zone with the permission of the Captain of the Port St. Petersburg or his designated representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the office listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy

Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary section 165.T07–115 is added to read as follows:

§ 165.T07–115 Safety Zone; Ft. Myers Beach, Florida.

(a) *Regulated area.* The Coast Guard is establishing a temporary safety zone on the waters of San Carlos Bay, Florida, in the vicinity of the Sanibel Island Bridge span "A". This safety Zone includes all the waters from surface to bottom, within a 400 foot radius extending from the center portion of span "A" at the following coordinates: 26°28′59″ N, 082°00′52″ W. All coordinates referenced use datum: NAD 83.

(b) *Definitions.* The following definitions apply to this section: *Designated representative* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port (COTP) St. Petersburg, Florida, in the enforcement of regulated navigation areas and safety and security zones.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel may anchor, moor or transit the safety zone without the prior permission of the Captain of the Port St. Petersburg, Florida, or his designated representative.

(d) *Dates.* This rule is effective from 6 a.m. on May 30, 2006 through 9 p.m. on September 30, 2006.

(e) *Enforcement period.* This regulated area will only be enforced during specific periods between the dates specified in paragraph (d). The Coast Guard does not know the exact dates of the construction operations at this time, however Sector St. Petersburg will announce each enforcement period by issuing Broadcast Notice to Mariners 24 to 48 hours prior to the start of enforcement. Additionally, on-scene notice will be provided by Coast Guard or other local law enforcement maritime units enforcing the safety zone.

Dated: May 30, 2006.

J.A. Servidio,

Captain, U.S. Coast Guard, Captain of the Port St. Petersburg, Florida.

[FR Doc. E6–10651 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–06–032]

RIN 1625–AA00

Safety and Security Zones; Tall Ships Celebration 2006, Great Lakes, Cleveland, OH, Bay City, MI, Green Bay, WI, Sturgeon Bay, WI, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing safety and security zones around Tall Ships visiting the Great Lakes during Tall Ships Celebration 2006. These safety and security zones will provide for the regulation of vessel traffic in the vicinity of Tall Ships in the navigable waters of the United States. The Coast Guard is taking this action to safeguard participants and spectators from the safety hazards associated with the limited maneuverability of these tall ships and to ensure public safety during Tall Ships events.

DATES: This rule is effective from 12:01 a.m. (local) July 11, 2006 through 12:01 a.m. (local) August 10, 2006.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–06–032] and are available for inspection or copying at the Ninth Coast Guard District, Cleveland, OH between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CDR K. Phillips, Waterways Planning and Development Section, Prevention Department Ninth Coast Guard District, Cleveland, OH at (216) 902–6045.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 2, 2006, we published a notice of proposed rulemaking (NPRM) entitled "Safety and Security Zones; Tall Ships Celebration 2006, Great Lakes, Cleveland, Ohio, Bay City, Michigan, Green Bay, Wisconsin, Sturgeon Bay, Wisconsin, Chicago, Illinois," in the **Federal Register** (71 FR 31999). We did not receive any letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Specifically, this rule must be made effective less than 30 days after publication because the Tall Ships Celebration will commence on July 10, 2006. In order to ensure the safety of participants and spectators this rule must be effective when the Tall Ships Celebrations commences.

Background and Purpose

During the Tall Ships Celebration 2006, Tall Ships will be participating in parades and then mooring in the harbors of Cleveland, OH, Bay City, MI, Green Bay, WI, Sturgeon Bay, WI, and Chicago, IL. Safety and security zones will be established around Tall Ships participating in these events on 12:01 a.m. (local time) July 10, 2006 and terminate on 12:01 a.m. (local time) August 23, 2006.

These safety and security zones are necessary to protect the public from the hazards associated with limited maneuverability of tall sailing ships and to protect the Tall Ships from potential harm. Due to the high profile nature and extensive publicity associated with this event, each Captain of the Port (COTP) expects a large number of spectators in confined areas adjacent to and on Lake Erie, Saginaw Bay, Lake Huron, Green Bay and Lake Michigan. Therefore, the Coast Guard is implementing a safety and security zone around each ship to ensure the safety of both participants and spectators in these areas. The combination of large numbers of recreational boaters, congested waterways, boaters crossing commercially transited waterways and

low maneuverability of the Tall Ships could easily result in serious injuries or fatalities.

Discussion of Comments and Changes

No comments were received regarding this rulemaking and no changes have been made to the rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed 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 rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based upon the size and location of the safety and security zones and the minimal time and limited area from which vessels will be restricted. Vessels may transit through the safety zone with permission from the official on-scene patrol.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the safety and security zones.

These safety and security zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The zones are relatively small and vessels may transit through the safety zone with permission from the official on-scene patrol.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will 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 rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CDR K. Phillips, Waterways Planning and Development Section, Ninth Coast Guard District, Cleveland, OH at (216) 902–6045. 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 rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This 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 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. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, 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 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 is categorically excluded, under figure 2–1, paragraph (34) (g), of the Instruction, from further environmental documentation.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T09–032 is added to read as follows:

§ 165.T09–032 Safety and Security Zone; Huntington Cleveland Harbor Fest, Tall Ship Festival, Green Bay, Wisconsin, Sturgeon Bay, Wisconsin, Tall Ships Chicago 2006, Tall Ship Celebration, Saginaw River, Bay City, MI.

(a) *Definitions.* The following definitions apply to this section:

Navigation Rules means the Navigation Rules, International and Inland (See, 1972 COLREGS and 33 U.S.C. 2001 et seq.).

Official Patrol means those persons designated by Captain of the Port Buffalo, Detroit, Sault Ste. Marie and Lake Michigan to monitor a Tall Ship safety and security zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone and take other actions authorized by the cognizant Captain of the Port. Persons authorized in paragraph (i) to enforce this section are designated as the Official Patrol.

Public Vessel means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

Tall Ship means any sailing vessel participating in the 2006 Tall Ships Challenge in the Great Lakes. The following vessels are participating in the 2006 Tall Ships Challenge: Sailing Vessel (S/V) Appledore IV, S/V Denis Sullivan, S/V Appledore V, S/V Friends Good Will, S/V Highlander Sea, S/V Niagara, S/V Madeline, S/V Nina, S/V Picton Castle, S/V Pathfinder, S/V Playfiar, S/V Providence, S/V Pride of Baltimore, S/V St. Lawrence II, S/V Red Witch, S/V Royaliste, S/V Windy, S/V Unicorn, and S/V Windy II.

(b) *Safety and Security zone.* The following areas are safety and security zones: all navigable waters of United States located in the Ninth Coast Guard District within a 100 yard radius of any Tall Ship sailing vessel.

(c) *Effective Period.* This section is effective from 12:01 a.m. (local) on Wednesday July 11, 2006 through 12:01 a.m. (local) on August 10, 2006.

(d) *Regulations.* When within a Tall Ship safety and security zone all vessels must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the on-scene official patrol. No vessel or person is allowed within 25 yards of a Tall Ship that is underway, at anchor, or moored, unless authorized by the cognizant Captain of the Port, his designated representative, or on-scene official patrol.

(e) *Navigation Rules.* The Navigation Rules shall apply at all times within a Tall Ship's security and safety zone.

(f) To request authorization to operate within 25 yards of a large passenger vessel that is underway or at anchor, contact the on-scene official patrol on VHF–FM channel 16.

(g) When conditions permit, the on-scene official patrol should:

(1) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 25 yards of a Tall Ship in order to ensure a safe passage in accordance with the Navigation Rules; and

(2) Permit vessels that must transit via a navigable channel or waterway to pass within 25 yards of a Tall Ship that is anchored or moored with minimal delay consistent with safety and security.

(h) When a Tall Ship approaches within 25 yards of any vessel that is moored or anchored, the stationary vessel must stay moored or anchored while it remains within the Tall Ship's safety and security zone unless it is either ordered by, or given permission by Captain of the Port Buffalo, Detroit, Sault Ste. Marie or Lake Michigan, his designated representative, or the on-scene official patrol to do otherwise.

(i) *Enforcement.* Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section.

(j) *Exemption.* Public vessels as defined in paragraph (a) of this section are exempt from complying with paragraphs (b), (d), (f), (g), and (h) of this section.

(k) *Waiver.* Captain of the Port Buffalo, Detroit, Sault Ste. Marie and Lake Michigan, may, within their respective Captain of the Port zones, waive any of the requirements of this section for any vessel or class of vessels upon finding that a vessel or class of vessels, operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port security, safety or environmental safety.

Dated: June 28, 2006.

J.R. Castillo,

Captain, U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. E6–10650 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Charleston 06–136]

RIN 1625–AA00

Safety Zone; Beaufort Water Festival Fireworks, Beaufort River, Beaufort, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Beaufort River for a fireworks display. The temporary safety zone extends 460 feet in all directions from the center of a barge located in Beaufort River, Beaufort, South Carolina in approximate position 32°25.632′ N, 080°40.600′ W. This rule prohibits entry, anchoring, mooring or transiting within the safety zone without the permission of the Captain of the Port Charleston or his designated representative. This regulation is necessary to protect life and property on

the navigable waters of Beaufort River due to the hazards associated with the launching of fireworks.

DATES: The rule is effective from 8:30 p.m. to 10:30 p.m. on July 14, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP Charleston 06–136] and are available for inspection or copying at Coast Guard Sector Charleston (WWM), 196 Tradd Street, Charleston, South Carolina 29401 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer James J. McHugh, Sector Charleston Office of Waterways Management, at (843) 724–7647.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The exact location and time of the event was not provided with sufficient time for public comment. Publishing an NPRM, which would incorporate a comment period before a final rule could be issued and delay the effective date, would be contrary to the public interest because immediate action is needed to protect the public and waters of the United States.

For the same reason, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. A Safety patrol vessel will be on scene for the duration of the effective period to notify mariners of the restrictions.

Background and Purpose

A Fireworks Display is planned for July 14, 2006, in Beaufort, SC. These fireworks will be launched from a barge anchored in Beaufort River, and a large number of spectators are expected to attend the display. This rule is needed to protect spectators in the vicinity of the fireworks presentation from the hazards associated with transport, storage, and launching of fireworks.

Discussion of Rule

The temporary safety zone will be in effect and enforced in an area extending 460 feet in all directions from the center of a barge located on the Beaufort River, Beaufort, SC in approximate position 32°25.632′ N, 080°40.600′ W. The temporary safety zone will be enforced from 8:30 p.m. to 10:30 p.m. on 14 July 2006. Persons and vessels will be prohibited from entering, anchoring, mooring or transiting within the safety zone without the permission of the Captain of the Port Charleston or his designated representative. Any concerned traffic may request permission to pass through the safety zone from the COTP or his designated representative on VHF–FM channel 16 or via phone at (843) 724–7616.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary because the regulation will only be in effect for a short duration, the impact on routine navigation is expected to be minimal, marine traffic will still be able to safely transit around the temporary safety zone, and vessels may be allowed to enter the zone with the permission of the COTP or his designated representative.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The owners and operators of vessels navigating in the vicinity of the launching barge in the Beaufort River may be impacted by this rule. This impact will not be significant because the regulation will only be in effect for a short duration, the impact on routine navigation is expected to be minimal, marine traffic will still be able to safely transit around the temporary safety zone and vessels may be allowed to enter the zone with the permission of the COTP or his designated representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T07–136 to read as follows:

§ 165.T07–136 Beaufort River, Beaufort, SC.

(a) *Regulated area.* The Coast Guard is establishing a temporary safety zone on the navigable waters of the Beaufort River Sound for a fireworks display. The temporary safety zone extends, from surface to bottom, 460 feet in all directions from the fireworks launch barges located on the Beaufort River, Beaufort, SC in approximate position 32°25.632′ N, 080°40.600′ W.

(b) *Definitions.* The following definitions apply to this section: Designated representative means Coast Guard Patrol Commanders including Coat Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port Charleston (COTP) in the enforcement of the regulated area.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, anchoring, mooring or transiting in this regulated area is prohibited, except as provided for herein, or unless authorized by the Coast Guard Captain of the Port Charleston, South Carolina or his designated representative. Persons and vessels may request permission to enter the safety zone on VHF–FM channel 16 or via phone at (843) 724–7616.

(d) *Dates.* The rule is effective from 8:30 p.m. to 10:30 p.m. on July 14, 2006.

Dated: June 23, 2006.

John E. Cameron,

Captain, U.S. Coast Guard, Captain of the Port Charleston, SC.

[FR Doc. E6–10648 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–06–064]

RIN 1625–AA00

Safety Zone; Fundacion Amistad Fireworks, Three Mile Harbor, East Hampton, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Fundacion Amistad Fireworks in Three Mile Harbor off of East Hampton, NY. The safety zone is necessary to protect the life and property of the maritime community from the hazards posed by the fireworks display. Entry into or movement within this safety zone during the enforcement period is prohibited without approval of the Captain of the Port, Long Island Sound.

DATES: This rule is effective from 8:30 p.m. to 11:30 p.m. on July 22, 2006 and July 23, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD01–06–064] and will be available for inspection or copying at Sector Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade D. Miller, Assistant Chief, Waterways Management Division, Coast Guard Sector Long Island Sound at (203) 468–4596.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The Coast Guard did not receive an Application for Approval of Marine Event for this event until May 1, 2006, thereby making an NPRM impracticable and contrary to the pubic interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Any delay encountered in this regulation's effective date would be impracticable and contrary to public interest since immediate action is needed to prevent traffic from transiting a portion of Three Mile Harbor off of East Hampton, NY and to protect the maritime public from the hazards associated with this fireworks event.

The temporary zone should have minimal negative impact on the public and navigation because it is only effective for a 3 hour period and the area closed by the safety zone is minimal, allowing vessels to transit around the zone in Three Mile Harbor off of East Hampton, NY.

Background and Purpose

The Fundacion Amistad Fireworks display will be taking place in Three Mile Harbor off of East Hampton, NY from 8:30 p.m. to 11:30 p.m. on July 22, 2006. If the fireworks display is cancelled due to inclement weather on July 22, 2006, it will take place during the same hours on July 23, 2006. This safety zone is necessary to protect the life and property of the maritime public from the hazards posed by the fireworks display. It will protect the maritime public by prohibiting entry into or movement within this portion of Three Mile Harbor one hour prior to, during and one hour after the stated event.

Discussion of Rule

This regulation establishes a temporary safety zone in Three Mile Harbor off of East Hampton, NY and the impacted waters of Three Mile Harbor within an 800-foot radius of the fireworks launch site located at approximate position 41°1′5″ N, 072°11′55″ W. The temporary safety zone will be outlined by temporary marker buoys installed by the event organizers.

This action is intended to prohibit vessel traffic in a portion of Three Mile Harbor off of East Hampton, NY to provide for the protection of life and property of the maritime public. The safety zone will be enforced from 8:30 p.m. until 11:30 p.m. on July 22, 2006. Marine traffic may transit safely outside of the safety zone during the event thereby allowing navigation of the rest of Three Mile Harbor except for the portion delineated by this rule.

The Captain of the Port anticipates minimal negative impact on vessel traffic due to this event due to the limited area and duration covered by this safety zone. Public notifications will be made prior to the effective period via local notice to mariners and marine information broadcasts.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule will be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: vessels will only be excluded from the area of the safety zone for 3 hours; and vessels will be able to operate in other areas of Three Mile Harbor off of East Hampton, NY during the enforcement period.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in those portions of Long Island Sound covered by the safety zone. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

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 subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Lieutenant Junior Grade D. Miller, Assistant Chief, Waterways Management Division, Sector Long Island Sound, at (203) 468–4596.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by 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 rule will not result in such

an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of the categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34), of the Instruction, from further environmental documentation.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1225, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T01–064 to read as follows:

§ 165.T01–064 Safety Zone: Fundacion Amistad Fireworks, Three Mile Harbor, East Hampton, NY.

(a) *Location.* The following area is a safety zone: All waters of Three Mile Harbor in an 800-foot radius of a fireworks barge site located off of East Hampton, NY at approximate position 41°1′5″ N, 072°11′55″ W. All coordinates are North American Datum 1983.

(b) *Enforcement period.* This section will be enforced from 8:30 p.m. to 11:30 p.m. on Saturday, July 22, 2006. If the fireworks display is cancelled due to inclement weather on July 22, 2006, it will take place during the same hours on Sunday, July 23, 2006.

(c) *Regulations.* (1) The general regulations contained in 33 CFR § 165.23 apply.

(2) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

(3) All persons and vessels shall comply with the Coast Guard Captain of the Port or designated on-scene patrol personnel. These personnel comprise commissioned, warrant and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

Dated: June 22, 2006.

J.J. Plunkett,

Commander, U.S. Coast Guard, Captain of the Port, Long Island Sound, Acting.

[FR Doc. E6–10592 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Sector Juneau Western Alaska 06–002]

RIN 1625–AA00

Safety Zone; Grand Island, Stephens Passage

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters south of Grand Island in Stephens Passage. This safety zone is intended to restrict vessels from entering within 2.5 nautical miles of a Coast Guard vessel that is conducting gunnery exercises. Entry into this safety zone, while it is activated and enforced, is prohibited unless authorized by the on-scene U.S. Coast Guard vessel. This safety zone and its periodic activations are necessary to protect the public from the hazards associated with the firing of weapons.

DATES: This temporary rule is effective from June 21, 2006 through December 21, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket Juneau 06–002 and are available for inspection or copying at District 17 Waterways Management Branch between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG David Wohlers, Phone: 907–463–2265. E-mail: *david.c.wohlers@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. The Coast Guard is promulgating this safety zone to conduct mission essential training directly related to military operations and national security. Accordingly, based on the military function exception to the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rulemaking under 5 U.S.C. 553(b) and an effective date of 30 days after publication under 5 U.S.C. 553(d) are not required for this temporary final rule.

Furthermore, under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This training is necessary to ensure that Coast Guard personnel located within the Seventeenth Coast Guard District are properly trained and certified before conducting military and national security operations for use in securing Alaska ports and waterways. Any delay in training would prevent the units located within the Seventeenth Coast Guard District from becoming capable of accomplishing missions integral to our nation's security, and would therefore be contrary to public interest.

Background and Purpose

This temporary safety zone is necessary to protect vessels and people from hazards associated with live fire from weapons. These hazards include projectiles and ricochets that could damage vessels and cause death or serious bodily harm.

Discussion of Rule

The Grand Island safety zone will include all navigable waters within 2.5 nautical miles, from the surface to the seafloor, of position 58°05′00″ N 134°08′00″ W. This zone will be activated and enforced only when a Coast Guard asset enters the safety zone for the purpose of gunnery training. The Coast Guard will notify the public of its intent to use this zone via a broadcast to mariners 48-hours prior to gunnery exercises. In addition, the Coast Guard will ensure the safety zone is clear of vessels before initiating its gunnery exercise. Entry, transiting, or anchoring within the safety zone, while it is activated and enforced, is prohibited unless authorized by the on-scene U.S. Coast Guard vessel.

U.S. Coast Guard personnel will enforce this safety zone. Other Federal, State, or local agencies may assist the Coast Guard, including the Coast Guard Auxiliary. Section 165.23 of Title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in a safety zone. Vessels or persons violating this section will be subject to both criminal and civil penalties.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed 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 rule to be so minimal that a full Regulatory Evaluation is unnecessary. The safety zone is of a limited duration, is limited to a relatively small geographic area, and vessels that cannot reasonably pass around the safety zone will be allowed to transit the zone upon a cease-fire request and approval from the on-scene U.S. Coast Guard vessel via VHF channel 16.

The size of the zone is the minimum necessary to provide adequate protection for personnel or vessels during live fire training. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing, commercial fishing vessels, and cruise ships.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the area affected by this safety zone. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The zone encompasses only a small portion of the navigable waterways in the area; (ii) vessels are allowed to enter this zone when not occupied by the Coast Guard for the purpose of gunnery training; (iii) vessels may contact the on-scene U.S. Coast Guard vessel on VHF channel 16 to request cease-fire in order to transit the zone. The Coast Guard will notify the public of its intent to use and enforce the zone and will ensure the safety zone is clear of vessels before initiating its gunnery exercise.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact LTJG David Wohlers, U.S. Coast Guard, Waterways Management, District Seventeen at (907) 463–2265.

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of

compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by 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 rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraphs (3)(a) and (34)(g) of the Instruction, from further environmental documentation because we are establishing a safety zone.

A final "Environmental Analysis Checklist" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add new § 165.T17–071 to read as follows:

§ 165.T17–071 Safety Zone; Gunnery Gun Exercises; Grand Island, in Stephens Passage, AK.

(a) *Location.* The following area is a safety zone: Grand Island Area—all navigable waters 2.5 nautical miles surrounding position 58°05′00″ N 134°08′00″ W. These coordinates are based upon North American Datum of 1983.

(b) *Definitions.* As used in this section: *Designated on-scene representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the U.S. Coast Guard in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general regulations in § 165.23, entry into, transiting, or anchoring within a safety zone is prohibited unless authorized by the on-scene U.S. Coast Guard vessel, or the designated on-scene representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the on-scene U.S. Coast Guard vessel or the designated on-scene representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the on-scene U.S. Coast Guard vessel or the on-scene representative on channel 16 to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the on-scene U.S. Coast Guard vessel or the on-scene representative.

(d) *Enforcement and suspension of enforcement of certain safety zone.*

(1) The safety zone in paragraph (a) of this section will be enforced only when a Coast Guard asset is operating in the safety zone for the purpose of conducting gunnery exercises.

(2) Notice of enforcement and suspension of enforcement will be made by use of broadcast notice to mariners 48 hours prior to the gunnery exercise.

(e) *Effective period.* This section is effective from June 21, 2006 through December 21, 2006. If the need for the safety zone ends before the scheduled termination time, the U.S. Coast Guard District Seventeen Commander will cease enforcement of this safety zone and notify the public via a broadcast notice to mariners.

Dated: June 21, 2006.

D.T. Glenn,

Captain, U.S. Coast Guard, Commander, Seventeenth Coast Guard District, Acting.

[FR Doc. E6–10649 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

Temporary Mail Forwarding Policy

AGENCY: Postal Service.

ACTION: Interim rule and request for comments.

SUMMARY: This document amends the standards in the Domestic Mail Manual concerning the duration and submission of temporary change-of-address orders.

DATES: Effective August 3, 2006. Comments must be received by August 7, 2006.

ADDRESSES: Written comments should be mailed or delivered to the Office of Product Management—Addressing, National Customer Support Center, United States Postal Service, 6060 Primacy Pkwy, Ste. 201, Memphis, TN 38188–0001. Comments may be transmitted via facsimile to 901–821–6206 or via e-mail to *charles.hunt@usps.gov*. Copies of all written comments will be available for inspection and photocopying at USPS Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor N, Washington, DC 20260–1450 between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles B. Hunt, Product Management, (901) 681–4651, James Wilson, Address Management, (901) 681–4676.

SUPPLEMENTARY INFORMATION: The Postal Service offers temporary and permanent change of address services to its customers, and forwards mail for generous time periods free of charge, in order to deliver mail accurately and efficiently to its intended recipient. A temporary change-of-address indicates the customer's intention to return to the original address and resume the receipt of mail at that location. Temporary mail forwarding may not exceed twelve months duration.

To better serve its customers, the Postal Service is implementing new procedures in the provision of temporary forwarding of mail. These new procedures are intended to improve mail deliverability to our customers, ensure that mail is delivered to the addressee as quickly as possible, and reduce the volume of mail forwarded unnecessarily.

As background, temporary change-of-address filings typically comprise 7–8 percent of the approximate 46 million change-of-address orders received by the Postal Service each year. Forwarding of mail based on temporary change of address orders is estimated to account for 11 percent of all forwarded mail volume. Approximately 62 percent of all temporary filings have a length of six months or less. The Postal Service received more than 509,000 temporary change-of-address orders in 2005 that did not specify when the forwarding period should end; under current policy, the Postal Service treats these as orders to forward mail for a twelve month period after the start date. The Postal Service also received more than 90,000 temporary changes of address orders where the duration was for a period of 14 days or less. This includes more than 14,000 that had a total duration to forward mail of only 1 day.

The Postal Service is adopting two changes to the Domestic Mail Manual concerning temporary mail forwarding policies. The changes, and the reasons underlying each, are explained below. The changes will be effective August 3, 2006.

Minimum duration will change from one day to two weeks.

Currently, the Postal Service has no minimum timeframe for providing temporary forwarding services. However, the time needed to process temporary change of address orders and begin delivery of forwarded pieces to a temporary address may approach 14 days. Accordingly, short-term forwarding orders may result in mail that is en route to the customer's temporary new address not arriving prior to the customer's departure from that temporary address. This requires the Postal Service to return the mail to the customer's permanent address and delays the time the customer receives the mail. Therefore, the Postal Service will institute a new minimum duration for temporary filings of at least two weeks in length. This will help ensure the efficient forwarding of mail, allow customers to receive mail as quickly as possible, and reduce Postal Service costs. The Postal Service recommends that customers who will be temporarily away from their residences less than two weeks submit a request to hold their mail. Hold requests can be submitted in person or by mail to their post office, electronically through *www.usps.com* or by telephone through 1–800–ASK–USPS. Customers can ask that held mail be delivered upon their return or request to pick up the mail at their post office.

Maximum duration for an initial temporary order will change from twelve months to six months.

The Postal Service seeks to avoid the unnecessary or improper forwarding of mail. As previously stated, the majority of temporary filings last no more than six months. Therefore, the current policy that assigns a 12 month duration on temporary change of address orders that do not reflect an end date probably overstates the term desired by many customers. This would result in the unnecessary forwarding of mail and delay the receipt of correspondence by those customers. Accordingly, the Postal Service is changing its standards to limit an initial temporary change of address order to a maximum of 6 months, or, if no time period is specified, will use 6 months as the end date. Customers who wish to have their mail forwarded for a longer period may submit an additional order to extend the forwarding period up to the maximum allowable twelve month period. Prior to the expiration of the first six month period, the Postal Service will advise customers that they may renew the temporary change-of-address for an additional time period up to the maximum temporary forwarding period of twelve months. To assist customers to request additional temporary forwarding service, the Postal Service will send a letter to the customers at their temporary new address to remind them of the expiration date. Where a customer has already received temporary forwarding service for a continuous twelve month period for any same old and new address combination, the Postal Service will not accept additional temporary change-of-address orders for that customer for those same old and new address combinations.

By instituting these procedures, the Postal Service seeks to improve service and efficiency for its customers. As described above, the changes will immediately benefit customers by ensuring they receive mail in a timely manner; e.g. by reducing the amount of mail that may be delivered at a temporary address after the customer has returned to his or her permanent address. Accordingly, the Postal Service believes it is in the public interest to adopt this rule, without prior public comment, on August 3, 2006. Nevertheless, the Postal Service is inviting public comments on the rule. These comments should be submitted within 30 days from the date of this notice to the address set forth above. At the end of this period, the Postal Service will evaluate any comments it receives and consider whether the rule should be revised.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding rulemaking by 39 U.S.C. 410(a), the Postal Service is seeking comments to this interim rule. The Postal Service is adopting the following interim revisions of the Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Revise the following section of the Domestic Mail Manual to read as set forth below:

* * * * *

507 Mailer Services

* * * * *

2.0 Forwarding

* * * * *

507.2.1.3 Temporary Forwarding

A customer temporarily moving away may have mail forwarded for a specific time, not to exceed twelve months total duration. The Postal Service shall provide temporary forwarding services in periods from two weeks to six months in duration based upon customer request. Customers can request temporary forwarding in excess of six months up to a maximum of twelve months by submitting a second temporary change-of-address order that will commence on the first day of the second six month period and expire on the desired date up to and including the last day of the second six month period. The customer must show beginning and ending dates in the change-of-address order.

* * * * *

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E6–10606 Filed 7–6–06; 8:45 am]

BILLING CODE 7710–12–P

Proposed Rules

Federal Register
Vol. 71, No. 130
Friday, July 7, 2006

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE248, Notice No. 23–06–04–SC]

Special Conditions; Thielert Aircraft Engines GmbH, Piper PA 28–161 Cadet, Warrior II and Warrior III Series Airplanes; Diesel Cycle Engine Using Turbine (Jet) Fuel

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions; correction.

SUMMARY: On June 14, 2006, we published a document concerning proposed special conditions for Thielert Aircraft Engines GmbH, Piper PA 28–161 Cadet, Warrior II and Warrior III Series Airplanes with a Diesel Cycle Engine Using Turbine (Jet) Fuel. There was an error in the preamble of the proposed special conditions in the reference to the notice number. The notice number was used in a previous proposed special condition. This document contains a correction to the notice number; the docket number remains unchanged.

DATES: Comments must be received on or before July 14, 2006.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE248, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE248. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Peter L. Rouse, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4135, fax 816–329–4090.

SUPPLEMENTARY INFORMATION:

Need for Correction

The FAA published a document on June 14, 2006 (71 FR 34288) that issued proposed special conditions. In the document heading, the notice number "23–06–03–SC" appears. However, the correct notice number is "23–06–04–SC." This document corrects that error.

Correction of Publication

Accordingly, the preamble of the proposed special conditions is revised to remove the notice number "23–06–03–SC" and to replace it with "23–06–04–SC" wherever it appears in the document.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposed special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE248." The postcard will be date stamped and returned to the commenter.

Issued in Kansas City, Missouri on June 30, 2006.

Sandra J. Campbell,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–10674 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM346, Notice No. 25–06–05–SC]

Special Conditions: Airbus Model A380–800 Airplane; Reinforced Flightdeck Bulkhead

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions; correction.

SUMMARY: This document corrects an error that appeared in Docket No. NM317, Notice No. 25–05–12–SC, which was published in the **Federal Register** on April 11, 2006 (71 FR 18236). The error is in the Docket No. and the Notice No. and is being corrected herein.

DATES: *Effective Date:* The effective date of this correction is June 15, 2006.

FOR FURTHER INFORMATION CONTACT: Madeleine Kolb, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certifications Service, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: The document designated as "Docket No. NM317, Notice No. 25–05–12–SC" was published in the **Federal Register** on April 11, 2006 (71 FR 18236). The document proposed special conditions pertaining to the reinforced flightdeck bulkhead for the Airbus Model A380–800 airplane.

As published, the document contained an error in that the Docket No. was shown as NM317, and the Notice No. was shown as 25–05–12–SC; these are the numbers of a separate set of special conditions, pertaining to flotation and ditching for the Airbus Model A380–800 airplane. To avoid confusion, a new Docket No., NM346, and a new Notice No., 25–06–05–SC, have been assigned to "Special Conditions: Airbus Model A380–800 Airplane, Reinforced Flightdeck Bulkhead."

Since no other part of the regulatory information has been changed, the Notice of proposed special conditions is not being republished.

Correction

In Notice of proposed special conditions document [FR Doc. E6–5240 Filed 4–10–06; 8:45 am] and published on April 11, 2006 (71 FR 18236), make the following correction:

1. On page 18236, in the first column in the Headings section, correct "Docket No. NM317; Notice No. 25–05–12–SC" to read "Docket No. NM346; Notice No. 25–06–05–SC."

Issued in Renton, Washington on June 15, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–10675 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 121, and 129

[Docket No. FAA–2006–24281; Notice No. 06–04]

RIN 2120–AI05

Widespread Fatigue Damage

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 that was published on April 18, 2006. In that document, the FAA proposed to require that design approval holders establish operational limits for transport category airplanes in order to prevent widespread fatigue damage in those airplanes. This extension is a result of requests from the Air Transport Association of America, Inc. (ATA), Airbus, Boeing Commercial Airplanes, Cargo Airline Association (CAA), National Air Carrier Association, Inc. (NACA), and Lynden Air Cargo to extend the comment period for the proposal.

DATES: Comments must be received by September 18, 2006.

ADDRESSES: You may send comments identified by Docket Number FAA–2006–24281 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 20590–001.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

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

Docket: To read background documents or comments received, go to http://dms.dot.gov at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, ANM–115, Airframe and Cabin Safety, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, telephone: (425–227–2116); facsimile (425–227–1232), e-mail *walter.sippel@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

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

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

Before acting on this proposal, we will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Background

On April 18, 2006, the Federal Aviation Administration (FAA) published Notice No. 06–04, Widespread Fatigue Damage (71 FR 19928). Comments on that document were to be received by July 17, 2006.

Six petitioners, the Air Transport Association of America, Inc. (ATA), Airbus, the Cargo Airline Association (CAA), Boeing Commercial Airplanes, the National Air Carrier Association, Inc. (NACA), and Lynden Air Cargo, have requested that the FAA extend the comment period for Notice No. 06–04. Many of these petitioners said that Notice No. 06–04 as well as other Aging Aircraft proposals and related guidance material present complex issues that would take time to review together.

Lynden Air Cargo requested an extension of 180 days, and all other petitioners requested an extension of 90 days to fully evaluate this proposal and send comments to the FAA.

The FAA concurs with the petitioners' requests for an extension of the comment period on Notice No. 06–04, but we believe that an extension of 90 days or more would be excessive. As Notice No. 06–04 presents some complex issues, the FAA initially provided a 90-day comment period. Although the FAA agrees that additional time may facilitate industry's assessment of the combined impacts of Notice 06–04 and other Aging Aircraft proposals and related guidance material, we must balance that need against the need to proceed expeditiously with the Widespread Fatigue Damage rulemaking. We believe that an additional 60 days would be adequate for the petitioners to review and comment on Notice No. 06–04. Absent unusual circumstances, the FAA does not anticipate any further extension of the comment period for this rulemaking.

Extension of Comment Period

In accordance with § 11.47(c) of Title 14, Code of Federal Regulations, the FAA has reviewed the petitions made by ATA, Airbus, Boeing Commercial Airplanes, CAA, NACA, and Lynden Air Cargo for extension of the comment period to Notice No. 06–04. These petitioners have shown substantial interest in the proposed rule and have provided good cause for the extension. The FAA has determined that extension of the comment period is consistent with the public interest and that good cause exists for taking this action.

Accordingly, the comment period for Notice No. 06–04 is extended to September 18, 2006.

Issued in Washington, DC, on June 29, 2006.

John M. Allen,

Acting Director, Flight Standards Service, Aviation Safety.

Dorenda D. Baker,

Acting Director, Aircraft Certification Service, Aviation Safety.

[FR Doc. E6–10597 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 121, and 129

[Docket No. FAA–2005–21693; Notice No. 05–11]

RIN 2120–AI32

Damage Tolerance Data for Repairs and Alterations

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 that was published on April 21, 2006. In that document, the FAA proposed requirements for holders of design approvals to make available to operators damage tolerance data for repairs and alterations to fatigue critical structure. This extension is a result of requests from the Air Transport Association of America, Inc. (ATA), Airbus, Boeing Commercial Airplanes, Cargo Airline Association (CAA), and National Air Carrier Association, Inc. (NACA) to extend the comment period to the proposal.

DATES: Comments must be received by September 18, 2006.

ADDRESSES: You may send comments identified by Docket Number FAA–2005–21693 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 20590–001.
- Fax: 1–202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

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

Docket: To read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Greg Schneider, ANM–115, Airframe and Cabin Safety, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, telephone: (425–227–2116); facsimile (425–227–1232), e-mail *greg.schneider@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

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

Before acting on this proposal, we will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

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(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Background

On April 21, 2006, the Federal Aviation Administration (FAA) published Notice No. 05–11, Damage Tolerance Data for Repairs and Alterations (71 FR 20574). Comments to that document were to be received by July 20, 2006.

By letters dated May 26 and 30, and June 6, 9, and 12, the Air Transport Association of America, Inc. (ATA), Airbus, the Cargo Airline Association (CAA), Boeing Commercial Airplanes, and National Air Carrier Association, Inc. (NACA), respectively, asked the FAA to extend the comment period for Notice No. 05–11. Many of the petitioners said Notice No. 05–11, as well as other Aging Aircraft proposals and related guidance material, present complex issues that would take time to review together. Each petitioner requested a 60-day extension, except Boeing Commercial Airplanes, who requested a 90-day extension, to fully evaluate this proposal before sending comments to the FAA.

The FAA concurs with the petitioners' requests for an extension of the comment period on Notice No. 05–11. The FAA believes that a 90-day extension, as requested by Boeing Commercial Airplanes, would be excessive. As Notice No. 05–11 presents some complex issues, the FAA initially provided a 90-day comment period. Although the FAA agrees that additional time will allow industry to assess the impact of this regulation and provide meaningful comments, this need must be balanced against the need to proceed expeditiously with a rulemaking that will allow airline operators to comply with existing regulations.[1] We believe an additional 60 days, as requested by most of the petitioners, would be adequate for them to review and provide comment to Notice No. 05–11. Absent unusual circumstances, the FAA does not anticipate any further extension of the comment period for this rulemaking.

[1] Aging Airplane Safety final rule: 70 FR 5518, February 2, 2005.

Extension of Comment Period

In accordance with § 11.47(c) of Title 14, Code of Federal Regulations, the FAA has reviewed the petitions made by ATA, Airbus, Boeing Commercial Airplanes, CAA, and NACA for extension of the comment period to Notice No. 05–11. These petitioners have shown a substantive interest in the proposed rule and good cause for the extension. The FAA also has determined that extension of the comment period is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, the comment period for Notice No. 05–11 is extended until September 18, 2006.

Issued in Washington, DC, June 29, 2006.

John M. Allen,

Acting Director, Flight Standards Service, Aviation Safety.

Dorenda D. Baker,

Acting Director, Aircraft Certification Service, Aviation Safety.

[FR Doc. E6–10598 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 91, 121, 125, and 129

[Docket No. FAA–2004–18379; Notice No. 05–08]

RIN 2120–AI31

Enhanced Airworthiness Program for Airplane Systems/Fuel Tank Safety (EAPAS/FTS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Alignment of compliance times for EAPAS and FTS.

SUMMARY: On October 6, 2005, the FAA published the "Enhanced Airworthiness Program for Airplane Systems/Fuel Tank Safety (EAPAS/FTS)" proposed rule. This proposal includes a discussion about our intent to coordinate the Instructions for Continued Airworthiness (ICA) for fuel tank system and electrical wiring interconnection systems (EWIS) to avoid redundancies in those ICA. It also discusses our intent to align the compliance dates for operators to include those ICA in their maintenance programs. The purpose of this document is to advise industry that while we still intend to avoid redundancies in the fuel

tank system and EWIS ICA, it is no longer practical to align the compliance dates to incorporate those ICA into operator maintenance programs. As a result, the December 16, 2008 compliance date in the fuel tank safety operational rules remains firm, and industry should proceed with the necessary plans to meet this date.

DATES: The mandatory compliance date for airline operators to comply with the fuel tank safety operational rules is December 16, 2008.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, ANM–111, Airplane & Flight Crew Interface, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–2315; facsimile (425) 227–1320, e-mail *steve.slotte@faa.gov* (certification rules) or Fred Sobeck, AFS–304, Aircraft Maintenance Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7355; facsimile (202) 267–7335, e-mail *frederick.sobeck@faa.gov* (operating rules).

SUPPLEMENTARY INFORMATION:

Background

On May 7, 2001, the FAA issued the "Transport Airplane Fuel Tank System Design Review, Flammability Reduction, and Maintenance and Inspection Requirements" final rule.[1] The operational portion of this rule, called "Fuel Tank Safety Rule," requires operators of affected transport category airplanes to include fuel tank system maintenance and inspection instructions in their existing maintenance programs by a specified date. This final rule also included a Special Federal Aviation Regulation (SFAR) component, called SFAR 88, which applies to design approval holders (DAHs). SFAR 88 requires DAHs, among other things, to develop the fuel tank system maintenance and inspection instructions that operators need to include in their maintenance programs.

On July 30, 2004, the FAA published the "Fuel Tank Safety Compliance Extension (Final Rule) and Aging Airplane Program Update (Request for Comments)" final rule.[2] That action revised the compliance date for fuel tank safety operational rules to December 16, 2008.

On October 6, 2005, the FAA published the "Enhanced Airworthiness Program for Airplane Systems and Fuel Tank Safety (EAPAS/FTS)" proposal.[3] In that proposed rule, we discussed our intent to coordinate the Instructions for Continued Airworthiness (ICA) for fuel tank system and electrical wiring interconnection systems (EWIS). The intent of this approach is to facilitate a more comprehensive treatment of those ICA and accomplish maintenance instructions at consistent intervals. We also discussed our intent to align the compliance times for incorporation of those ICA into operators' maintenance programs. This would have allowed operators to accomplish their maintenance program revisions for both initiatives at one time.

When we originally drafted the EAPAS/FTS proposal, we aligned the compliance dates at December 16, 2008, assuming we would issue the final rule by mid-2006. This would have allowed operators enough time to meet the 2008 compliance date for both fuel tank system and EWIS ICA. However, we also realized the EAPAS/FTS rulemaking could take longer than expected, so we asked for comments about the possible impact on the compliance times. The comment period for the proposal closed on February 3, 2006. We are currently reviewing the comments to the proposal; we anticipate that we will not issue a final rule that will respond to those comments for several months. If we were to keep the compliance times aligned, we would need to extend the December 16, 2008 date to coincide with the compliance date of the EAPAS final rule. After studying the impact of delays in issuing the October 2005 EAPAS/FTS proposal, and after reviewing the comments related to compliance dates, we have determined that public safety would not be served by extending implementation of the fuel tank safety operational rules beyond the December 16, 2008 date. Also, since adoption of the May 7, 2001 final rule, specifically SFAR 88, DAHs have had enough time to develop the required fuel tank system ICA and make them available to operators.

Therefore, for the reasons stated, we have decided not to maintain the alignment of the fuel tank system and EWIS compliance times specified in the EAPAS/FTS proposal. Today's action gives industry notice that the December 16, 2008 date for compliance with the fuel tank safety operational rules remains firm.

While alignment of the fuel tank system and EWIS ICA compliance dates is no longer practical, coordination of the maintenance tasks contained in the ICA is still desirable and possible. Therefore, it remains our intent to fully coordinate these tasks to avoid possible conflicts, remove redundancies, and provide maximum efficiency to accomplish them.

We are still evaluating the appropriate compliance date for implementation of the EWIS ICA and will provide that date in the EAPAS final rule.

Issued in Washington, DC, June 29, 2006.

John M. Allen,

Acting Director, Flight Standards Service.

Dorenda D. Baker,

Acting Director, Aircraft Certification Service.

[FR Doc. E6–10596 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–13–P

[1] 66 FR 23086.

[2] 69 FR 45936.

[3] 70 FR 58508.

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 511

[BOP Docket No. BOP–1137]

RIN 1120–AB37

Possession or Introduction of Personal Firearms Prohibited on the Grounds of Bureau of Prisons Facilities

AGENCY: Federal Bureau of Prisons, DOJ.

ACTION: Proposed rule.

SUMMARY: To help ensure the safe operation of Federal Prisons, this rule proposes prohibiting all persons from possessing or introducing personal firearms, or attempting, aiding, or abetting possession or introduction of personal firearms, on the grounds of Bureau of Prisons facilities, with exceptions for possession of personal firearms: (1) As required in the performance of official law enforcement duties; (2) on Bureau firing ranges by law enforcement personnel, as authorized by the Warden; and (3) in Warden-designated secure locations by Bureau employees who reside on Bureau grounds.

DATES: Please submit written comments no later than August 7, 2006.

ADDRESSES: Our e-mail address is *BOPRULES@BOP.GOV*. Comments should be submitted to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may view an electronic version of this rule at *http://www.regulations.gov*. You may also comment via the Internet to BOP at *BOPRULES@BOP.GOV* or by using the *http://www.regulations.gov* comment form for this regulation. When submitting comments electronically you must include the BOP Docket No. in the subject box.

SUPPLEMENTARY INFORMATION: To help ensure the safe operation of Federal Prisons, this rule proposes prohibiting all persons from possessing or introducing personal firearms, or attempting, aiding, or abetting possession or introduction of personal firearms, on the grounds of Bureau facilities, with the following exceptions: (1) Personal firearms are permitted as required in the performance of official law enforcement duties; (2) Law enforcement personnel are permitted to possess personal firearms on Bureau firing ranges as authorized by the Warden, where continuous possession and control of the firearm is maintained; and (3) An officer or employee of the Bureau who resides on Bureau grounds may store personal firearms in secure locations designated by the Warden. Residences must not be designated as secure location sites for personal firearms storage.

18 U.S.C. 4042(a) gives the Bureau broad authority to "have charge of the management and regulation of all Federal penal and correctional institutions," to "provide for the safekeeping, care, and subsistence of all" Federal offenders, and to "provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States." This provision authorizes the Bureau to issue regulations for the management of its institutions and for the safekeeping and protection of inmates.

Currently, the Bureau's policy on searching, detaining, and arresting non-inmates requires an easily read sign to be posted at the commonly used entrances into each Bureau facility which indicates that "[i]t is a Federal crime to bring upon the institution grounds any firearm, destructive device, ammunition, other object designed to be used as a weapon, narcotic drug, controlled substance, alcoholic beverage, currency, or any other object without the knowledge and consent of the Warden." Through this rulemaking, the Bureau proposes to codify this principle.

This regulation is necessary for the following reasons.

- The Bureau needs to clarify that *all* persons are prohibited from bringing personal firearms onto institution grounds, including storing them in motor vehicles driven onto or parked on institution grounds. Storage of personal firearms in motor vehicles is inadequate because vehicle security is easy to compromise, making firearms so stored accessible to inmates working on institution grounds, inmates being released, and members of the public.
- Personal firearms could be obtained by inmates or members of the public and used to injure persons or assist in inmate escapes.
- Prohibiting personal firearms on institution grounds creates a "buffer zone" between the community, where concealed personal firearms may be allowed, and the actual institution facility, where the presence of unauthorized firearms of any type creates a variety of serious potential management and security problems.
- Creating such a "buffer zone" through regulation will increase attention of Bureau staff and others to this prohibition and the attendant risks, and will reduce inadvertent introductions of personal firearms onto institution grounds.

The Law Enforcement Officers Safety Act of 2004 (Pub. L. 108–277) (LEOSA) now exempts qualified current and retired law enforcement officers from State laws that prohibit carrying concealed personal firearms. Bureau staff employed at Federal penal and correctional institutions may qualify under LEOSA to carry concealed personal firearms in public. Therefore, the possible presence of concealed personal firearms on institution grounds is greater now than before LEOSA and the risk to the safety of inmates, Bureau staff, and the public is likewise heightened, as explained above.

Although we highlight the general prohibition on concealed personal firearms on institution grounds, we also recognize that certain exceptions are necessary. Therefore, this rule will permit personal firearms in furtherance of official law enforcement functions. This exception contemplates only "on-duty" situations, such as instances in which local law enforcement officers are required to serve process at a Bureau institution, or when local law enforcement officers, who sometimes carry only personal firearms, are called upon to respond to emergency situations on Bureau grounds.

The second exception in the rule permits law enforcement personnel to possess personal firearms on Bureau firing ranges as authorized by the Warden, where continuous personal possession and control of the firearm is maintained. This exception will allow staff to continue to have a place to safely and appropriately maintain the skills necessary for proper firearm use, as further regulated by local institutions.

The third exception, permitting Bureau staff who reside on Bureau grounds to store personal firearms in secure locations designated by the Warden, other than residences, recognizes that such staff may simply have no other location to safely store personal firearms outside of Bureau grounds.

To provide more comprehensive institutional security and reduce even further the likelihood that firearms on Bureau grounds will come into the possession of inmates, the Bureau proposes the additional security measures described above.

Regulatory Flexibility Act

The Director, Bureau of Prisons, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, § 1(b), Principles of Regulation. The Director, Bureau of Prisons, has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule will only have minor effect on State law enforcement personnel carrying personal firearms who wish to enter upon Bureau grounds. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 511

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we propose to amend 28 CFR part 511 as follows.

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 511—GENERAL MANAGEMENT POLICY

1. Revise the authority citation for 28 CFR part 511 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 751, 752, 1791, 1792, 1793, 3050, 3621, 3622, 3624, 4001, 4012, 4042, 4081, 4082 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; Pub. L. 772, 80th Cong.; 18 U.S.C. 1791 and 4042; Pub. L. 108–277 (18 U.S.C. 926B); 28 CFR part 6.

2. Subpart A is added to read as follows:

Subpart A—Personal Firearms

Sec.

511.1 Possession or introduction of personal firearms prohibited on the grounds of Bureau of Prisons facilities.

§ 511.1 Possession or introduction of personal firearms prohibited on the grounds of Bureau of Prisons facilities.

All persons are prohibited from possessing or introducing personal firearms, or attempting, aiding, or abetting possession or introduction of personal firearms, on the grounds of any Bureau of Prisons (Bureau) facility, with the following exceptions:

(a) Personal firearms are permitted as required in the performance of official law enforcement duties;

(b) Law enforcement personnel are permitted to possess personal firearms on Bureau firing ranges as authorized by the Warden, provided that continuous personal possession and control of the firearm is maintained; and

(c) An officer or employee of the Bureau who resides on Bureau grounds may store personal firearms in secure locations designated by the Warden. Residences must not be designated as secure location sites for personal firearms storage.

[FR Doc. E6–10601 Filed 7–6–06; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 206, 210, 216, and 218

RIN 1010–AD20

Reporting Amendments

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: The MMS is proposing to amend its existing regulations for reporting production and royalties on oil, gas, coal, and geothermal resources produced on Federal and Indian leases in order to align the regulations with current MMS business practices. These amendments reflect changes that were implemented as a result of a major reengineering of MMS's financial system and other legal requirements.

DATES: Comments must be submitted on or before September 5, 2006.

ADDRESSES: Address your comments, suggestions, or objections regarding the proposed rule to:

By Federal eRulemaking Portal. Follow the instructions on the Web site at *http://www.regulations.gov.*

By e-mail. mrm.comments@mms.gov. Please include "Attn: RIN 1010–AD20" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, call the contact person listed below.

By regular U.S. mail. Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225.

By overnight mail or courier. Minerals Management Service, Minerals Revenue Management, Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225; telephone: (303) 231–3211; fax: (303) 231–3781; e-mail: *Sharron.Gebhardt@mms.gov.* The principal authors of this rule are Lorraine Corona, Louise Williams, Richard Adamski, and Paul Knueven of Minerals Revenue Management, MMS, Department of the Interior.

SUPPLEMENTARY INFORMATION:

I. Introduction

The MMS implemented integrated reengineered systems on November 1, 2001. This process included a major reengineering of the Minerals Revenue Management (MRM) financial system. The new systems are the core systems support for MMS's implementation of new royalty management business processes for the 21st century. The new systems were developed around new business processes and have been reengineered to be more effective and efficient. The reengineering, as well as changes required by law, resulted in changes to, or elimination of, some forms and requirements. The MMS is proposing to eliminate references in the regulations to forms that are no longer used; however, elimination of these forms by reengineering did not eliminate the requirements for record retention and making the records available to support the payment of royalties, as stated in 30 CFR part 212, Records and Files Maintenance.

The MMS is proposing to amend its regulations to align the regulations with the following changes that were required as a result of reengineering: (1) Aligning the regulations with the updated Form MMS–2014, Report of Sales and Royalty Remittance (approved by the Office of Management and Budget (OMB)); (2) eliminating references in the regulations to report forms, designations, systems, and codes that are no longer applicable; (3) updating references to OMB-approved information collections; (4) revising the due date for production reports submitted electronically; (5) clarifying the requirement for production reporting of inventory on leases and agreements until all production has ceased and all inventory has been disposed of; (6) eliminating references to Federal oil and gas late and incorrect (erroneous) reporting assessments and failure to report; (7) eliminating references to some electronic reporting options that no longer exist as a result of reengineering; and (8) clarifying the reporting requirement for taxpayer identification numbers.

II. Explanation of Proposed Rule Amendments

The proposed rule would affect four CFR parts: (1) 30 CFR Part 206—Product Valuation; (2) Part 210—Forms and Reports; (3) Part 216—Production Accounting; and (4) Part 218—Collection of Royalties, Rentals, Bonuses and Other Monies Due the Federal Government. The proposed changes to the regulations would align the regulations with current MMS business practices. These proposed changes to the regulations are explained in depth in the following sections:

A. 30 CFR Part 206—Product Valuation

The proposed changes in part 206 would align the regulations with current reporting requirements for Form MMS–2014, Report of Sales and Royalty Remittance (OMB Control Number 1010–0140).

1. *Selling Arrangement* v. *Sales Type Code.* Before October 1, 2001, MMS required payors to report at the selling arrangement level on Form MMS–2014, which entailed reporting one line for each sale under each type of contract. Effective October 1, 2001, the revised Form MMS–2014 allows payors to roll up all sales (including rolling up pooling situations) under a contract type—referred to as a "sales type code" to one line per lease. To incorporate this change in our regulations, we propose to remove references to and definition of "selling arrangement" wherever it occurs and add a definition of "sales type code" as follows:

Sales type code means the contract type and/or general disposition (arm's-length or non-arm's-length) of the production from Federal and Indian oil, gas, and geothermal leases. The sales type code applies to the sales contract/disposition and not to the arm's-length/non-arm's-length nature of the transportation or processing allowance.

2. *Transportation and Processing Allowance Deductions.* Other reengineering changes to Form MMS–2014 allow payors to report transportation and processing allowance deductions on the same line as volumes and values. Prior to 2001, allowances were reported on separate lines from volumes and values. Allowances are now reported in a separate column but on the same line as the associated volumes and values. Consequently, in our regulations pertaining to transportation and processing allowances, we propose to remove all references to previous requirements to report an allowance on a separate line on Form MMS–2014. We propose to change the text to read a separate "entry" rather than "line." The MMS discussed the benefit of this change in an information collection request (ICR) to OMB that was approved August 2000, and renewed October 2003, under OMB Control Number 1010–0140.

B. 30 CFR Part 210—Forms and Reports

We are proposing to revise part 210, subparts A, B, C, D, and E; and eliminate subparts F, G, H, and I in order to align the regulations with reengineered MMS business practices.

1. 30 CFR Part 210, Subpart A—General Provisions

Subpart A would provide an updated comprehensive list of ICRs currently approved by OMB. We propose to include the following chart, listing the OMB control number, legal basis, and associated forms or information collected.

OMB control No.	Legal basis	Form or information collected
1010–0073	30 CFR Part 220—Accounting Procedures for Determining Net Profit Share Payment for Outer Continental Shelf Oil and Gas Leases.	No form, Net profit share payment information.
1010–0087	30 CFR Part 227—Delegation to States, and Part 228—Cooperative Activities with States and Indian Tribes.	No form, Written delegation proposal to perform auditing and investigative activities. No form, Request for cooperative agreement and subsequent requirements.
1010–0090	30 CFR Part 216—Production Accounting, Subpart B—Oil and Gas, General.	Form MMS–4377, Stripper Royalty Rate Reduction Notification.
1010–0103	30 CFR Part 202—Royalties, Subpart J—Gas Production From Indian Leases, and Part 206—Product Valuation, Subpart B—Indian Oil, and Subpart E—Indian Gas.	Form MMS–4109, Gas Processing Allowance Summary Report. Form MMS–4295, Gas Transportation Allowance Report. Form MMS–4110, Oil Transportation Allowance Report. Form MMS–4411, Safety Net Report. Form MMS–4410, Accounting for Comparison [Dual Accounting]. Form MMS–4393, Request to Exceed Regulatory Allowance Limitation (**Note:** Form MMS–4393 is used for both Federal and Indian oil and gas leases. Burden hours are applied to both 1010–0103 and 1010–0136; however, the form resides with ICR 1010–0136.).
1010–0107	30 CFR Part 218—Collection of royalties, rentals, bonuses and other monies due the Federal Government, Subpart A—General Provisions, and Subpart B—Oil and Gas, General.	Form MMS–4425, Designation Form for Royalty Payment Responsibility. No form, Cross-lease netting documentation. No form, Indian over-recoupment approval.
1010–0110	Executive Order 12862—Setting Customer Service Standards.	Form MMS–4420A–E, Training and Outreach Evaluation Form.
1010–0119	30 CFR Part 208—Sale of Federal Royalty Oil.	Form MMS–4070, Application for the Purchase of Royalty Oil. Form MMS–4071, Letter of Credit (RIK). Form MMS–4072, Royalty-in-Kind Contract Surety Bond. No form, Royalty oil sales to eligible refiners.

OMB control No.	Legal basis	Form or information collected
1010–0120	30 CFR Part 206—Production Valuation, Subpart F—Federal Coal, and Subpart J—Indian Coal; Part 210—Forms and Reports, Subpart B—Oil, Gas, and OCS Sulfur—General, Subpart E—Solid Minerals, General, and Subpart H—Geothermal Resources; and Part 218—Collection of royalties, rentals, bonuses and other monies due the Federal Government, Subpart B—Oil and Gas, General, and Subpart E—Solid Minerals—General.	Form MMS–4430, Solid Minerals Production and Royalty Report. Form 4292, Coal Washing Allowance Report. Form 4293, Coal Transportation Allowance Report. No form, Facility data—solid minerals. No form, Sales contracts—solid minerals. No form, Sales summaries—solid minerals.
1010–0122	30 CFR Part 243—Suspensions Pending Appeal and Bonding—Minerals Revenue Management.	Form MMS–4435, Administrative Appeal Bond. Form MMS–4436, Letter of Credit. Form MMS–4437, Assignment of Certificate of Deposit. No form, Self bonding. No form, U.S. Treasury securities.
1010–0136	30 CFR Part 206—Product Valuation, Subpart C—Federal Oil.	Form MMS–4393, Request to Exceed Regulatory Allowance Limitation. No form, Federal oil valuation support information.
1010–0139	30 CFR Part 216—Production Accounting, Subpart A—General Provisions, and Subpart B—Oil and Gas, General; and Part 210—Forms and Reports.	Form MMS–4054, Oil and Gas Operations Report (OGOR). Form MMS–4058 (Parts A, B, and C), Production Allocation Schedule Report (PASR).
1010–0140	30 CFR Part 210—Forms and Reports	Form MMS–2014, Report of Sales and Royalty Remittance.
1010–0155	30 CFR Part 204—Alternatives for Marginal Properties, Subpart C—Accounting and Auditing Relief.	No form, Notification and relief request for accounting and auditing relief.
1010–0162	Chief Financial Officers Act of 1990	No form, Accounts receivable confirmations.

The proposed sections would align with reengineered MMS business practices as follows:

Section 210.1 What is the purpose of this subpart?

Section 210.1 would be added to explain that the purpose of this part is to identify OMB-approved information collections currently required by reengineered MMS business operations.

Section 210.2 To whom do these regulations apply?

Section 210.2 would apply to any person who is assigned or assumes an obligation to report data and/or make payment to MMS and may include lessees, designees, operators, purchasers, reporters, payors, and working interest owners, but is not restricted to these parties.

Section 210.10 What are MMS's approved information collections?

Currently, 30 CFR 210.10(a) contains a list of information collections approved by OMB prior to reengineering. Paragraph (c) contains a brief description of the information collections listed in paragraph (a). In this rule, we propose to update the list of OMB-approved ICRs and combine the information about individual ICRs in paragraphs (a) and (c) into one chart with references to relevant CFR citations. Paragraph (b) would be eliminated, and mailing addresses would be specified only in CFR sections relevant to specific information collections.

Section 210.20 What if I disagree with MMS's burden estimates?

The text in § 210.10(d) pertaining to commenting on the accuracy of our burden estimates would be moved to new § 210.20 and updated with current information.

Section 210.21 How do I report my taxpayer identification number?

The proposed rule would clarify taxpayer identification number (TIN) reporting at 30 CFR 210.21. The MMS requires reporters to use a TIN to report and pay mineral revenues to MMS. A TIN is either a Social Security Number (SSN) or an Employer Identification Number (EIN) assigned by the Internal Revenue Service (IRS). The proposed rule would require all MMS reporters to report using an EIN. All reporters are presumed to have entrepreneurial or business activities and, thus, should either already have an EIN or qualify to apply for an EIN. To protect individuals' privacy, MMS would no longer accept SSNs to meet the requirement of reporting using a TIN.

The MMS would use IRS Form W–9, Request for Taxpayer Identification Number, or equivalent certification, to collect EINs. The collection of TIN data on IRS Form W–9 is not subject to the provisions of the Paperwork Reduction Act of 1995 (PRA) and does not require OMB approval because only information to identify the respondent is requested [5 CFR 1320.3(h)]. However, filing IRS Form SS–4, Application for Employer Identification Number, is subject to the PRA and is covered under an IRS information collection (OMB Control Number 1545–00033).

Section 210.30 What are my responsibilities as a reporter/payor?

The text in § 216.21 pertaining to reporter responsibilities would be moved to new § 210.30.

Section 210.40 Will MMS keep the information I provide confidential?

The text in § 216.25 pertaining to confidentiality of information provided to MMS would be moved to new § 210.40.

2. 30 CFR Part 210, Subpart B—Royalty Reports—Oil, Gas, and Geothermal Resources

Subpart B would explain current reengineered MMS reporting practices, including the report that must be submitted when reporting royalties on oil and gas and geothermal resources produced from Federal and Indian lands. In addition to the changes to the regulations listed below, we propose to rewrite the text in subpart B in plain English and insert questions in the section headings.

Section 210.50 What is the purpose of this subpart?

We propose to add § 210.50 to state that the purpose of subpart B is to explain the royalty reporting requirements for Federal and Indian oil and gas and geothermal leases, which were implemented as a result of reengineering.

Section 210.51 Who must submit royalty reports?

Section 210.51 would apply to any person who pays royalty to MMS.

Section 210.52 What royalty reports must I submit?

The information in § 210.52(a) would be moved to new § 210.52.

Section 210.53 When are my royalty reports and payments due?

The information in § 210.52(c) through (e) would be moved to new § 210.53.

Section 210.54 Must I submit this royalty report electronically?

The information pertaining to Form MMS–2014 in §§ 210.20, 210.21, and 210.22 would be moved to new § 210.54.

The proposed rule would eliminate references in the regulations to several electronic reporting options, which are no longer used to submit production and royalty reports to MMS. The MMS has contracted with an electronic commerce (EC) service that collects regulatory report data electronically from reporters and forwards that data to MMS in American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X12 Electronic Data Interchange (EDI) reporting format. This EC service allows MMS to consolidate and streamline our infrastructure, thereby eliminating multiple input processes and required maintenance, and to address changing and obsolete technology. Based on the new technology requirements, the proposed rule would eliminate references to magnetic tape/cartridge reporting as well as electronic mail, template software, and diskette reporting formats. The proposed rule would describe the revised list of approved electronic reporting options at 30 CFR 210.54 and 210.104.

Section 210.55 May I submit this royalty report manually?

Section 210.55 would allow manual submission of Form MMS–2014 under specific conditions and would provide mailing instructions.

Section 210.56 Where can I find more information on how to complete the royalty report?

The information pertaining to Form MMS–2014 in § 210.53 would be moved to new § 210.56.

3. 30 CFR Part 210, Subpart C—Production Reports—Oil, Gas, and Geothermal Resources

Subpart C would explain current reengineered MMS reporting practices, including the report that must be submitted when reporting production on oil and gas and geothermal resources produced from Federal and Indian lands. To make production reporting requirements easier to find, we propose to combine all production reporting information found in part 216 with the production reporting information found in part 210, thus eliminating part 216. In addition to the changes to the regulations listed below, we propose to write the text in subpart C in plain English and insert questions in the section headings.

Section 210.100 What is the purpose of this subpart?

We propose to add § 210.100 to explain that the purpose of subpart C is to provide the production reporting requirements for Federal and Indian oil and gas and geothermal leases, which were implemented as a result of reengineering.

Section 210.101 Who must submit production reports?

Section 210.101—would identify those who must submit production reports as anyone who operates a Federal or Indian oil and gas or geothermal lease or federally approved agreement.

Section 210.102 What production reports must I submit?

In our final electronic reporting rule, published July 15, 1999 (64 FR 38116), we clarified a long-standing practice concerning unsold inventory on a terminated lease or agreement. If the last production report submitted to MMS on a terminated lease or agreement indicated unsold inventory on the property, our previous practice was to notify the Bureau of Land Management (BLM), if the property was located onshore, or the MMS Offshore Minerals Management (OMM) program, if the property was located on the Outer Continental Shelf. The BLM and OMM then monitored the inventory from the point of termination, and the operator was not required to submit further production reports to MMS.

In this rule, we are proposing at the new 30 CFR 210.102(a) to eliminate in its entirety 30 CFR 216.50, which references the eliminated Form MMS–3160 and 30 CFR 216.53(d), which references Form MMS–4054. We are proposing to amend the regulations to reflect current reengineered business practices, which require an operator to submit a production report (Form MMS–4054) on a lease or agreement until no production remains on the property. In other words, a production report must be submitted if any production remains on the property and until all inventory has been disposed of. This would include the time after all production has ceased, including the period after the well is plugged or a lease or agreement terminates, if inventory remains on the property. This process has improved the tracking of unsold inventory and is more efficient than transferring the responsibility between agencies.

Section 210.103 When are my production reports due?

In our final electronic reporting rule published July 15, 1999 (64 FR 38116), MMS extended the due date for submitting electronic production reports from the 15th day of the second month following production to the 25th day of the second month following production as an incentive to increase electronic production reporting. This change is reflected in 30 CFR 216.53, Oil and Gas Operations Report. After operating under these procedures for more than 7 years, we now receive more than 98 percent of our production data electronically. However, the extended due date for electronic reporters has had an unexpected effect on our ability to timely perform the MMS reservoir management, inspection, and enforcement functions. Production reports on offshore leases are forwarded to the OMM program weekly as they are received and corrected. Consequently, extending the due date for electronic reporters (also our largest volume reporters) unduly delays OMM's initiation of certain verification procedures. For this reason, we are proposing to eliminate the extended due date for electronic reporters. Under the proposed rule, all production reporters (electronic and other than electronic) would be required to submit Form MMS–4054 by the 15th day of the second month following production. The proposed rule reflects this change at 30 CFR 210.103.

Section 210.104 Must I submit these production reports electronically?

No. You may submit the forms by non-electronic means if you qualify for one of the exemptions under § 210.105. The information pertaining to completing Forms MMS–4054 and MMS–4058 in §§ 210.20, 210.21, and 210.22 would be moved to new § 210.104. As we discussed above in § 210.54, we would also eliminate references to some electronic reporting options.

Section 210.105 May I submit these production reports manually?

Section 210.105 would allow manual submission of Forms MMS–4054 and MMS–4058 under specific conditions and would provide mailing instructions.

Section 210.106 Where can I find more information on how to complete these production reports?

The information pertaining to Forms MMS–4054 and MMS–4058 in § 216.15 would be moved to new § 210.106.

4. 30 CFR Part 210, Subpart D—Special-Purpose Forms and Reports—Oil and Gas and Geothermal Resources

Subpart D would explain the special circumstances under which each of the remaining OMB-approved information collections, pertaining to oil and gas and geothermal resources in subpart A, must be submitted.

Sections 210.150 through 210.158 would be added in subpart D to summarize the current reengineered MMS requirements of our special-purpose forms and reports. Our special-purpose forms and reports are the remaining information collections not discussed in subparts B (basic royalty reporting) and C (basic production reporting). These sections would also provide acceptable reporting options for each report, addresses to submit completed reports and other required documents, and regulatory cites to direct the reader to additional information about each requirement. If you do not submit these special-purpose forms and reports in accordance with the regulations, MMS may disallow allowances, assess penalties, or take other appropriate enforcement actions. The added sections would be:

210.150 What reports must I submit to claim an excess allowance?
210.151 What reports must I submit to claim allowances on an Indian lease?
210.152 What reports must I submit for Indian gas valuation purposes?
210.153 What reports must I submit for Federal oil valuation purposes?
210.154 What reports must I submit for Federal onshore stripper oil properties?

Note: This is a BLM program that has been suspended; however it could be reinstated at any time in the future. In addition, MMS will continue to process amendments for Form MMS–4377, Stripper Royalty Rate Reduction Notification, indefinitely. Therefore, this section remains.

210.155 What reports must I submit for net profit share leases?
210.156 What reports must I submit for the small refiner royalty-in-kind program?
210.157 What reports must I submit to suspend an MMS order under appeal?
210.158 What reports must I submit to designate someone to make my royalty payments?

5. 30 CFR Part 210, Subpart E—Solid Minerals, General [Amended]

Subpart E would pertain to current reengineered business requirements for production and royalty reporting for solid mineral leases on Form MMS–4430, Solid Minerals Production and Royalty Report (OMB Control Number 1010–0120). The title of subpart E would be revised and a section added on the special reporting requirements, which were implemented as a result of reengineering, for allowances on Indian coal production.

Sections 210.205 and 210.206 would be redesignated as §§ 210.206 and 210.207, respectively.

Section 210.205 What reports must I submit to claim allowances on Indian coal leases?

We propose to add § 210.205 to explain requirements implemented as a result of reengineering for reporting allowances related to Indian leases. If reporters do not submit these allowance forms and reports as required in the regulations, MMS may disallow allowances, assess penalties, or take other appropriate enforcement actions.

6. 30 CFR Part 210, Subpart F—Coal [Reserved]; Subpart G—Other Solid Minerals [Reserved]; Subpart H—Geothermal Resources; and Subpart I—OCS Sulfur [Reserved]

We propose to remove subparts F through I.

7. The MMS Proposes To Eliminate 30 CFR 210.51 and 210.352 in Their Entirety, Which Reference Form MMS–4025, Payor Information Form

Form MMS–4025, Payor Information Form (PIF), was used to establish payor reference data such as the lease and agreement number and product code on which the payor was assuming responsibility to pay royalty. During reengineering of our core business processes, the specific need for Form MMS–4025 was eliminated when MMS removed the revenue source code reporting requirement from Form MMS–2014. The MMS determined that other information reported on Form MMS–2014 could be used to establish necessary payor reference data in our financial system. Therefore, Form MMS–4025 was unnecessary.

The MMS discussed the reasons for, and benefits of, eliminating Form MMS–4025 in an information collection request to OMB that was approved in August 2000, and renewed in August 2003, under OMB Control Number 1010–0140. On May 29, 2001, MMS issued a "Dear Payor" letter informing reporters that Form MMS–4025 had been eliminated effective April 1, 2001. The proposed rule would eliminate 30 CFR 210.51 and 210.352 in their entirety, remove Form MMS–4025 from our list of required information collections, and remove all references to this form in the MMS regulations.

C. 30 CFR Part 216—Production Accounting

We propose to move all production reporting information in part 216 to subpart C of part 210 and remove part 216 in its entirety.

1. Eliminate references to report forms, designations, systems, and codes that are no longer applicable.

We propose to eliminate the following 30 CFR part 216 sections, referencing forms that are no longer used.

(a) The MMS proposes to eliminate 30 CFR 216.50 in its entirety, which references Form MMS–3160, Monthly Report of Operations.

Since the late 1980s, for onshore Federal and Indian oil and gas lease production, MMS has required operators to submit Form MMS–3160, Monthly Report of Operations. For offshore oil and gas lease production, MMS has required operators to submit Form MMS–4054, Oil and Gas Operations Report (OGOR). Some operators also used Form MMS–4054 for their onshore properties.

During the reengineering of our core business processes, MMS determined that Form MMS–3160 was not adequate for our new compliance verification process. Previously, on Form MMS–3160, reporters grouped all dispositions, other than the seven most common situations, in a field called "Other" with an explanation in a "Comments" section. When MMS detected a reporting exception, MMS had to analyze this grouping of several dispositions manually to determine the volume, method, and propriety of each disposition. Form MMS–4054 accommodates more types of dispositions, allowing MMS to resolve more exceptions automatically, thus reducing the burden on industry and MMS.

Further, under previous reporting using both Forms MMS–3160 and MMS–4054, many companies that reported both offshore and onshore properties had to maintain and support two separate production reporting systems. It is more efficient for all parties to have one form for production reporting.

The MMS discussed the benefits of eliminating Form MMS–3160 and streamlining remaining production reporting Forms MMS–4054 and MMS–4058, Production Allocation Schedule Report (PASR), in an information collection request to OMB that was approved in July 2000, and renewed in August 2003, under OMB Control Number 1010–0139 (formerly OMB

Control Number 1010–0040). Moreover, effective October 1, 2001, reporters began reporting all onshore and offshore production on Form MMS–4054. The proposed rule would reflect this change at 30 CFR part 210, subpart C—Production Reports—Oil, Gas, and Geothermal Resources, by eliminating 30 CFR 216.50 in its entirety, removing Form MMS–3160 from our list of required information collections. The proposed rule also would remove all references to this form in the MMS regulations.

(b) The MMS proposes to eliminate 30 CFR 216.51 in its entirety, which references Form MMS–4051, Facility and Measurement Information Form. This information is now collected on the Form MMS–4054.

The purpose of Form MMS–4051, Facility and Measurement Information Form (FMIF), was to identify facilities where oil and gas production is stored or processed and the metering points where production is measured for sale or transfer. This information established a reference database used to account for all oil and gas production. Effective October 1, 2001, the MMS converted compilations of this information into an internal MMS worksheet and companies were no longer required to file the Form MMS–4051 report form.

The MMS discussed the benefits of converting this information into an internal MMS worksheet in an information collection request to OMB that was approved in July 2000, and renewed in August 2003, under OMB Control Number 1010–0139. The proposed rule would eliminate 30 CFR 216.51 in its entirety, remove Form MMS–4051 from our list of required information collections, and remove all references to this form in the MMS regulations.

(c) The MMS proposes to eliminate 30 CFR 216.52 in its entirety, which references Form MMS–4053, First Purchaser Report.

The purpose of Form MMS–4053, First Purchaser Report, was to document the first purchaser of minerals produced from Federal and Indian oil and gas leases. The MMS no longer requires this information or uses this form. The OMB approval for Form MMS–4053 expired May 31, 1995. The proposed rule would eliminate 30 CFR 216.52 in its entirety, remove Form MMS–4053 from our list of required information collections, and remove all references to this form in the MMS regulations.

(d) The MMS proposes to eliminate 30 CFR 216.54 in its entirety, which references Form MMS–4055, Gas Analysis Report.

The purpose of Form MMS–4055, Gas Analysis Report (GAR), was to report the composition of a lease gas stream transferred to a gas plant before royalty determination. During the reengineering of our core business processes, MMS determined that it is more efficient to obtain a copy of gas sample results, if necessary, during our compliance verification or audit processes than to require reporters to transcribe and submit the information on an MMS form. The information requested on Form MMS–4055 was covered under OMB Control Number 1010–0040, which expired September 30, 2001. Effective October 1, 2001, companies were no longer required to submit this form. The proposed rule would eliminate 30 CFR 216.54 in its entirety, remove Form MMS–4055 from our list of required information collections, and remove all references to this form in the MMS regulations.

(e) The MMS proposes to eliminate 30 CFR 216.55 in its entirety, which references Form MMS–4056, Gas Plant Operations Report.

The purpose of Form MMS–4056, Gas Plant Operations Report (GPOR), was to report a summary of all operations conducted at a gas plant during a specific period. Form MMS–4056, used in conjunction with Form MMS–4055, was used to determine the quantity and quality of gas plant products attributed to a specific Federal or Indian lease when the gas was transferred to a gas plant before royalty determination. During the reengineering of our core business processes, MMS determined that it is more efficient to obtain a copy of the entire gas plant report during our compliance verification or audit processes than to require reporters to transcribe and submit the information on an MMS form. The information requested on Form MMS–4056 was covered under OMB Control Number 1010–0040, which expired September 30, 2001. Effective October 1, 2001, companies were no longer required to submit this form. The proposed rule would eliminate 30 CFR 216.55 in its entirety, remove Form MMS–4056 from our list of required information collections, and remove all references to this form in the MMS regulations. The MMS is proposing to eliminate references to forms that are no longer used; however, elimination of these forms by reengineering did not eliminate the requirements for record retention and making the records available to support the payment of royalties, as stated in 30 CFR part 212, Records and Files Maintenance.

2. Revise the due date for production reports submitted electronically.

As we discussed above, the information in §§ 216.53(c), 216.56(c), and 216.16(c) would be moved to new § 210.104. We also propose to eliminate the 10-day reporting extension for production reports submitted electronically.

3. Clarify the requirement for production reporting of inventory on leases and agreements until all inventory has been disposed of and all production has ceased.

The information in §§ 216.53(a), (b), and (d) and 216.56(a) and (b) would be moved to new § 210.102. As we discussed above, we also would clarify current requirements to submit production reports on terminated leases and agreements until all inventory is disposed of.

D. 30 CFR Part 218—Collection of Royalties, Rentals, Bonuses and Other Monies Due the Federal Government

The proposed changes in part 218 would:

1. Eliminate references to Federal oil and gas late or incorrect (erroneous) reporting, failure to submit payment of same amount as Form MMS–2014 or bill document or to provide adequate information assessments and failure to report.

We propose to revise the following sections: (1) 30 CFR 218.40, Assessments for incorrect or late reports and failure to report; and (2) § 218.41, Assessments for failure to submit payment of same amount as Form MMS–2014 or bill document or to provide adequate information.

The proposed rule would eliminate only the language in § 218.40(c)(2) that provided for assessments for Federal oil and gas leases. This section would remain in effect for assessments related to solid minerals, geothermal, and Indian oil and gas.

The primary reason we propose these changes is that section 116 of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA), 30 U.S.C. 1725, limited MMS's discretion to issue assessments for Federal oil and gas lease reporting to those who chronically submit erroneous reports. In addition, as a result of our extensive reengineering initiative, we implemented a new financial system on November 1, 2001. The new financial system incorporated significantly revised and streamlined reporting forms and new electronic reporting methods, resulting in lower error rates. For the remaining Federal oil and gas reporting errors, we intend to use the general penalty provisions at 30 CFR part 241.

2. Eliminate references in § 218.50(b) to Form DI–1040b, Bill for Collection,

and replace with current terminology, as appropriate.

3. Correct the definition of "Invoice Document Identification" in § 218.51(a) and eliminate parenthetical descriptions of fields in § 218.51(f) that are no longer relevant to the revised Form MMS–2014.

4. Remove the requirement in § 218.52(a)(4) and (d) that lessees provide the percentage of their record title or operating rights ownership when they designate another party to make royalty and other payments on their behalf.

We have determined that we can obtain this information from records maintained by other Federal agencies or during our compliance verification and audit processes. We also added Form MMS–4425, Designation Form for Royalty Payment Responsibility (OMB Control Number 1010–0107), to meet RSFA requirements. Lessees are required to complete Form MMS–4425 when designating a designee.

5. Eliminate 30 CFR 218.57 in its entirety, which references Form MMS–4280, Application for Reward for Original Information.

This section referencing a reward program was written in the 1980s; however, Congress has never appropriated funds for a rewards program, nor has MMS ever received an application for a reward. The information requested on Form MMS–4280, Application for Reward for Original Information, is currently covered under OMB Control Number 1010–0120, which includes 1 burden hour for this rare and unusual possibility. The proposed rule would eliminate 30 CFR 218.57 in its entirety, remove Form MMS–4280 from our listing of required information collections, and remove all references to this form in the MMS regulations.

6. Change the reference to paragraph (a) to (b) in § 218.154(c).

7. Add the option to refund bonus monies via Electronic Funds Transfer (EFT) as well as via checks in § 218.155(b)(2).

III. Procedural Matters

1. Public Comment Policy

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours and on our Internet Web site at *http://www.mrm.mms.gov*. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

2. Summary Cost and Royalty Impact Data

This rule will not have any costs or royalty impacts on any of the potentially affected groups: Industry, state and local governments, Indian tribes, individual Indian mineral owners, or the Federal Government. The proposed rule amends existing MMS regulations to align the regulations with current MMS business practices, which were implemented as a result of a major reengineering of MMS's financial systems.

The net impact of reengineering resulted in an overall estimated annual savings in reporting costs (on a continuing basis) of $2,225,050 (44,501 burden hour reduction x $50). However, the reporting changes and reduced costs of reengineering have already been incorporated into 14 information collections, which have been approved by OMB and published in the **Federal Register**. The effects of the seven eliminated report forms were either incorporated in these information collections or were associated with insignificant burden hour reduction. For a current listing of OMB-approved ICRs, see the chart in new § 210.10.

Under the proposed rule, MMS would no longer accept SSNs to meet the requirement to report using a TIN. To protect individual's privacy, MMS would require the use of an EIN as a TIN for reporting purposes. The one-time cost to obtain an EIN from the IRS is covered under an IRS information collection (OMB Control Number 1545–0003).

A. Industry

The proposed rule would not impose any additional burden on industry.

B. State and Local Governments

The proposed rule would not impose any additional burden on states and local governments.

C. Indian Tribes and Individual Indian Mineral Owners

The proposed rule would not impose any additional burden on Indian tribes and individual Indian mineral owners.

D. Federal Government

The proposed rule would not impose any additional burden on the Federal Government.

E. Summary Cost and Royalty Impact Data

The proposed rule would not impose any additional burden on industry, state and local governments, Indian tribes and individual Indian mineral owners, or the Federal Government.

3. Regulatory Planning and Review, Executive Order 12866

Under the criteria in Executive Order 12866, this rule is not a significant regulatory action requiring review by the Office of Management and Budget.

1. This rule will not have an annual effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The MMS has evaluated the costs of this rule and has determined that it will impose no additional administrative costs.

2. This rule will not create inconsistencies with other agencies' actions.

3. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

4. This rule will not raise novel legal or policy issues.

4. Regulatory Flexibility Act

The Department of the Interior certifies this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Your comments are important. The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

5. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

1. Does not have an annual effect on the economy of $100 million or more. See Summary Cost and Royalty Impact Data, section III.2.E of Procedural Matters.

2. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions.

3. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

6. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

1. This rule will not significantly or uniquely affect small governments. Therefore, a Small Government Agency Plan is not required.

2. This rule will not produce a Federal mandate of $100 million or greater in any year; *i.e.*, it is not a significant regulatory action under the Unfunded Mandates Reform Act. The analysis prepared for Executive Order 12866 will meet the requirements of the Unfunded Mandates Reform Act. See Summary Cost and Royalty Impact Data, section III.2.E of Procedural Matters.

7. Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings), Executive Order 12630

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required.

8. Federalism, Executive Order 13132

In accordance with Executive Order 13132, this rule does not have federalism implications. A federalism assessment is not required. It will not substantially and directly affect the relationship between Federal and state governments. The management of Federal leases is the responsibility of the Secretary of the Interior. Royalties collected from Federal leases are shared with state governments on a percentage basis as prescribed by law. This rule will not alter any lease management or royalty sharing provisions. This rule will not impose costs on states or localities.

9. Civil Justice Reform, Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

10. Paperwork Reduction Act of 1995

This rulemaking does not contain new information collection requirements or change existing information collection requirements; therefore, a submission to OMB is not required. The 14 information collections referenced in this rule and listed in the chart below are currently approved by OMB. The total hour burden currently approved is 235,180 hours.

OMB control No. expiration date, and legal basis	Form or information collected	Annual burden hours
1010–0073, September 30, 2006 (in renewal)	No form, Net profit share payment information	1,583
30 CFR Part 220—Accounting Procedures for Determining Net Profit Share Payment for Outer Continental Shelf Oil and Gas Leases.		
1010–0087, September 30, 2006 (in renewal)	No form, Written delegation proposal to perform auditing and investigative activities.	6,091
30 CFR Part 227—Delegation to States, and Part 228—Cooperative Activities with States and Indian Tribes.	No form, Request for cooperative agreement and subsequent requirements.	
1010–0090, October 31, 2007	Form MMS–4377, Stripper Royalty Rate Reduction Notification	1,080
30 CFR Part 216, Subpart B—Oil and Gas, General.		
10–0103, April 30, 2006 (in renewal)	Form MMS–4109, Gas Processing Allowance Summary Report	1,836
30 CFR Part 202—Royalties, Subpart J—Gas Production	Form MMS–4295, Gas Transportation Allowance Report.	
From Indian Leases, and Part 206—Product Valuation, Subpart B—Indian Oil, and Subpart E—Indian Gas.	Form MMS–4110, Oil Transportation Allowance Report.	
	Form MMS–4411, Safety Net Report.	
	Form MMS–4410, Accounting for Comparison [Dual Accounting].	
	Form MMS–4394, Request to Exceed Regulatory Allowance Limitation (**Note:** Form MMS–4393 is used for both Federal and Indian oil and gas leases. Burden hours for Indian leases are included here. The form resides with ICR 1010–0136.).	
1010–0107, August 31, 2008	Form MMS–4425, Designation Form for Royalty Payment Responsibility.	1,220
30 CFR Part 218, Subpart A—General Provisions, and Subpart B—Oil and Gas, General.	No form, Cross-lease netting documentation.	
	No form, Indian over-recoupment approval.	
1010–0110, October 31, 2007, Executive Order 12862	Form MMS–4420A–E Training and Outreach Evaluation Form	160
1010–0119, February 28, 2009	Form MMS–4070, Application for the Purchase of Royalty Oil	2,284
30 CFR Part 208—Sale of Federal Royalty Oil	Form MMS–4071, Letter of Credit (RIK).	
	Form MMS–4072, Royalty-in-Kind Contract Surety Bond.	
	No form, Royalty oil sales to eligible refiners.	
1010–0120, October 31, 2007	Form MMS–4430, Solid Minerals Production and Royalty Report.	1,751
30 CFR Part 206, Subpart F—Federal Coal, and Subpart J—Indian Coal; Part 210, Subpart B—Oil, Gas, and OCS Sulfur—General, Subpart E—Solid Minerals, General, and Subpart H—Geothermal Resources; and Part 218, Subpart B—Oil and Gas, General, and Subpart E—Solid Minerals—General.	Form 4292, Coal. Washing Allowance Report.	
	Form 4293, Coal Transportation Allowance Report.	
	No form, Facility data—solid minerals.	
	No form, Sales contracts—solid minerals.	
	No form, Sales summaries—solid minerals.	
1010–0122, July 31, 2008	Form MMS–4435, Administrative Appeal Bond	300

OMB control No. expiration date, and legal basis	Form or information collected	Annual burden hours
30 CFR Part 243—Suspensions Pending Appeal and Bonding—Minerals Revenue Management.	Form MMS–4436, Letter of Credit. Form MMS–4437, Assignment of Certificate of Deposit. No form, Self bonding. No form, U.S. Treasury securities.	
1010–0136, May 31, 2006 (in renewal)	Form MMS–4393, Request to Exceed Regulatory Allowance Limitation.	13,863
30 CFR Part 206—Product Valuation, Subpart C—Federal Oil ...	No form, Federal oil valuation support information.	
1010–0139, August 31, 2006 (in renewal)	Form MMS–4054, Oil and Gas Operations Report	76,630
30 CFR Part 216—Production Accounting, Subpart A—General Provisions, and Subpart B—Oil and Gas, General; and Part 210—Forms and Reports.	Form MMS–4058 (Parts A, B, and C), Production Allocation Schedule Report.	
1010–0140, October 31, 2006 (in renewal)	Form MMS–2014, Report of Sales and Royalty Remittance	126,144
30 CFR Part 210—Forms and Reports.		
1010–0155, May 31, 2006 (in renewal)	No form, Notification and relief request for accounting and auditing relief.	2,206
30 CFR Part 204—Alternatives for Marginal Properties, Subpart C—Accounting and Auditing Relief.		
1010–0162, February 28, 2006 (in renewal)	No form, Accounts receivable confirmations	32
Chief Financial Officers Act of 1990.		
Total Burden Hours		235,180

11. National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. This rule deals with financial matters and has no direct effect on MMS decisions on environmental activities. According to Departmental Manual 516 DM 2.3A(2), Section 1.10 of 516 DM 2, Appendix 1 excludes from documentation in an environmental assessment or impact statement "policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case." Section 1.3 of the same appendix clarifies that royalties and audits are considered to be routine financial transactions that are subject to categorical exclusion from the NEPA process. A detailed statement is not required because none of the NEPA exceptions apply.

12. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR at 22951) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes, and found no significant impacts. We also extended our review to individual Indian mineral owners and determined no potential effect on them.

13. Effects on the Nation's Energy Supply, Executive Order 13211

In accordance with Executive Order 13211, this regulation does not have a significant adverse effect on the Nation's energy supply, distribution, or use.

14. Consultation and Coordination With Indian Tribal Governments, Executive Order 13175

In accordance with Executive Order 13175, this rule does not have tribal implications that impose substantial direct compliance costs on Indian tribal governments. As noted above, this rule also has no implications on individual Indian mineral owners.

15. Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading. (5) What is the purpose of this part? (6) Is the description of the rule in the Supplementary Information section of the preamble helpful in understanding the rule? (7) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240.

List of Subjects

30 CFR Part 206

Coal, Continental Shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 210

Coal, Continental Shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 216

Coal, Continental Shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 218

Coal, Continental Shelf, Electronic funds transfers, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: June 13, 2006.

R.M. "Johnnie" Burton,

Director for Minerals Management Service, Exercising the delegated authority of the Assistant Secretary for Land and Minerals Management.

For reasons stated in the preamble, we propose to amend 30 CFR parts 206, 210, 216, and 218 as follows:

PART 206—PRODUCT VALUATION

1. The authority for part 206 continues to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq., 396a et seq., 2101 et seq.; 30 U.S.C. 181 et seq., 351 et seq., 1001 et seq., 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq., 1331 et seq., and 1801 et seq.

2. Amend § 206.51 as follows:

A. Remove the definition of "selling arrangement."

B. Add in alphabetical order the definition of "sales type code."

The addition reads as follows:

§ 206.51 Definitions.

* * * * *

Sales type code means the contract type and/or general disposition (arms'-length or non-arm's-length) of the production from Federal and Indian oil, gas, and geothermal leases. The sales type code applies to the sales contract/disposition and not to the arm's-length/non-arm's-length nature of the transportation or processing allowance.

* * * * *

Subparts B and D [Nomenclature change]

3. In subparts B and D, remove the words "selling arrangement" and "selling arrangements" wherever they appear and add in their place the words "sales type code" and "sales type codes," respectively.

§ 206.55 [Amended]

4. In § 206.55, paragraph (c)(4), remove the words "line item" and add in their place "entry."

5. Amend § 206.116 as follows:

A. Revise the section title to read as set forth below.

B. Remove paragraph (a).

C. Remove the paragraph designation from paragraph (b).

The revision reads as follows:

§ 206.116 What interest applies if I improperly report a transportation allowance?

* * * * *

6. Amend § 206.151 as follows:

A. Revise the definition of "Netting."

B. Add in alphabetical order the definition of "sales type code."

C. Remove the definition of "selling arrangement."

The revision and addition read as follows:

§ 206.151 Definitions.

* * * * *

Netting means the deduction of an allowance from the sales value by reporting a net sales value, instead of correctly reporting the deduction as a separate entry on the Form MMS–2014.

* * * * *

Sales type code means the contract type and/or general disposition (arms'-length or non-arm's-length) of the production from Federal and Indian oil, gas, and geothermal leases. The sales type code applies to the sales contract/disposition and not to the arm's-length/non-arm's-length nature of the transportation or processing allowance.

* * * * *

§ 206.156 [Amended]

7. In § 206.156(d), remove the last sentence.

§ 206.157 [Amended]

8. Amend § 206.157 as follows:

A. In paragraphs (a) and (b), remove the words "line entry" wherever they appear and add in their place the word "entry."

B. Remove paragraph (d)(1) and redesignate paragraphs (d)(2) through (d)(4) as paragraphs (d)(1) through (d)(3), respectively.

§ 206.158 [Amended]

9. In § 206.158, paragraph (e), last sentence, remove the words "line item" and add in their place "entry."

§ 206.159 [Amended]

10. In § 206.159, remove the word "line" wherever it appears and in paragraph (d)(1), remove the words "selling arrangement" and add in their place "sales type code."

11. Amend § 206.171 as follows:

a. Remove the definition of "selling arrangement."

b. Add in alphabetical order the definition of "sales type code." The addition reads as follows:

§ 206.171 What definitions apply to this subpart?

* * * * *

Sales type code means the contract type and/or general disposition (arms'-length or non-arm's-length) of the production from Federal and Indian oil, gas, and geothermal leases. The sales type code applies to the sales contract/disposition and not to the arm's-length/non-arm's-length nature of the transportation or processing allowance.

* * * * *

§ 206.177 [Amended]

12. In § 206.177, paragraphs (c)(1), first sentence, and (c)(2), last sentence, remove the words "selling arrangement" and add in their place "sales type code."

§ 206.178 [Amended]

13. In § 206.178, paragraph (d)(2), first sentence, remove the words "line item" and add in their place the word "entry."

§ 206.180 [Amended]

14. In § 206.180, paragraph (c)(2), first sentence, remove the words "line item" and add in their place "entry."

15. Amend § 206.351 as follows:

a. Remove the definition of "selling arrangement."

b. Add in alphabetical order the definition of "sales type code." The addition reads as follows:

§ 206.351 Definitions.

* * * * *

Sales type code means the contract type and/or general disposition (arms-length or non-arm's-length) of the production from Federal and Indian oil, gas, and geothermal leases. The sales type code applies to the sales contract/disposition and not to the arm's-length/non-arm's-length nature of the transportation or processing allowance.

* * * * *

§ 206.357 [Amended]

16. Amend § 206.357 as follows:

a. In paragraph (b), remove the words "selling arrangement" and add in their place "sales type code."

b. In paragraph (g), remove the word "lines" and add in its place "entries."

PART 210—FORMS AND REPORTS

17. The authority citation for part 210 continues to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396, 2107; 30 U.S.C. 189, 190, 359, 1023, 1751(a); 31 U.S.C. 3716, 9701; 43 U.S.C. 1334, 1801 et seq.; and 44 U.S.C. 3506(a).

18. Revise subparts A and B, and add subparts C and D to read as follows:

Subpart A—General Provisions

Subpart B—Royalty Reports—Oil, Gas, and Geothermal Resources

Subpart A—General Provisions

§ 210.1 What is the purpose of this subpart?

This subpart identifies information collections required by the Minerals Management Service (MMS), Minerals Revenue Management, in the normal course of operations. This information is submitted by various parties associated with Federal and Indian leases such as lessees, designees, and operators. The information is collected to meet MMS's congressionally mandated accounting and auditing responsibilities relating to Federal and Indian mineral revenue management. Information collected regarding production, royalties, and other payments due the Government from activities on leased Federal or Indian land is authorized by the Federal Oil and Gas Royalty Management Act of 1982, as amended (30 U.S.C. 1701 et seq.), for oil and gas production; and by 30 U.S.C. 189, 359, and 396d for solid minerals production.

§ 210.2 To whom do these regulations apply?

These regulations apply to any person, referred to in this subpart as a Reporter/Payor, who is assigned or assumes an obligation to report data and/or make payment to MMS. The Reporter/Payor may include lessees, designees, operators, purchasers, reporters, payors, and working interest owners, but is not restricted to these parties. This section does not affect the liability to pay and report royalties as established by other regulations, laws, and the lease terms.

§ 210.10 What are MMS's approved information collections?

The information collection requirements identified in this section have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 et seq. The information collection requests (ICR) and associated MMS form numbers, if applicable, are listed below:

OMB control No.	Legal basis	Form or information collected
1010–0073	30 CFR Part 220—Accounting Procedures for Determining Net Profit Share Payment for Outer Continental Shelf Oil and Gas Leases.	No form, Net profit share payment information.
1010–0087	30 CFR Part 227—Delegation to States, and Part 228—Cooperative Activities with States and Indian Tribes.	No form, Written delegation proposal to perform auditing and investigative activities. No form, Request for cooperative agreement and subsequent requirements.
1010–0090	30 CFR Part 216—Production Accounting, Subpart B—Oil and Gas, General.	Form MMS–4377, Stripper Royalty Rate Reduction Notification.
1010–0103	30 CFR Part 202—Royalties, Subpart J—Gas Production From Indian Leases, and Part 206—Product Valuation, Subpart B—Indian Oil, and Subpart E—Indian Gas.	Form MMS–4109, Gas Processing Allowance Summary Report. Form MMS–4295, Gas Transportation Allowance Report. Form MMS–4110, Oil Transportation Allowance Report. Form MMS–4411, Safety Net Report. Form MMS–4410, Accounting for Comparison [Dual Accounting]. Form MMS–4393, Request to Exceed Regulatory Allowance Limitation (Note: Form MMS–4393 is used for both Federal and Indian oil and gas leases. Burden hours are applied to both 1010–0103 and 1010–0136; however, the form resides with ICR 1010–0136.).
1010–0107	30 CFR Part 218—Collection of royalties, rentals, bonuses and other monies due the Federal Government, Subpart A—General Provisions, and Subpart B—Oil and Gas, General.	Form MMS–4425, Designation Form for Royalty Payment Responsibility. No form, Cross-lease netting documentation. No form, Indian over-recoupment approval.
1010–0110	Executive Order 12862—Setting Customer Service Standards.	Form MMS–4420A–E, Training and Outreach Evaluation Form.
1010–0119	30 CFR Part 208—Sale of Federal Royalty Oil	Form MMS–4070, Application for the Purchase of Royalty Oil. Form MMS–4071, Letter of Credit (RIK). Form MMS–4072, Royalty-in-Kind Contract Surety Bond. No form, Royalty oil sales to eligible refiners.

OMB control No.	Legal basis	Form or information collected
1010–0120	30 CFR Part 206—Production Valuation, Subpart F—Federal Coal, and Subpart J—Indian Coal; Part 210—Forms and Reports, Subpart B—Oil, Gas, and OCS Sulfur—General, Subpart E—Solid Minerals, General, and Subpart H—Geothermal Resources; and Part 218—Collection of royalties, rentals, bonuses and other monies due the Federal Government, Subpart B—Oil and Gas, General, and Subpart E—Solid Minerals—General.	Form MMS 4430, Solid Minerals Production and Royalty Report. Form 4292, Coal. Washing Allowance Report. Form 4293, Coal Transportation Allowance Report. No form, Facility data—solid minerals. No form, Sales contracts—solid minerals. No form, Sales summaries—solid minerals.
1010–0122	30 CFR Part 243—Suspensions Pending Appeal and Bonding—Minerals Revenue Management.	Form MMS–4435, Administrative Appeal Bond. Form MMS–4436, Letter of Credit. Form MMS–4437, Assignment of Certificate of Deposit. No form, Self bonding. No form, U.S. Treasury securities.
1010–0136	30 CFR Part 206—Product Valuation, Subpart C—Federal Oil.	Form MMS–4393, Request to Exceed Regulatory Allowance Limitation. No form, Federal oil valuation support information.
1010–0139	30 CFR Part 216—Production Accounting, Subpart A—General Provisions, and Subpart B—Oil and Gas, General; and Part 210—Forms and Reports.	Form MMS–4054, Oil and Gas Operations Report (OGOR). Form MMS–4058 (Parts A, B, and C), Production Allocation Schedule Report (PASR).
1010–0140	30 CFR Part 210—Forms and Reports	Form MMS–2014, Report of Sales and Royalty Remittance.
1010–0155	30 CFR Part 204—Alternatives for Marginal Properties, Subpart C—Accounting and Auditing Relief.	No form, Notification and relief request for accounting and auditing relief.
1010–0162	Chief Financial Officers Act of 1990	No Form, Accounts receivable confirmations.

§ 210.20 What if I disagree with MMS's burden estimates?

Burden estimates are included on MMS's Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRNotices.htm.* Send comments on the accuracy of these burden estimates or suggestions on reducing the burden to the Minerals Management Service, Attention: Information Collection Clearance Officer (OMB Control Number 1010–XXXX [insert appropriate OMB control number]), Mail Stop 4230, 1849 C Street, NW., Washington, DC 20240. 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.

§ 210.21 How do I report my taxpayer identification number?

(a) Before paying or reporting to MMS, you must obtain a payor code (see our Minerals Revenue Reporter Handbook). At the time, you request a payor code, you must provide your Employer Identification Number (EIN) by submitting:

(1) An IRS Form W–9; or

(2) An equivalent certification containing:

(i) Your name;

(ii) The name of your business, if different from your name;

(iii) The form of your business entity; for example a sole proprietorship, corporation, or partnership;

(iv) The address of your business;

(v) The EIN of your business; and

(vi) A signed and dated certification that you are a U.S. citizen or resident alien and that the EIN number provided is correct.

(b) If you are already paying or reporting to MMS but do not have an EIN, MMS may request that you submit an IRS Form W–9 or equivalent certification containing the information required under paragraph (a)(2) of this section.

(c) The collection of this data is not subject to the provisions of the Paperwork Reduction Act because it only requires information necessary to identify the respondent [5 CFR 1320.3(h)].

(d) The EIN you provide to MMS under paragraph (a) of this section:

(1) Means the taxpayer identification number (TIN) of an individual or other person (whether or not an employer), which is assigned under 26 U.S.C. 6011(b), or a corresponding version of prior law, or under 26 U.S.C. 6109.

(2) Must contain nine digits separated by a hyphen as follows: 00–0000000.

(3) May not be a Social Security Number.

§ 210.30 What are my responsibilities as a reporter/payor?

Reporters/Payors must submit accurate, complete, and timely information to MMS according to the requirements in this part. If you discover an error in a previous report, you must file an accurate and complete amended report within 30 days of your discovery of the error. Failure to comply may result in penalties under the provisions of 30 CFR part 241.

§ 210.40 Will MMS keep the information I provide confidential?

The MMS will treat information it obtains under this part under the regulations at 43 CFR part 2.

Subpart B—Royalty Reports—Oil, Gas, and Geothermal Resources

§ 210.50 What is the purpose of this subpart?

The purpose of this subpart is to explain royalty reporting requirements when energy and mineral resources are removed from Federal and Indian oil and gas and geothermal leases and federally approved agreements. This includes leases and agreements located onshore and on the Outer Continental Shelf (OCS).

§ 210.51 Who must submit royalty reports?

(a) Any person who pays royalty to MMS must submit royalty reports to MMS.

(b) Before you pay or report to MMS, you must obtain a payor code. To obtain a payor code, refer to our Minerals Revenue Reporter Handbook for instructions and MMS contact information (also see § 210.56 for information on how to obtain a handbook).

§ 210.52 What royalty reports must I submit?

You must submit a completed Form MMS–2014, Report of Sales and Royalty Remittance, to MMS with:

(a) All royalty payments; and

(b) Rents on nonproducing leases, where specified in the lease.

§ 210.53 When are my royalty reports and payments due?

(a) Completed Forms MMS–2014 for royalty payments and the associated payments (see also § 218.50) are due by the end of the month following the production month.

(b) Completed Forms MMS–2014 for rental payments, where applicable, and the associated payments (see also § 218.50), are due no later than the anniversary date of the lease.

(c) You may submit reports and payments early.

§ 210.54 Must I submit this royalty report electronically?

(a) You must submit Form MMS–2014 electronically unless you qualify for an exception under § 210.55(a).

(b) You must use one of the following electronic media types, unless MMS instructs you differently:

(1) Electronic Data Interchange (EDI)—The direct computer-to-computer interchange of data using standards set forth by the X12 American National Standards Institute (ANSI) Accredited Standards Committee (ASC). The interchange uses the services of a third party with which either party may contract.

(2) Web-based reporting—Reporters/Payors may enter report data directly or upload files using the MMS electronic Web form located at www.mrmreports.net. The uploaded files must be in one of the following formats: the American Standard Code for Information Interchange (ASCII) or Comma Separated Values (CSV) formats. External files created by the sender must be in the proprietary ASCII and CSV File Layout formats defined by MMS. These external files can be generated from a reporter's system application.

(c) Refer to our electronic reporting guidelines for the most current reporting options, instructions, and security measures. The guidelines may be found on our Internet Web site or you may call your MMS customer service representative.

§ 210.55 May I submit this royalty report manually?

(a) The MMS will allow you to submit Form MMS–2014 manually if:

(1) You have never reported to MMS before. You have 3 months from the date your first report is due to begin reporting electronically;

(2) You report only rent, minimum royalty, or other annual obligations on Form MMS–2014; or

(3) You are a small business, as defined by the U.S. Small Business Administration, and you have no computer.

(b) If you meet the qualifications under paragraph (a) of this section, you may submit your form manually to MMS by:

(1) U.S. Postal Service regular or express mail addressed to Minerals Management Service, P.O. Box 5810, Denver, Colorado 80217–5810; or

(2) Special couriers or overnight mail addressed to Minerals Management Service, Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, CO 80225.

§ 210.56 Where can I find more information on how to complete the royalty report?

(a) Specific guidance on how to prepare and submit Form MMS–2014 is contained in our Minerals Revenue Reporter Handbook. The handbook is available on our Internet Web site at *www.mrm.mms.gov/ReportingServices/Handbooks/Handbks.htm* or from MMS at P.O. Box 5760, Denver, Colorado 80217–5760.

(b) Royalty reporters/payors should refer to the handbook for specific guidance on royalty reporting requirements. If you require additional information, you should contact MMS at the above address. A customer service telephone number is also listed in our handbook.

(c) You may find copies of blank Forms MMS–2014 on our Internet Web site at *www.mrm.mms.gov/ReportingServices/Forms/AFSOil_Gas.htm,* or you may request the forms from MMS at P.O. Box 5760, Denver, Colorado 80217–5760.

Subpart C—Production Reports—Oil, Gas, and Geothermal Resources

§ 210.100 What is the purpose of this subpart?

The purpose of this subpart is to explain production reporting requirements when energy and mineral resources are removed from Federal and Indian oil and gas and geothermal leases and federally approved agreements. This includes leases and agreements located onshore and on the Outer Continental Shelf (OCS).

§ 210.101 Who must submit production reports?

(a) If you operate a Federal or Indian oil and gas or geothermal lease or federally approved agreement, you must submit production reports.

(b) Before reporting production to MMS, you must obtain an operator number. To obtain an operator number, refer to our Minerals Production Reporter Handbook for instructions and MMS contact information (also see § 210.106 for information on how to obtain a handbook).

§ 210.102 What production reports must I submit?

(a) Oil and Gas Operations Report (Form MMS–4054). If you operate an onshore or OCS oil and gas or geothermal lease or federally approved agreement that contains one or more wells that are not permanently plugged or abandoned, you must submit Form MMS–4054 to MMS:

(1) You must submit Form MMS–4054 for each well for each calendar month, beginning with the month in which you complete drilling, unless:

(i) You have only test production from a drilling well; or

(ii) MMS tells you in writing to report differently.

(2) You must continue reporting until:

(i) The Bureau of Land Management (BLM) or MMS approves all wells as permanently plugged or abandoned or the lease or agreement is terminated; and

(ii) You dispose of all inventory.

(b) Production Allocation Schedule Report (Form MMS–4058). If you operate an offshore facility measurement point (FMP) handling production from a Federal oil and gas or geothermal lease or federally approved agreement that is commingled (with approval) with production from any other source prior to measurement for royalty determination, you must file Form MMS–4058.

(1) You must submit Form MMS–4058 for each calendar month beginning with the month in which you first handle production covered by this section.

(2) Form MMS–4058 is not required whenever all of the following conditions are met:

(i) All leases involved are Federal leases;

(ii) All leases have the same fixed royalty rate;

(iii) All leases are operated by the same operator;

(iv) The facility measurement device is operated by the same person as the leases/agreements;

(v) Production has not been previously measured for royalty determination; and

(vi) The production is not subsequently commingled and measured for royalty determination at an FMP for which Form MMS–4058 is required under this part.

§ 210.103 When are my production reports due?

(a) The MMS must receive your completed Form MMS–4054 and Form MMS–4058 by the 15th day of the second month following the month for which you are reporting.

(b) A report is considered received when it is delivered to MMS by 4 p.m.

mountain time at the addresses specified in § 210.105. Reports received after 4 p.m. mountain time are considered received the following business day.

§ 210.104 Must I submit these production reports electronically?

(a) You must submit Forms MMS–4054 and MMS–4058 electronically unless you qualify for an exception under § 210.105.

(b) You must use one of the following electronic media types, unless MMS instructs you differently:

(1) Electronic Data Interchange (EDI)—The direct computer-to-computer interchange of data using standards set forth by the X12 American National Standards Institute (ANSI) Accredited Standards Committee (ASC). The interchange uses the services of a third party with which either party may contract.

(2) Web-based reporting—Reporters may enter report data directly or upload files using the MMS electronic Web form located at www.mrmreports.net. The uploaded files must be in one of the following formats: the American Standard Code for Information Interchange (ASCII) or Comma Separated Values (CSV) formats. External files created by the sender must be in the proprietary ASCII and CSV File Layout formats defined by MMS. These external files can be generated from a reporter's system application.

(c) Refer to our electronic reporting guidelines for the most current reporting options, instructions, and security measures. The guidelines may be found on our Internet Web site or you may call your MMS customer service representative.

§ 210.105 May I submit these production reports manually?

(a) The MMS will allow you to submit Forms MMS–4054 and MMS–4058 manually if:

(1) You have never reported to MMS before. You have 3 months from the day your first report is due to begin reporting electronically; and

(2) You are a small business, as defined by the U.S. Small Business Administration, and you have no computer.

(b) If you meet the qualifications under paragraph (a) of this section, you may submit your forms manually to MMS by:

(1) U.S. Postal Service regular or express mail addressed to Minerals Management Service, P.O. Box 17110, Denver, Colorado 80217–0110; or

(2) Special couriers or overnight mail addressed to Minerals Management Service, Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

§ 210.106 Where can I find more information on how to complete these production reports?

(a) Specific guidance on how to prepare and submit production reports to MMS is contained in our Minerals Production Reporter Handbook. The handbook is available on our Internet Web site at *www.mrm.mms.gov/ReportingServices/Handbooks/Handbks.htm* or from MMS at P.O. Box 17110, Denver, Colorado 80217–0110.

(b) Production reporters should refer to the handbook for specific guidance on production reporting requirements. If you require additional information, you should contact MMS at the above address. A customer service telephone number is also listed in our handbook.

(c) You may find copies of blank Forms MMS–4054 or MMS–4058 on our Internet Web site at *www.mrm.mms.gov/ReportingServices/Forms/PAASOff.htm*, or you may request the forms from MMS at P.O. Box 17110, Denver, Colorado 80217–0110.

Subpart D—Special-Purpose Forms and Reports—Oil and Gas, and Geothermal Resources

§ 210.150 What reports must I submit to claim an excess allowance?

(a) *General.* If you are a lessee, you must submit Form MMS–4393, Request to Exceed Regulatory Allowance Limitation, to request approval from MMS to exceed prescribed transportation and processing allowance limits on Federal and Indian oil and gas leases under part 206 of this chapter. OMB Control Number 1010–0136.

(b) *Reporting options.* You may find an electronic copy of Form MMS–4393 on our Web site at *www.mrm.mms.gov/ReportingServices/Forms/AFSOil_Gas.htm*. You may also request copies of the form from MMS at P.O. Box 25165, MS 392B2, Denver, Colorado 80217–0165.

(c) *Reporting address.* Submit completed Form MMS–4393 as follows:

(1) Complete and submit the form electronically as an e-mail attachment;

(2) Send the form by U.S. Postal Service regular or express addressed to Minerals Management Service, P.O. Box 25165, MS 392B2, Denver, Colorado 80217–0165; or

(3) Deliver the form to MMS by special couriers or overnight mail addressed to Minerals Management Service, Building 85, Room A–614, MS 392B2, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

§ 210.151 What reports must I submit to claim allowances on an Indian lease?

(a) *General.* You must submit three additional forms to MMS to claim transportation and processing allowances on Indian oil and gas leases:

(1) You must submit Form MMS–4110, Oil Transportation Allowance Report, to claim an allowance for expenses incurred by a reporter/payor to transport oil from the lease site to a point remote from the lease where value is determined under § 206.55 of this chapter. OMB Control Number 1010–0103.

(2) You must submit Form MMS–4109, Gas Processing Allowance Summary Report, to claim an allowance for the reasonable, actual costs of removing hydrocarbon and nonhydrocarbon elements or compounds from a gas stream under § 206.180 of this chapter. OMB Control Number 1010–0103.

(3) You must submit Form MMS–4295, Gas Transportation Allowance Report, to claim an allowance for the reasonable, actual costs of transporting gas from the lease to the point of first sale under § 206.178 of this chapter. OMB Control Number 1010–0103.

(b) *Reporting options.* You may submit Forms MMS–4110, MMS–4109, and MMS–4295 manually. You may find copies of the forms on our Internet Web site at *www.mrm.mms.gov/ReportingServices/Forms/AFSOil_Gas.htm*, or you may request the forms from MMS at P.O. Box 25165, MS 396B2, Denver, Colorado 80217–0165.

(c) *Reporting address.* You may submit completed Forms MMS–4110, MMS–4109, and MMS–4295 by:

(1) U.S. Postal Service regular or express mail addressed to Minerals Management Service, P.O. Box 25165, MS 396B2, Denver, Colorado 80217–0165; or

(2) Special couriers or overnight mail addressed to Minerals Management Service, Building 85, Room A–614, MS 396B2, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

§ 210.152 What reports must I submit for Indian gas valuation purposes?

(a) *General.* For Indian gas valuation, lessees must submit the following forms under certain conditions under § 206.172 of this chapter:

(1) Form MMS–4411, Safety Net Report, OMB Control Number 1010–0103; or

(2) Form MMS–4410, Accounting for Comparison (Dual Accounting), Part A

or Part B, OMB Control Number 1010–0103.

(b) *Reporting options.* You must submit Forms MMS–4410 and MMS–4411 manually. You may find copies of the forms on our Internet Web site at *www.mrm.mms.gov/ReportingServices/Forms/AFSOil_Gas.htm* or request forms from MMS at P.O. Box 25165, MS 396B2, Denver, Colorado 80217–0165.

(c) *Reporting address.* You may submit completed Forms MMS–4410 and MMS–4411 by:

(1) U.S. Postal Service regular or express mail addressed to Minerals Management Service, P.O. Box 25165, MS 396B2, Denver, Colorado 80217–0165; or

(2) Special couriers or overnight mail addressed to Minerals Management Service, Building 85, Room A–614, MS 396B2, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

§ 210.153 What reports must I submit for Federal oil valuation purposes?

(a) *General.* The MMS may require lessees to submit several documents or other information to MMS to support their valuation of Federal oil under 30 CFR part 206. See information collection OMB Control Number 1010–0136. There are no specific forms related to this information collection.

(b) *Reporting options.* You must submit the documents manually.

(c) *Reporting address.* You may submit required documents by:

(1) U.S. Postal Service regular or express mail addressed to Minerals Management Service, P.O. Box 25165, MS 392B2, Denver, Colorado 80217–0165; or

(2) Special couriers or overnight mail addressed to Minerals Management Service, Building 85, Room A–614, MS 392B2, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

§ 210.154 What reports must I submit for Federal onshore stripper oil properties?

(a) *General.* Operators who have been granted a reduced royalty rate by the Bureau of Land Management (BLM) under 43 CFR 3103.4–2 must submit Form MMS–4377, Stripper Royalty Rate Reduction Notification under 43 CFR 3103.4–2(b)(3). OMB Control Number 1010–0090.

(b) *Reporting options.* You may find copies of Form MMS–4377 on our Internet Web site at *www.mrm.mms.gov/ReportingServices/Forms/AFSOil_Gas.htm* or request the form from MMS at P.O. Box 17110, Denver, Colorado 80217–0110. You may file the form:

(1) Electronically by filling the form out in electronic format and submitting it to MMS as an e-mail attachment; or

(2) Manually by filling out the form and submitting it by:

(i) U.S. Postal Service regular or express mail addressed to Minerals Management Service, P.O. Box 25165, MS 392B2, Denver, Colorado 80217–0165; or

(ii) Special couriers or overnight mail addressed to Minerals Management Service, Building 85, Room A–614, MS 392B2, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

§ 210.155 What reports must I submit for net profit share leases?

(a) *General.* After entering into a net profit share lease (NPSL) agreement, a lessee must report under part 220 of this chapter. OMB Control Number 1010–0073.

(b) *Reporting options.* You must submit the reports manually.

(c) *Reporting address.* You may submit the required documents by:

(1) U.S. Postal Service regular or express mail addressed to Minerals Management Service, P.O. Box 25165, MS 382B2, Denver, Colorado 80217–0165; or

(2) Special couriers or overnight mail addressed to Minerals Management Service, Building 85, Room A–614, MS 382B2, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

§ 210.156 What reports must I submit for the small refiner royalty-in-kind program?

(a) *General.* You may be required to submit the following forms or documents to participate in the small refiner royalty-in-kind program:

(1) Refiners interested in the purchase of royalty oil must submit their applications and Form MMS–4070 under part 208 of this chapter for additional information. OMB Control Number 1010–0119;

(2) Eligible small refiners must provide specific information that MMS requests under part 208 of this chapter. OMB Control Number 1010–0119;

(3) Small refiners must submit a letter of credit, Form MMS–4072, and a contract surety bond, Form MMS–4071, as part of their bidding application under part 208 of this chapter for additional information. OMB Control Number 1010–0119.

(b) *Reporting options.* You must submit the forms and other documents manually. You may find copies of the forms on our Internet Web site at *www.www.mrm.mms.gov/ReportingServices/Forms/Forms.htm*, or you may request forms from MMS at the address listed in the **Federal Register** Notice of Availability of Royalty Oil.

(c) *Reporting address.* You must mail the forms and documents required in this section to the address identified in the applicable **Federal Register** Notice of Availability of Royalty Oil.

§ 210.157 What reports must I submit to suspend an MMS order under appeal?

(a) *General.* Reporters/Payors or other recipients of MMS's Minerals Revenue Management (MRM) orders may be required to post a bond or other surety, under part 243 of this chapter. The MMS accepts the following surety types: Form MMS–4435, Administrative Appeal Bond; Form MMS–4436, Letter of Credit; Self-bonding; Form MMS–4437, Assignment of Certificate of Deposit; and U.S. Treasury Securities. OMB Control Number 1010–0122.

(b) *Reporting options.* You must submit these forms and other documents manually.

(c) *Reporting address.* You may submit the required forms and other documents by:

(1) U.S. Postal Service regular or express mail addressed to Minerals Management Service, P.O. Box 5760, MS 370B2, Denver, Colorado 80217–0165;

(2) Special couriers or overnight mail addressed to Minerals Management Service, Building 85, Room A–614, MS 370B2, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

§ 210.158 What reports must I submit to designate someone to make my royalty payments?

(a) *General.* You must submit Form MMS–4425, Designation Form for Royalty Payment Responsibility, if you want to designate a person to make royalty payments on your behalf, under 30 CFR 218.52. OMB Control Number 1010–0107.

(b) *Reporting options.* You must submit Form MMS–4425 manually. You may find copies of the form on our Internet Web site at *www.mrm.mms.gov/ReportingServices/Forms/AFSOil_Gas.htm* or request the form from MMS at P.O. Box 5760, Denver, Colorado 80217–5760.

(c) *Reporting address.* You must submit completed Form MMS–4425 by:

(1) U.S. Postal Service regular or express mail addressed to Minerals Management Service, P.O. Box 25165, MS 357B1, Denver, Colorado 80217–0165; or

(2) Special couriers or overnight mail addressed to Minerals Management Service, Building 85, Room A–614, MS

357B1, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

Subpart E—Production and Royalty Reports—Solid Minerals

19. Revise the title of subpart E to read as set forth above.

§§ 210.205, 210.206 [Redesignated]

20. Redesignate §§ 210.205 and 210.206 as §§ 210.206 and 210.207.

21. Add new § 210.205 to read as follows:

§ 210.205 What reports must I submit to claim allowances on Indian coal leases?

(a) *General.* You must submit two MMS forms to claim transportation and washing allowances on Indian coal leases:

(1) Form MMS–4292, Coal Washing Allowance Report, to claim an allowance for the reasonable, actual costs incurred to wash coal under § 206.458 of this chapter. OMB Control Number 1010–0120.

(2) Form MMS–4293, Coal Transportation Allowance Report, to claim an allowance for the reasonable, actual costs of transporting coal to a sales point or a washing facility remote from the mine or lease under § 206.461 of this chapter. OMB Control Number 1010–0120.

(b) *Reporting options.* You must submit the forms manually. You may find copies of the forms on our Internet Web site at *www.mrm.mms.gov/ReportingServices/Forms/AFSSol_Min.htm* or request forms from MMS at P.O. Box 25165, MS 390B2, Denver, Colorado 80217–0165.

(c) *Reporting address.* You may submit completed Forms MMS–4292 and MMS–4293 by:

(1) U.S. Postal Service regular or express mail addressed to Minerals Management Service, P.O. Box 25165, MS 390B2, Denver, Colorado 80217–0165; or

(2) Special couriers or overnight mail addressed to Minerals Management Service, Building 85, Room A–614, MS 390B2, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

Subparts F–I [Removed]

22. Remove subparts F through I.

PART 216—PRODUCTION ACCOUNTING [Removed]

23. Remove part 216.

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

24. The authority citation for part 218 continues to read as follows:

Authority: 25 U.S.C. 396 et seq., 396a et seq., 2101 et seq.; 30 U.S.C. 181 et seq., 351 et seq., 1001 et seq., 1701 et seq.; 31 U.S.C. 3335; 43 U.S.C. 1301 et seq., 1331 et seq., 1801 et seq.

25. In § 218.40, revise paragraphs (a) through (c) to read as follows:

§ 218.40 Assessments for incorrect or late reports and failure to report.

(a) An assessment of an amount not to exceed $10 per day may be charged for each report not received by MMS by the designated due date for geothermal, solid mineral, and Indian oil and gas leases.

(b) An assessment of an amount not to exceed $10 may be charged for each incorrectly completed report for geothermal, solid mineral, and Indian oil and gas leases.

(c) For purpose of assessments discussed in this section, a report is defined as follows:

(1) For coal and other solid mineral leases, a report is each line on the Solid Minerals Production and Royalty Report, Form MMS–4430.

(2) For Indian oil and gas and all geothermal leases, a report is each line on the Report of Sales and Royalty Remittance, Form MMS–2014.

* * * * *

26. In § 218.41, revise paragraphs (a) through (d) to read as follows:

§ 218.41 Assessments for failure to submit payment of same amount as Form MMS–2014 or bill document or to provide adequate information.

(a) An assessment of an amount not to exceed $250 may be charged when the amount of a payment submitted by a payor for geothermal, solid mineral, and Indian oil and gas leases is not equivalent in amount to the total of individual line items on the associated Form MMS–2014 or bill document, unless the difference in amount has been authorized by MMS.

(b) An assessment of amount not to exceed $250 may be charged for each payment for geothermal, solid mineral, and Indian oil and gas leases submitted by a payor that cannot be automatically applied by AFS to the associated Form MMS–2014 or bill document because of inadequate or erroneous information submitted by the payor. For purposes of this section, inadequate or erroneous information is defined as:

(1) Absent or incorrect payor assigned document number, required to be identified by the payor in Block 4 on a Form MMS–2014, or the reuse of the same payor assigned document ("4") number in a subsequent reporting period.

(2) Absent or incorrect bill document invoice number (to include the three character alpha prefix and the nine digit number) or the pay-assigned 3a number required to be identified by the payor on the associated payment document, or the reuse of the same payor assigned 4 number in a subsequent reporting period.

(3) Absent or incorrect name of the administering Bureau of Indian Affairs Agency/Area office and the word "allotted" or the tribe name on payment documents remitted to MMS for an Indian tribe or allottee. If the payment is made by EFT, the payor must identify the tribe/allottee on the EFT message by a pre-established five digit code.

(4) Absent or incorrect MMS assigned payor code on a payment document.

(c) For purposes of this section, the term "Form MMS–2014" includes submission of reports of royalty information.

(d) For purposes of this section, a bill document is defined as any Invoice that has been issued by MMS for assessments, late-payment interest charges, or other amount owed.

* * * * *

27. In § 218.50, revise paragraph (b) to read as follows:

§ 218.50 Timing of payment.

* * * * *

(b) Payments made on a Invoice are due as specified by the Invoice. Invoices will be issued and payable as final collection actions.

* * * * *

28. In § 218.51, in paragraph (a), revise the definition of "Invoice Document Identification" and revise paragraphs (f)(1) and (f)(2) to read as follows:

§ 218.51 How to make payments.

(a) * * *

Invoice Document Identification—The MMS-assigned invoice document identification (three alpha and nine numeric characters).

* * * * *

(f) * * * (1) For Form MMS–2014 payments, you must include both your payor code and your payor-assigned document number.

(2) For invoice payments, including RIK invoice payments, you must include both your payor code and invoice document identification.

* * * * *

29. Amend § 218.52 by revising paragraphs (a) introductory text (a)(1),

(a)(4)(i), (a)(4)(ii), (c) introductory text, and (d), to read as follows:

§ 218.52 How does a lessee designate a Designee?

(a) If you are a lessee under 30 U.S.C. 1701(7), and you want to designate a person to make all or part of the payments due under a lease on your behalf under 30 U.S.C. 1712(a), you must notify MMS or the applicable delegated State in writing of such designation by submitting Form MMS–4425, Designation Form for Royalty Payment Responsibility, OMB Control Number 1010–0107. Your notification for each lease must include the following:

(1) The lease number for the lease;

* * * * *

(4) * * *

(i) A lessee of record (record title owner) in the lease; or

(ii) An operating rights owner (working interest owner) in the lease;

* * * * *

(c) If you want to terminate a designation you made under paragraph (a) of this section, you must provide to MMS in writing using Form MMS–4425 before the termination:

* * * * *

(d) MMS may require you to provide notice when there is a change in your record title or operating rights ownership.

§ 218.57 [Removed]

30. Remove § 218.57.

§ 218.154 [Amended]

31. In § 218.154, paragraph (c), remove the words "paragraph (a) of this section" and add in their place "paragraph (b) of this section."

32. In § 218.155, paragraph (b)(2), revise the fourth and fifth sentences to read as follows:

§ 218.155 Method of payment.

* * * * *

(b) * * *

* * * * *

(2) * * * The one-fifth bonus amounts submitted with bids other than the highest valid bid shall be returned to respective bidders after bids are opened, recorded, and ranked. Return of such amounts will not affect the status, validity, or ranking of bids.* * *

* * * * *

[FR Doc. 06–5988 Filed 7–6–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD 07–05–156]

RIN 1625–AA08

Special Local Regulation; Annual Gasparilla Marine Parade, Hillsborough Bay, Tampa, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the permanent special local regulation for the Annual Gasparilla Marine Parade, Hillsborough Bay, and Tampa Bay, FL. This proposed rule would change the date of the event by moving it up one week, from the first weekend in February to the last weekend in January. Additionally, this regulation will create a parade staging area and a 50 foot safety zone around officially entered parade boats during the parade. This action is necessary because the date on which the parade is held annually has changed. Restricting access to the parade staging area box is necessary to ensure the official parade boats are properly lined up to begin the parade. A 50 foot safety zone around officially entered parade boats is necessary to ensure the safety of the parade participants due to safety concerns caused by an increasing number of spectator vessels that gather to watch the parade.

DATES: Comments and related material must reach the Coast Guard on or before September 5, 2006.

ADDRESSES: You may mail comments and related material to Coast Guard Sector St. Petersburg, Prevention Department, 155 Columbia Drive, Tampa, Florida 33606–3598. The Waterways Management Division maintains the public docket 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 Coast Guard Sector St. Petersburg between 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Waterways Management Division at Coast Guard Sector St. Petersburg, (813) 228–2191, Ext. 8307.

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 (CGD 07–05–156), 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 they 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 now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Sector St. Petersburg 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

The Annual Gasparilla Marine Parade is currently held annually on the first Saturday in February and is governed by a permanent regulation published at 33 CFR 100.734. The Annual Gasparilla Marine Parade has been moved permanently to the last Saturday in January. Law enforcement officials have also identified a need for a parade staging area for vessels officially entered in the parade. This area would prohibit vessels not officially entered in the parade from entering the area and allow for the safe movement and lineup of the official boats prior to the start of the parade. Law enforcement personnel also identified a need for a 50 foot safety zone around all official parade boats during the parade due to safety concerns associated with an increased number of spectator vessels that gather to watch the parade.

Discussion of Proposed Rule

This rule is necessary to accommodate the change in the date of the event, to create a parade staging area, and to create a 50 foot safety area around all official parade boats. The regulation would change the enforcement date from the first Saturday in February to the last Saturday in January. It would also prohibit vessels not officially entered in the parade from entering the parade staging area and

prohibit vessels from entering within 50 feet of all officially entered parade boats during the parade without prior permission of Coast Guard Sector St. Petersburg.

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 under the regulatory policies and procedures of DHS is unnecessary. The short duration of this regulation would have little, if any, economic impact.

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.

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 rule will effect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Hillsborough Bay and its tributaries north of a line drawn along latitude 27°51′18″ (Coordinates Reference Datum: NAD 1983).

The amendments to the current existing regulation will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule is effective for one day and only commercial marine traffic will be precluded from entering the regulated area. Before the effective period, we will issue maritime advisories widely available to users of the waterway.

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 1–888–REG–FAIR (1–888–734–3247). 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. 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 affect 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.lD, 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. As a special local regulation issued in conjunction with a marine parade, this proposed rule satisfies the requirements of paragraph (34)(h).

Under figure 2–1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" is 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—MARINE EVENTS & REGATTAS

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 § 100.734 to read as follows:

§ 100.734 Annual Gasparilla Marine Parade; Hillsborough Bay, Tampa, FL.

(a) *Regulated Area.* A regulated area is established consisting of all waters of Hillsborough Bay and its tributaries north of 27° 51′18″ north latitude. The regulated area includes the following in their entirety: Hillsborough Cut "D" Channel, Seddon Channel and the Hillsborough River south of the John F. Kennedy Bridge. All coordinates referenced use datum: NAD 83.

(b) *Special local regulations.* (1) Entrance into the regulated area is prohibited to all commercial marine traffic from 9 a.m. to 2:30 p.m. EST on the date of the event.

(2) The regulated area is a "no wake" zone.

(3) All vessels within the regulated area shall stay 50 feet away from and give way to all officially entered vessels in parade formation in the Gasparilla Marine Parade.

(4) When within the marked channels of the parade route, vessels participating in the Gasparilla Marine Parade may not exceed the minimum speed necessary to maintain steerage.

(5) Jet skis and vessels without mechanical propulsion are prohibited from the parade route.

(6) Northbound vessels in excess of 80 feet in length without mooring arrangements made prior to the date of the event are prohibited from entering Seddon Channel unless the vessel is officially entered in the Gasparilla Marine Parade. All northbound vessels in excess of 80 feet without prior mooring arrangements and not officially entered in the Gasparilla Marine Parade must use the alternate route through Sparkman Channel.

(7) Vessels not officially entered in the Gasparilla Marine Parade may not enter the Parade staging area box within the following coordinates:

27°53′53″ N 082°27′47″ W
27°53′22″ N 082°27′10″ W
27°52′36″ N 082°27′55″ W
27°53′02″ N 082°28′31″ W

(c) *Enforcement Period.* This section will be enforced from 9 a.m. until 2:30 p.m. EST, annually on the last Saturday in the month of January.

Dated: June 20, 2006.

D.W. Kunkel,

RADM, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. E6–10583 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–15–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1195

[Docket No. 2004–1]

RIN 3014-AA11

Americans With Disabilities Act (ADA) Accessibility Guidelines for Passenger Vessels

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Availability of draft guidelines.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has placed in the docket and on its Web site for public review and comment draft guidelines which address accessibility to and in passenger vessels which are permitted to carry more than 150 passengers or more than 49 overnight passengers. In addition, the draft addresses all ferries regardless of size and passenger capacity, and certain tenders which carry 60 or more passengers. Comments will be accepted on the draft guidelines and the Access Board will consider those comments prior to issuing a notice of proposed rulemaking.

DATES: Comments should be received by September 5, 2006. Comments received after this date will be considered to the extent practicable.

ADDRESSES: You may submit comments, identified by Docket No. 2004–1, by any of the following methods:

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

E-mail: *pvag@access-board.gov*. Include Docket No. 2004–1 in the subject line of the message.

Fax: (202) 272–0081.

Mail or Hand Delivery: Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111.

Comments will be available for inspection at the above address from 9 a.m. to 5 p.m. on regular business days.

FOR FURTHER INFORMATION CONTACT: Paul Beatty, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0012 (voice); (202) 272–0082 (TTY); Electronic mail address: *pvag@access-board.gov*.

SUPPLEMENTARY INFORMATION: In 1998, the Access Board established a 21-member Federal advisory committee to provide recommendations to assist the Board in developing passenger vessel accessibility guidelines. The committee included disability organizations, industry trade groups, State and local government agencies, and passenger vessel operators. The Passenger Vessel Access Advisory Committee (PVAAC) met nine times between September 1998 and September 2000 and submitted a final report "Recommendations for Accessibility Guidelines for Passenger Vessels" to the Board in December 2000. The PVAAC report provided recommendations on access to elements, rooms, spaces, and facilities on passenger vessels and how to provide access on and off such vessels.

The Access Board convened an ad hoc committee of Board members to review

the PVAAC report. After reviewing the PVAAC report in detail, the Board's ad hoc committee prepared draft guidelines addressing accessibility to and in passenger vessels which carry more than 150 passengers or more than 49 overnight passengers. The Access Board made the recommendations of the ad hoc committee available in the form of draft guidelines for public review and comment. A notice of availability of the draft guidelines was published in the **Federal Register** (69 FR 69244; November 26, 2004). At the same time the 2004 draft was released, the Board also published an advance notice of proposed rulemaking (ANPRM) on small passenger vessels (69 FR 69245; November 26, 2004). In addition to seeking written comment, the Board held public hearings in Washington, DC and Los Angeles, CA.

Over 90 comments were received from the public in response to the publication of the 2004 draft and ANRPM. Key issues from the comments were identified for analysis. Issues regarding the 2004 draft included which vessels should be subject to the guidelines, coverage of employee areas, criteria for embarking and disembarking, high door thresholds (coamings), alterations, methods for swimming pool access, elevator car size, guest room scoping, dispersion of wheelchair spaces in assembly areas, and visual emergency alarms. Comments on the ANPRM ranged from requesting the Board to exempt small passenger vessels to recommending that the Board concentrate its efforts on addressing large passenger vessels first. Based on public comments and other information collected, the Board has made changes to some of the provisions in the 2004 draft. The Board has also decided to address small passenger vessels after completing this rulemaking.

To facilitate the gathering of cost data necessary for the next step in this rulemaking which is the preparation of a regulatory assessment (costs and benefits) and a Notice of Proposed Rulemaking (NPRM), the Board is placing this revised draft in the rulemaking docket. In order to develop an accurate picture of the potential costs and benefits of this rulemaking, the Board intends to work closely with passenger vessel industry representatives and others who have data on both current costs and industry practices and the knowledge and skills to assess potential effects.

The Board is interested in receiving public comments on this entire second draft. Changes made in this draft from the November 26, 2004 draft are summarized in the supplementary information provided on the Board's Web site (*http://www.access-board.gov*). In addition, the supplementary information discusses the changes made to the draft plan for conducting the regulatory assessment.

Availability of Copies and Electronic Access

Single copies of this rulemaking may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–0080, by pressing 2 on the telephone keypad, then 1 and requesting the second draft of the Passenger Vessels Guidelines. Persons using a TTY should call (202) 272–0082. Documents are available in alternate formats upon request. Persons who want a publication in an alternate format should specify the type of format (cassette tape, Braille, large print, or ASCII disk). Documents are also available on the Board's Web site (*http://www.access-board.gov*).

David L. Bibb,

Chair, Architectural and Transportation Barriers Compliance Board.

[FR Doc. E6–10576 Filed 7–6–06; 8:45 am]

BILLING CODE 8150–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 4, 6, 7, 9, 11, 13, 15, 17, 18, 20, 22, 24, 25, 27, 52, 53, 54, 63, 64, 68, 73, 74, 76, 78, 79, 90, 95, 97 and 101

[EB Docket No. 06–119; FCC 06–83]

In the Matter of Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Communications Commission (Commission) initiates a comprehensive rulemaking to address and implement the recommendations presented by the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks (Independent Panel). The Independent Panel's report described the impact of the worst natural disaster in the Nation's history as well as the overall public and private response efforts. In addition, the report included recommendations which relate to: pre-positioning the communications industry and the government for disasters in order to achieve greater network reliability and resiliency; improving recovery coordination to address existing shortcomings and to maximize the use of existing resources; improving the operability and interoperability of public safety and 911 communications in times of crisis; and improving communication of emergency information to the public. The Commission, in this proceeding, is to take the lessons learned from this disaster and build upon them to promote more effective, efficient response and recovery efforts as well as heightened readiness and preparedness in the future. To accomplish this goal, the Commission invites comment on what actions the Commission can take to address the Independent Panel's recommendations.

DATES: Comments are due on or before August 7, 2006, and reply comments are due on or before August 21, 2006. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before September 5, 2006.

ADDRESSES: Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. You may submit comments, identified by EB Docket No. 06–119, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov/*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail; *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

In addition to filing with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *PRA@fcc.gov*, and to Kristy L. LaLonde, OMB Desk Officer, Room 10234, NEOB, 725 17th Street, NW., Washington, DC 20503, via the Internet to *Kristy_L.LaLonde@omb.eop.gov* or via fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Lisa M. Fowlkes, Assistant Bureau Chief, Enforcement Bureau, at (202) 418–7450 or Jean Ann Collins, Senior Counsel, Office of Homeland Security, Enforcement Bureau at (202) 418–1199. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at (202) 418–0214 or via the Internet at *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in EB Docket No. 06–119, FCC 06–83, adopted June 16, 2006 and released June 19, 2006. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 488–5300, facsimile (202) 488–5563, or via e-mail at *fcc@bcpiweb.com*. It is also available on the Commission's Web site at *http://www.fcc.gov*.

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the OMB to comment on the proposed information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due September 5, 2006.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

OMB Control Number: None

Title: Emergency Communications Status and Contact Information.

Form No.: N/A.

Type of Review: New Collection.

Respondents: Business or other for-profit, not-for-profit, state, local or tribal governments.

Estimated Number of Respondents: 1,300.

Frequency of Response: Contact information—0.167 hours for initial collection; 0.084 hours for updates; Readiness Checklist—40 hours.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 16,113 hours.

Estimated Total Annual Costs: $0.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission will use the information collected to promote more effective, efficient response and recovery efforts in the event of a natural disaster or emergency situation, as well as heightened readiness and preparedness. Additionally, this information collection will be used to compile a roster of key communications providers and other emergency personnel throughout the United States and in determining the extent of communications disruption and the appropriate agency response. This information collection will be used to compile a list of outages to communications infrastructure within an area affected by a disaster. This information will assist in ensuring rapid restoration of communications capabilities after disruption by a natural disaster, terrorist attack or other emergency and will assist in ensuring the public safety, public health, and other emergency and defense personnel have effective communications services available to them.

Synopsis of the Notice of Proposed Rulemaking

1. *Background.* On Monday, August 29, 2005, Hurricane Katrina struck the Gulf Coast of the United States, causing significant damage in Alabama, Louisiana, and Mississippi. The destruction to communications companies' facilities in the region, and therefore to the services upon which citizens rely, was extraordinary. Hurricane Katrina knocked out more than three million customer phone lines in Alabama, Louisiana, and Mississippi. The wireline telecommunications network sustained enormous damage—dozens of central offices and countless miles of outside plant were damaged or destroyed as a result of the hurricane or the subsequent flooding. Local wireless networks also sustained considerable damage—more than a thousand cell sites were knocked out of service by the hurricane. At the hurricane's height, more than thirty-five Public Safety Answering Points (PSAPs) were out of service, and some parishes in Louisiana remained without 911 or enhanced 911 (E911) service for weeks.

2. In January 2006, Chairman Kevin J. Martin established the Independent Panel pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (71 FR 933, January 6, 2006). The mission of the Independent Panel was to review the impact of Hurricane Katrina on the telecommunications and media infrastructure in the areas affected by the hurricane. Specifically, the Independent Panel was to study the impact of Hurricane Katrina on all sectors of the telecommunications and media industries, including public safety communications. In addition, the Independent Panel was to review the sufficiency and effectiveness of the recovery effort with respect to the communications infrastructure. The Independent Panel was tasked with making recommendations to the Commission by June 15, 2006, regarding ways to improve disaster preparedness, network reliability, and communications among first responders such as police, fire fighters, and emergency medical personnel.

3. The Independent Panel met directly on five occasions. Four of these meetings were used to examine the facts surrounding the impact of Hurricane Katrina and to obtain evidence concerning the extent of the damage and the sufficiency and effectiveness of the recovery efforts. On one occasion, the Independent Panel met in the area struck by Hurricane Katrina to hear first-hand from victims of the disaster. In addition to the in-person meetings, the Independent Panel also received written comments from interested members of the public. Finally, the Independent Panel's informal working groups met on numerous occasions via conference call and in person to discuss their progress.

4. On June 9, 2006, the Independent Panel held its final meeting in Washington, DC to conclude its analysis and deliberations. The Independent Panel finalized its findings and recommendations and submitted its report on June 12, 2006. A copy of the report is attached to this NPRM.

5. *Introduction.* In this Notice of Proposed Rulemaking, the Commission initiates a comprehensive rulemaking to address and implement the recommendations presented by the Independent Panel. Congress has charged the Commission with promoting the safety of life and property

through the use of wire and radio communications. In this regard, the Commission has already taken a number of steps to fulfill this mandate and we will continue to do so. The Independent Panel's report described the impact of the worst natural disaster in the Nation's history, as well as the overall public and private response and recovery efforts. Our goal in this proceeding is to take the lessons learned from this disaster and build upon them to promote more effective, efficient response and recovery efforts, as well as heightened readiness and preparedness, in the future. To accomplish this goal, we invite comment on what actions the Commission can take to address the Independent Panel's recommendations.

6. We seek comment on the recommendations presented by the Independent Panel in its final report. The Independent Panel's recommendations are organized into four areas: (1) Pre-positioning the communications industry and the government for disasters in order to achieve greater network reliability and resiliency; (2) improving recovery coordination to address existing shortcomings and to maximize the use of existing resources; (3) improving the operability and interoperability of public safety and 911 communications in times of crisis; and (4) improving communication of emergency information to the public. In some cases, the Independent Panel recommends actions that require the Commission to modify its rules pursuant to notice-and-comment rulemaking. In other cases, the Independent Panel recommends that the Commission take actions that are not dependent upon rulemakings, such as increased outreach and education campaigns, or recommends measures that may not fall within the Commission's statutory authority and jurisdiction. In advocating implementation of the Independent Panel's recommendations, commenters should note what actions would fall within the Commission's statutory authority and jurisdiction, and what the Commission could do to encourage the appropriate entities (*e.g.*, state and local authorities) to take action. In evaluating the Independent Panel's recommendations, our goal is to determine what actions the Commission should take to promote greater resiliency and reliability of communications infrastructure, as well as the actions the Commission should take to strengthen and improve response and recovery efforts. We therefore invite broad comment on the Independent Panel's recommendations and on the measures the Commission should take to address the problems identified. We also generally seek comment on whether, in adopting any of the Independent Panel's recommendations, any additional safeguards should be implemented to limit disclosure of sensitive infrastructure information or commercial information to prevent exposing potential targets to wrongdoers and subjecting regulated entities to competitive harm.

7. In addition to presenting recommendations, the Independent Panel's final report describes the Independent Panel's observations regarding the hurricane's impact and the sufficiency of the recovery efforts. We also seek comment on whether the Independent Panel's observations warrant additional measures or steps beyond the report's specific recommendations. Thus, to the extent parties believe additional measures beyond the Independent Panel's recommendations or different actions are warranted, we welcome these suggestions and recommendations. We also seek comment whether we should rely on voluntary consensus recommendations, as advocated by the Independent Panel, or whether we should rely on other measures for enhancing readiness and promoting more effective response efforts.

8. *Pre-Positioning for Disasters.* The Independent Panel recommendation notes that the sheer force of Hurricane Katrina and the extensive flooding that occurred severely tested the reliability and resiliency of communications networks in the Gulf Coast region. To help speed response efforts, the Independent Panel recommends the adoption of a proactive (rather than reactive) program for network reliability and resiliency. At the heart of the Independent Panel's recommendations are steps the Independent Panel believes the communications industry, public safety organizations, and the Commission should take for a faster, more effective response to disasters and emergencies. In particular, the Independent Panel recommends that the Commission work with industry sectors, associations, and other organizations to establish a "Readiness Checklist" for the communications industry that would include developing formal business continuity plans, conducting training exercises, developing suitable plans and procedures, and maintaining pre-positioned supplies and equipment to help in disaster response. We seek comment on these recommendations. The Independent Panel recommends that we rely on checklists developed by industry consensus groups, such as the Network Reliability and Interoperability Council (NRIC) and the Media Security and Reliability Council (MSRC). We seek comment on this recommendation, including whether we should rely on the results of voluntary consensus recommendations or instead rely on other measures. We invite parties to comment on the appropriate breadth of business continuity plans. Are the suggested elements presented by the Independent Panel adequate, or are other elements useful or necessary? We seek comment on whether we should adopt guidance or criteria for developing business continuity plans, conducting exercises, developing and practicing communications plans, or routinely archiving critical system back-ups for secure off-site facilities.

9. The Independent Panel also recommends enhancing the awareness of the public safety community in non-traditional emergency alternatives through community education campaigns. We seek comment on this recommendation and on other steps we can take within our jurisdiction and statutory authority to assist the public safety community response to disasters and other emergencies. The Independent Panel recommends that the Commission establish a prioritized system of automatically waiving regulatory requirements, or of granting automatic Special Temporary Authority (STA) in certain instances, and provides a list of specific Commission requirements. We invite comment on this suggestion. Are there other areas where regulatory relief would be appropriate? Should we establish specific thresholds or requirements in the Commission's rules pertaining to demonstrations that should be made? The Independent Panel also recommends that the Commission coordinate all federal outage and infrastructure reporting requirements in times of crisis. We seek comment on this recommendation and on the measures the Commission can take within its statutory authority and jurisdiction. Parties should address the appropriate content of emergency outage reports, format, frequency, distribution, and related issues. We seek comment on whether additional safeguards should be implemented to address issues concerning potential disclosure of sensitive infrastructure information or commercial information to avoid potential harm to communications providers or others. Finally, we invite comment on other steps beyond those recommended by the panel that we could take within our statutory authority and jurisdiction to

improve or strengthen network resiliency and reliability.

10. We seek comment on whether and how the Commission can assist organizations whose primary business is not communications (*e.g.*, hospitals, nursing homes, day care facilities, and so forth) with developing communications plans for an emergency. We also seek comment on whether the Commission should develop a hotline and/or Website to assist these entities.

11. *Recovery Coordination.* The Independent Panel observed significant challenges to maintenance and restoration of communications services after Hurricane Katrina due in part to problems with access to the affected area and key resources such as power and/or generator fuel. The Independent Panel "generally supports the National Security Telecommunications Advisory Committee's (NSTAC's) recommendation for a national standard for credentialing telecommunications repair workers." The Independent Panel advocates, however, expanding the NSTAC's credentialing recommendations to include repair workers of all communications infrastructure (*e.g.*, wireline, wireless, WISP, cable, broadcasting, satellite). The Independent Panel recommends that the Commission work with other appropriate Federal departments and agencies to promptly develop national credentialing requirements and guidelines to enable communications infrastructure providers and their contracted workers to access affected areas post-disaster. The Independent Panel also recommends that the Commission "encourage states to develop and implement a credentialing program consistent with [the NSTAC's guidelines]." We seek comment on these recommendations, including measures the Commission can take within its statutory authority and jurisdiction. The Independent Panel also recommends that the Commission work with Congress and appropriate federal departments and agencies to implement the NSTAC's recommendation that telecommunications infrastructure providers should be afforded emergency responder status under the Stafford Act and that this designation should be incorporated into the National Response Plan and state and local emergency response plans. The Independent Panel further recommends that the emergency responder designation be expanded to include all communications services providers (*e.g.*, wireline, wireless, WISP, satellite, cable, and broadcast media) and their contract workers. The Commission seeks comment on these recommendations and on other steps we can take within our statutory authority and jurisdiction.

12. The Independent Panel makes several recommendations related to improving and enhancing communications and coordination among Federal, state, and local authorities and the private sector. In particular, the Independent Panel recommends that the Commission "should encourage, but not require, each regional, state and local [Emergency Operating Center (EOC)] and the [Joint Field Office (JFO)] to engage in the following activities:

- Facilitate coordination between communications infrastructure providers and state and local emergency preparedness officials;
- Develop credentialing requirements and procedures for the purposes of allocating communications infrastructure providers (and their contractors and security teams) into disaster areas to perform repairs;
- Develop and facilitate inclusion in the state's Emergency Preparedness Plan, where appropriate, one or more clearly identified post-disaster coordination areas for communications infrastructure providers;
- Share information and coordinate resources to facilitate repair of key communications infrastructure; and
- Facilitate electric and other utilities' maintenance of priority lists for commercial power restoration.

We seek comment on these recommendations and on other measures the Commission could take within its statutory authority and jurisdiction to encourage other Federal agencies, state and local authorities, and the private sector to address the Independent Panel's recommendations in this regard.

13. In addition to recommending the Commission encourage other governmental bodies to engage in these activities, the Independent Panel notes its support for communications infrastructure providers forming an industry-only group for disaster planning, coordinating recovery efforts, and other purposes. The Independent Panel also recommends that the Commission work with the National Communications System, an organization within the Department of Homeland Security (DHS), to broaden the membership of the National Coordinating Center for Telecommunications (NCC) to include representation of all types of communications systems, including broadcast, cable, satellite, and other new technologies. We seek comment on these recommendations, including how the Commission can work within its statutory authority and jurisdiction to promote greater membership in the DHS's National Communications System coordination body. We seek comment on how the Commission could best work within its own jurisdiction and statutory authority to assist in promoting extensive, cross-jurisdictional coordination. We also seek comment generally on how we can better facilitate coordination during times of crisis.

14. The Independent Panel also recommended that the Commission work with the DHS's National Communications System to promote the use of existing priority communications services, such as Government Emergency Telecommunications Service (GETS), Wireless Priority Service (WPS), and Telecommunications Service Priority (TSP). In particular, the Independent Panel recommends that the Commission work with the DHS's National Communications System to promote WPS, GETS and TSP to all eligible government, public safety, and critical industry groups. We seek comment on how the Commission can address these recommendations within its statutory authority and jurisdiction. Finally, the Independent Panel recommends that the Commission create two Web sites identifying: (1) The key state emergency management contacts and post-disaster staging areas for communications providers; and (2) contact information for the Commission's Task Force that coordinates disaster response efforts and procedures for facilitating disaster response and outage recovery. We seek comment on these recommendations.

15. First Responder Communications. The Independent Panel made several recommendations intended to facilitate the restoration of public safety communications capabilities. As with other recommendations, the Independent Panel recommends that the Commission encourage state and local authorities to take actions, and to assist in supporting these efforts consistent with our statutory authority and jurisdiction. For example, the Independent Panel recommended that the Commission encourage state and local jurisdictions to retain and maintain a cache of equipment components that would be needed to immediately restore existing public safety communications within hours of a disaster. Such a cache of pre-positioned equipment would include Radiofrequency (RF) gear (e.g., Internet Protocol (IP) gateways, dispatch consoles, etc), trailers, tower system components (e.g., antenna systems and

hydraulic masts), back-up power equipment, and fuel. We seek comment on these recommendations. We invite parties to comment on the capabilities and content of pre-positioned equipment, as well as the functionalities most critical to support in the early stages of a crisis. The Independent Panel Report also includes recommendations intended to facilitate interoperability among first responder communications, including a recommendation that the Commission encourage the expeditious development of regional plans for the use of 700 MHz systems and move promptly to review and approve such plans. The Commission seeks comment on these recommendations, including how they should be implemented within our statutory authority and jurisdiction.

16. The Independent Panel also made recommendations intended to ensure a more robust 911 and E911 service. For example, the panel recommends that the Commission encourage the implementation of certain NRIC best practices intended to promote the reliability and resiliency of the 911 and E911 architecture. In particular, the Independent Panel recommends that service providers and network operators should consider placing and maintaining 911 circuits over diverse interoffice transport facilities and should ensure availability of emergency back-up power capabilities (located on-site, when appropriate). The Independent Panel further recommends that network operators should consider deploying dual active 911 selective router architectures as a means for eliminating single points of failure. The Independent Panel also recommends that network operators, service providers, equipment suppliers, and public safety authorities should establish alternative methods of communication for critical personnel. We seek comment on how the Commission can best encourage implementation of these recommendations consistent with our statutory authority and jurisdiction, and we welcome further suggestions on measures that could be taken to strengthen 911 and E911 infrastructure and architecture.

17. With respect to Public Safety Answering Points (PSAPs), the Independent Panel recommends the designation of a secondary back-up PSAP that is more than 200 miles away to answer calls when the primary and secondary PSAPs are disabled. The Independent Panel also recommends that the Commission work with other Federal agencies to enhance funding for 911 enhancement and interoperability. The Independent Panel recommends that the Commission work to assist the emergency medical community to facilitate the resiliency and effectiveness of their emergency communications system. The Independent Panel report includes four recommendations regarding the emergency medical community, stating that the Commission should, inter alia, educate the emergency medical community about emergency communications and the various priority communications services and help to coordinate this sector's emergency communications efforts. We seek comment on how to address these recommendations consistent with our statutory authority and jurisdiction. We also invite comment on what additional steps the Commission can take within its statutory authority to assist the emergency medical community enhance its disaster response capabilities.

18. Emergency Communications to the Public. The Independent Panel report also includes recommendations intended to facilitate and complement use of the Emergency Alert System (EAS), including recommendations that the Commission educate state and local officials about the existing EAS, its benefits, and how it can be utilized. Further, the report recommends that the Commission develop a program for educating the public about EAS and promote community awareness of potential mechanisms for accessing those alerts sent during power outages or broadcast transmission failures. In order to ensure that all Americans, including persons with disabilities and persons who do not speak English, are able to receive emergency communications, the Independent Panel recommends that the Commission: (1) Promptly find a mechanism to resolve any technical hurdles in the current EAS to ensure that persons with hearing or vision disabilities and persons who do not speak English have equal access to public warnings; (2) work with the various industry trade associations to create and publicize best practices for serving persons with disabilities and persons who do not speak English; and (3) encourage state and local government agencies who provide emergency information to take steps to make critical emergency information accessible to persons with disabilities and persons who do not speak English. We seek comment on how to address these recommendations consistent with our statutory authority and jurisdiction. With respect to item (1), we note that the issue is the subject of the Commission's ongoing EAS rulemaking proceeding, and we expect to address these and related issues in that proceeding.

Initial Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided in section IV of the item. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

20. On Monday, August 29, 2005, Hurricane Katrina struck the Gulf Coast of the United States, causing significant damage in Alabama, Louisiana, and Mississippi. The destruction to communications companies' facilities in the region, and therefore to the services upon which citizens rely, was extraordinary. Hurricane Katrina knocked out more than three million customer phone lines in Alabama, Louisiana, and Mississippi. The wireline telecommunications network sustained enormous damage—dozens of central offices and countless miles of outside plants were damaged or destroyed as a result of the hurricane or the subsequent flooding. Local wireless networks also sustained considerable damage—more than a thousand cell sites were knocked out of service by the hurricane. At the hurricane's height, more than thirty-five Public Safety Answering Points (PSAPs) were out of service, and some parishes in Louisiana remained without 911 or enhanced 911 (E911) service for weeks.

21. In January 2006, Chairman Kevin J. Martin established the Independent Panel pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended. The mission of the Independent Panel was to review the impact of Hurricane Katrina on the telecommunications and media infrastructure in the areas affected by the hurricane. Specifically, the Independent Panel was to study the impact of Hurricane Katrina on all

sectors of the telecommunications and media industries, including public safety communications. In addition, the Independent Panel was to review the sufficiency and effectiveness of the recovery effort with respect to the communications infrastructure. The Independent Panel was tasked with making recommendations to the Commission, by June 15, 2006, regarding ways to improve disaster preparedness, network reliability, and communications among first responders such as police, fire fighters, and emergency medical personnel.

22. On June 12, 2006, the Independent Panel submitted its Report and Recommendations. As explained in the NPRM, Congress has charged the Commission with promoting the safety of life and property through the use of wire and radio communications. In this regard, we have already taken a number of steps to fulfill this mandate and we will continue to do so. The Independent Panel's report described the impact of the worst natural disaster in the Nation's history as well as the overall public and private response and recovery efforts. Our goal in this proceeding is to take the lessons learned from this disaster and build upon them to promote more effective, efficient response and recovery efforts, as well as heightened readiness and preparedness, in the future. To accomplish this goal, we invite comment on what actions the Commission can take to address the Independent Panel's recommendations.

23. As we note in the NPRM, in some cases, the Independent Panel recommends action that require the Commission to modify its rules pursuant to notice-and-comment rulemaking. In other cases, the Independent Panel recommends that the Commission take actions that are not dependent upon rulemakings, such as increased outreach and education campaigns, or recommends measures that may not fall within the Commission's statutory authority and jurisdiction. In advocating implementation of the Independent Panel's recommendations, commenters should note what actions would fall within the Commission's statutory authority and jurisdiction and what the Commission could do to encourage the appropriate entities (e.g., states and local authorities) to take action.

24. To speed response efforts, the Independent Panel recommends that adoption of a proactive (rather than reactive) program for network reliability and resiliency. Specifically, the Independent Panel recommends working with industry sectors, associations and other organizations to establish a "Readiness Checklist" for the communications industry that would include developing formal business continuity plans, conducting training exercises, developing suitable plans and procedures, and maintaining pre-positioned supplies and equipment to help in disaster response. The NPRM seeks comment on these recommendations. The Independent Panel also recommends that we rely on checklists developed by industry consensus groups, such as the Network Reliability and Interoperability Council (NRIC) and the Media Security and Reliability Council (MSRC). The NPRM seeks comment on this recommendation, including whether we should rely on the results of voluntary consensus recommendations or instead rely on other measures. The NPRM also seeks comment on whether we should adopt guidance or criteria for developing business continuity plans, conducting exercises, developing and practicing communications plans, or routinely archiving critical system back-ups for secure off-site facilities.

25. The Independent Panel also recommends enhancing the public safety community's awareness of non-traditional emergency alternatives through community education campaigns. The NPRM seeks comment on this recommendation and other steps we can take within our jurisdiction and statutory authority to assist the public safety community in responding to disasters and other emergencies. The Independent Panel recommends that the Commission establish a prioritized system of automatically waiving regulatory requirements, or of granting automatic Special Temporary Authority (STA) in certain instances, and provides a list of specific Commission requirements. The NPRM seeks comment on this suggestion. The NPRM also seeks comment on the Independent Panel's recommendation that the Commission coordinate all federal outage and infrastructure reporting requirements in times of crisis. In addition, the NPRM seeks comment on other steps beyond those recommended by the Panel that the Commission could take within our statutory authority and jurisdiction to improve or strengthen network resiliency and reliability.

26. As discussed in the NPRM, the Independent Panel generally supports the National Security Telecommunications Advisory Committee's (NSTAC's) recommendation for a national standard for credentialing telecommunications repair workers. The Independent Panel, however, advocates expanding the NSTAC recommendations to include repair workers of all communications infrastructure. The Independent Panel recommends that the Commission work with other appropriate Federal departments and government agencies to promptly develop national credentialing requirements and guidelines to enable communications infrastructure providers and their contracted workers to access affected areas post-disaster. The Independent Panel also recommends that the Commission encourage states to develop and implement a credentialing program consistent with the NSTAC guidelines. The NPRM seeks comment on these recommendations as well as measures the Commission can take within its statutory authority and jurisdiction.

27. The NPRM seeks comment on the Independent Panel's recommendation that the Commission work with Congress and appropriate federal departments and agencies to implement the NSTAC's recommendation that telecommunications infrastructure providers should be afforded emergency responder status under the Stafford Act and that this designation should be incorporated into the National Response Plan and state and local emergency response plans. With respect to this proposal, the Independent Panel also recommends that the emergency responder designation include all types of communications services.

28. In order to enable the communications industry and state and local emergency officials to better coordinate their preparation for and response to disasters affecting communications infrastructure, the Independent Panel recommends that the Commission work with state and local emergency officials and the communications industry to encourage the formation of coordinating and planning bodies at the state or regional level. As set forth in the NPRM, the Panel's recommendation also lists activities that the Commission should encourage each state or regional coordinating body to engage in. The NPRM seeks comment on this recommendation and on the measures the Commission could take within its statutory authority and jurisdiction to encourage other Federal agencies, state and local authorities and the private sector to address the Independent Panel's recommendations in this regard.

29. The Independent Panel recommends that the Commission work with the National Communications System (NCS) to broaden the membership of the National Coordinating Center for Telecommunications to include representation from all types of

communications systems, including broadcast, cable, satellite, and other new technologies. The NPRM seeks comment on this recommendation, including how the Commission can work within its statutory authority and jurisdiction to promote greater membership in the DHS's National Communications System coordination body.

30. The NPRM seeks comment on several recommendations designed to facilitate the use of existing priority communications services, such as Government Emergency Telecommunications Service (GETS), Wireless Priority Service (WPS) and Telecommunications Service Priority (TSP), all of which are administered by DHS's National Communications System. In addition, the NPRM seeks comment on the Independent Panel's recommendation that the Commission create two Web sites identifying: (1) The key state emergency management contacts and post disaster staging areas for communications providers; and (2) contact information for the Commission's Task Force that coordinates disaster response efforts and procedures for facilitating disaster response and outage recovery.

31. In the NPRM, the Commission seeks comment on several recommendations intended to facilitate the restoration of public safety communications capabilities. For example, it seeks comment on the Panel's recommendation that the Commission encourage state and local jurisdictions to retain and maintain a cache of equipment components that would be needed to immediately restore existing public safety communications within hours of a disaster. The NPRM also seeks comment on a number of recommendations intended to facilitate interoperability among first responder communications, including a recommendation that the Commission encourage the expeditious development of regional plans for the use of 700 MHz systems and move promptly to review and approve such plans.

32. Regarding 911 and E911 service, the Independent Panel recommends that the Commission encourage the implementation of certain NRIC best practices intended to promote the reliability and resiliency of the 911 and E911 architecture. The Panel recommends that: (1) Service providers and network operators consider placing and maintaining 911 circuits over diverse interoffice transport facilities and should ensure availability of emergency back-up power capabilities (located on-site, when appropriate); (2) network operators consider deploying dual service 911 selective router architectures as a means for eliminating single points of failure; and (3) network operators, service providers, equipment suppliers, and public safety authorities establish alternative methods of communication for critical personnel. The NPRM seeks comment on these recommendations.

33. With respect to Public Safety Answering Points (PSAPs), the Independent Panel recommends (1) the designation of a secondary back-up PSAP that is more than 200 miles away to answer calls when the primary and secondary PSAPs are disabled; (2) that the Commission work with other federal agencies to enhance funding for 911 enhancement and interoperability; and (3) that the Commission work to assist the emergency medical community to facilitate the resiliency and effectiveness of their emergency communications system. The NPRM seeks comment on these recommendations. In addition, the Independent Panel's Report and Recommendations includes four recommendations regarding the emergency medical community, stating that the Commission should, inter alia, educate the emergency medical community about emergency communications and the various priority communications services and help to coordinate this sector's emergency communications efforts. The NPRM seeks comment on these recommendations.

34. Finally, the NPRM seeks comment on the Independent Panel's recommendations that the Commission: (1) Work with various industry trade associations to create and publicize best practices for serving persons with disabilities and persons who do not speak English; and (2) encourage state and local government agencies to provide emergency information to take steps to make critical emergency information accessible to persons with disabilities and persons who do not speak English.

Legal Basis

35. Authority for the actions proposed in this NPRM may be found in sections 1, 4(i), 4(o), 201, 303(r), 403, and 706 of the Communications Act of 1934, as amended, (Act) 47 U.S.C. 151, 154(i), 154(o), 303(r), 403 and 606.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

36. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

37. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, we estimate that most governmental jurisdictions are small.

38. Television Broadcasting. The SBA has developed a small business sized standard for television broadcasting, which consists of all such firms having $13 million or less in annual receipts. Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound." According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database (BIA) on October 18, 2005, about 873 of the 1,307 commercial television stations (or about 67 percent) have revenues of $12 million or less and thus quality as small entities under the SBA definition. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV). Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA size standard.

39. Radio Stations. The proposed rules and policies potentially will apply to all AM and commercial FM radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has $6.5 million or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number. According to Commission staff review of BIA Publications, Inc. Master Access Radio Analyzer Database on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations have revenue of $6 million or less. We note, however, that many radio stations are affiliated with much larger corporations having much higher revenue. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action.

40. Cable and Other Program Distribution. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material." The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, under this size standard, the majority of firms can be considered small.

41. Cable Companies and Systems. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

42. Cable System Operators. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

43. Multipoint Distribution Systems. The established rules apply to Multipoint Distribution Systems (MDS) operated as part of a wireless cable system. The Commission has defined "small entity" for purposes of the auction of MDS frequencies as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas. Of 67 winning bidders, 61 qualified as small entities. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees.

44. MDS also includes licensees of stations authorized prior to the auction. As noted above, the SBA has developed a definition of small entities for pay television services, cable and other subscription programming, which includes all such companies generating $13.5 million or less in annual receipts. This definition includes MDS and thus applies to MDS licensees that did not participate in the MDS auction. Information available to us indicates that there are approximately 392 incumbent MDS licensees that do not generate revenue in excess of $11 million annually. Therefore, we estimate that there are at least 440 (392 pre-auction plus 48 auction licensees) small MDS providers as defined by the SBA and the Commission's auction rules which may be affected by the rules adopted herein.

45. Instructional Television Fixed Service. The established rules would also apply to Instructional Television Fixed Service (ITFS) facilities operated as part of a wireless cable system. The SBA definition of small entities for pay television services also appears to apply to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 are small businesses and may be affected by the established rules.

46. Wireless Service Providers. The SBA has developed a small business size standard for wireless small businesses within the two separate categories of Paging and Cellular and Other Wireless Telecommunications. Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. According to Commission data, 1,012 companies reported that they were engaged in the provision of wireless service. Of these 1,012 companies, an estimated 829 have 1,500 or fewer employees and 183 have more than 1,500 employees. This SBA size standard also applies to wireless telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. According to the data, 437 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 260 of these are small businesses under the SBA small business size standard.

47. Broadband Personal Communications Service. The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A

through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

48. Incumbent Local Exchange Carriers (Incumbent LECs). We have included small incumbent local exchange carriers in this present IRFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed rules.

49. Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers." Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 12 carriers have reported that they are "Shared-Tenant Service Providers," and all 12 are estimated to have 1.500 or fewer employees. In addition, 39 carriers have reported that they are "Other Local Service Providers." Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our proposed rules.

50. Satellite Telecommunications and Other Telecommunications. There is no small business size standard developed specifically for providers of satellite service. The appropriate size standards under SBA rules are for the two broad census categories of "Satellite Telecommunications" and "Other Telecommunications." Under both categories, such a business is small if it has $13.5 million or less in average annual receipts.

51. The first category of Satellite Telecommunications "comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

52. This NPRM contains proposals that may result in specific reporting or recordkeeping requirements. The NPRM seeks comment on the Independent Panel's recommendation that the Commission coordinate all federal outage and infrastructure reporting requirements in times of crisis. Specifically, the NPRM seeks comment on the appropriate content of emergency outage reports, format, frequency, distribution and related issues. The NPRM requests suggestions on the appropriate content of emergency outage reports, format, frequency, distribution and related issues. The NPRM also seeks comment on the Independent Panel's recommendation that the Commission establish a "Readiness Checklist" for the communications industry that would include, inter alia, developing formal business continuity plans. The NPRM requests comment on the appropriate breadth of business continuity plans as well as whether the Commission should adopt guidance or criteria for the elements that would comprise the Readiness Checklist.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

53. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption

from coverage of the rule, or any part thereof, for such small entities." We invite comment on whether small entities should be subject to different requirements if we adopt rules to promote more effective, efficient response and recovery efforts, and whether differentiating such requirements based on the size of the entities is warranted. For example, should there be timing differences for requirements imposed on small entities? Should small entities be subject to different continuity of operations requirements?

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

54. None.

Ex Parte Rules

These matters shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

Ordering Clauses

55. It is ordered, that pursuant to sections 1, 4(i) and (o), 201, 303(r), 403, and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (o), 201, 303(r), 403, and 606, this Notice of Proposed Rulemaking Is hereby Adopted.

56. It is further ordered that the Commission's Consumer and Government Affairs Bureau, Reference Information Center, Shall Send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Council for Advocacy of the Small Business Administration.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks

Report and Recommendations to the Federal Communications Commission

June 12, 2006.

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EXECUTIVE SUMMARY

The Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks ("Katrina Panel" or "Panel") hereby submits its report to the Federal Communications Commission ("Commission" or "FCC"). The Panel is charged with studying the impact of Hurricane Katrina on the telecommunications and media infrastructure in the areas affected by the hurricane and making recommendations for improving disaster preparedness, network reliability and communications among first responders.

FINDINGS

Hurricane Katrina had a devastating impact on the Gulf Coast region, including its communications networks. The sheer force of this deadly hurricane and the extensive flooding from the breached levees in New Orleans severely tested the reliability and resiliency of the communications infrastructure in the area. Indeed, every sector of the communications industry was impacted by the storm. The Panel observed that most of the region's communications infrastructure fared fairly well through the storm's extreme wind and rain, with the coastal areas suffering the worst damage. However, the unique conditions in Katrina's aftermath—substantial flooding, widespread, extended power outages, and serious security issues—were responsible for damaging or disrupting communications service to a huge geographic area for a prolonged period of time. Indeed, in reviewing the impact on each communications sector, there appeared to be three main problems that caused the majority of communications network interruptions: (1) flooding; (2) lack of power and/or fuel; and (3) failure of redundant pathways for communications traffic. In addition, a fourth item—inadvertent line cuts during restoration—resulted in additional network damage, causing new outages or delaying service restoration.

The Panel also observed significant impediments to the recovery effort resulting from:

- Inconsistent and unclear requirements for communications infrastructure repair crews and their subcontractors to gain access to the affected area;
- Limited access to power and/or generator fuel;
- Limited security for communications infrastructure and personnel;
- Lack of pre-positioned back-up equipment;
- Lack of established coordination between the communications industry and state and local officials as well as among federal, state and local government officials with respect to communications matters; and
- Limited use of available priority communications services, such as GETS, WPS and TSP.

On a more positive note, in the wake of the storm, lines of communication between the communications industry and the federal government were established and seemed generally effective in facilitating coordination, promptly granting needed regulatory relief, and gathering outage information. The FCC was widely praised as playing a critical role in helping to restore communications connectivity. In

addition, ad hoc, informal sharing of fuel and equipment among communications industry participants helped to maximize the assets available and bolster the recovery effort. However, additional coordination of personnel and assets within industry and among government agencies could have substantially facilitated restoration of communications networks.

With respect to emergency communications, Hurricane Katrina significantly hampered the functionality of these typically resilient systems. The areas in and around New Orleans were seriously impacted, due to heavier storm impact and the levee flooding. As a result, more than 2,000 police, fire and emergency medical service personnel were forced to communicate in single channel mode, radio-to-radio, utilizing only three mutual aid frequencies. This level of destruction did not extend to inland areas, which generally did not lose their communications capabilities and were soon operating at pre-Katrina capabilities. In the hardest hit areas, however, the disruption of public safety communications operability, as well as a lack of interoperability, frustrated the response effort and caused tremendous confusion among official personnel and the general public.

The Panel observed that lack of effective first responder communications after the storm revealed inadequate planning, coordination and training on the use of technologies that can help to restore emergency communications. Very few public safety agencies had stockpiles of key equipment on hand to implement rapid repairs or alternative, redundant systems to turn to when their primary systems failed. To the extent alternative systems were available, lack of training and familiarity with the equipment limited functionality and impeded the recovery effort. Communications assets that could have been used to fill gaps were apparently not requested or deployed in sufficient quantities to have a significant impact. Hurricane Katrina also highlighted the long-standing problem of interoperability among public safety communications systems operating in different frequency bands and with different technical standards. Additionally, 911 emergency call handling suffered from a lack of preprogrammed routing of calls to PSAPs not incapacitated by the hurricane. Finally, the emergency medical community seemed lacking in contingency communications planning and information about technologies and services that might address their critical communications needs.

The use of communications networks to disseminate reliable emergency information to the public is critical—before, during and after such events. While the Panel understands that the National Weather Service used the Emergency Alert System ("EAS") to provide severe weather warnings to citizens in the Gulf States in advance of Katrina making landfall, the system was apparently not utilized by state and local officials to provide localized emergency evacuation and other important information. In the absence of EAS activation, inconsistent or erroneous information was sometimes provided within the affected area. Further, the Panel heard about notification technologies that may permit emergency messages to be sent to wireline and wireless telephones as well as personal digital assistants and other mobile devices, thus complementing the traditional broadcast-based EAS. Ensuring emergency communications reach Americans with hearing or visual disabilities or who do not speak English was a major challenge. Although the broadcast industry has taken significant steps to provide on-screen sign language interpreters, closed captioning, and critical information in a second language, these steps were reported to be insufficient in certain instances. Shelters also generally did not have communications capabilities for those with hearing or speech disabilities.

RECOMMENDATIONS

Based upon its observations regarding the impact of Hurricane Katrina on communications networks and the sufficiency and effectiveness of the recovery effort, the Panel has developed a number of recommendations to the FCC for improving disaster preparedness, network reliability and communications among first responders. These recommendations fall within four basic areas:

► Pre-positioning the communications industry and the government for disasters in order to achieve greater network reliability and resiliency. These recommendations include:

- Pre-positioning for the Communications Industry—A Readiness Checklist. The FCC should work with and encourage each industry sector, through their organizations or associations, to develop and publicize sector-specific readiness recommendations.
- Pre-positioning for Public Safety—An Awareness Program for Non-Traditional Emergency Alternatives. The FCC should take steps to educate the public safety community about the availability and capabilities of non-traditional technologies that might provide effective back-up solutions for existing public safety communications systems.
- Pre-positioning for FCC Regulatory Requirements—An A Priori Program for Disaster Areas. The FCC should explore amending its rules to permit automatic grants of certain types of waivers or special temporary authority (STA) in a particular geographic area if the President declares that area to be a "disaster area".
- Pre-positioning for Government Outage Monitoring—A Single Repository and Contact with Consistent Data Collection. The FCC should coordinate with other federal and state agencies to identify a single repository/point of contact for communications outage information in the wake of an emergency. The Panel suggests that the FCC is the Federal agency best situated to perform this function.

► Improving recovery coordination to address existing shortcomings and to maximize the use of existing resources. These recommendations include:

- Remedying Existing Shortcomings—National Credentialing Guidelines for Communications Infrastructure Providers. The FCC should work with other appropriate federal departments and agencies and the communications industry to promptly develop national credentialing requirements and process guidelines for enabling communications infrastructure providers and their contracted workers access to the affected area post-disaster.
- Remedying Existing Shortcomings—Emergency Responder Status for Communications Infrastructure Providers. The Panel supports the National Security Telecommunications Advisory Committee's ("NSTAC's") recommendation that telecommunications infrastructure providers and their contracted workers be afforded emergency responder status under the Stafford Act, but recommends that it be broadened to include all communications infrastructure providers.
- Remedying Existing Shortcomings—Utilization of State/Regional Coordination Bodies. The FCC should work with state and local government and the communications industry (including wireline, wireless, WISP, satellite, cable and broadcasting) to better utilize the coordinating capabilities at regional, state and local Emergency Operations Centers, as well as the Joint Field Office.
- Maximizing Existing Resources—Expanding and Publicizing Emergency

Communications Programs (GETS, WPS, and TSP). The FCC should work with the National Communications System ("NCS") to actively and aggressively promote GETS, WPS and TSP to all eligible government, public safety, and critical industry groups.

• Maximizing Existing Resources—Broadening NCC to Include All Communications Infrastructure Sectors. The FCC should work with the NCS to broaden the membership of the National Coordination Center for Telecommunications ("NCC") to include adequate representation of all types of communications systems, including broadcast, cable, satellite and other new technologies, as appropriate.

• Maximizing Existing Resources—FCC Web site for Emergency Coordination Information. The FCC should create a password-protected Web site, accessible by credentialed entities, listing the key state emergency management contacts, as well as post-disaster coordination areas for communications providers.

• Maximizing Existing Resources—FCC Web site for Emergency Response Team Information. The FCC should create a Web site to publicize the agency's emergency response team's contact information and procedures for facilitating disaster response and outage recovery.

► Improving the operability and interoperability of public safety and 911 communications in times of crisis. These recommendations include:

• Essential Steps in Pre-positioning Equipment, Supplies and Personnel—An Emergency Restoration Supply Cache and Alternatives Inventory. The FCC should encourage state and local jurisdictions to retain and maintain, including through arrangements with the private sector, a cache of equipment components that would be needed to immediately restore existing public safety communications. The FCC should also work with the NCC to develop inventories of alternative communications assets.

• Essential Steps in Enabling Emergency Communications Capabilities—Facilitating First Responder Interoperability. The FCC should take several steps to facilitate interoperability among first responder communications, including maintaining the schedule for commercial spectrum auctions to fund the federal public safety grant programs; working with the National Telecommunications and Information Administration ("NTIA") and the Department of Homeland Security ("DHS") to establish appropriate criteria for these grants; encouraging the expeditious development and approval of 700 MHz regional plans; working with NTIA and DHS to develop spectrum sharing among federal, state and local agencies for emergency response purposes; and publicizing interoperability successes and best practices.

• Essential Steps in Addressing E–911 Lessons Learned—A Plan for Resiliency and Restoration of E–911 Infrastructure and Public Safety Answering Points ("PSAPs"). The FCC should encourage implementation of certain Network Reliability and Interoperability Council ("NRIC") best practice recommendations to ensure more robust E–911 service. In addition, the FCC should recommend and take steps to permit the designation of a secondary back-up PSAP more than 200 miles away, as well as urge applicable federal programs to expand eligibility for 911 enhancement/interoperability grants.

• Essential Steps in Addressing Lessons Learned Concerning Emergency Medical and Hospital Communications Needs—An Outreach Program to Educate and Include the Emergency Medical Community in Emergency Communications Preparedness. The FCC should work to assist the emergency medical community to facilitate the resiliency and effectiveness of their emergency communications systems through education and clarification of Stafford Act classification and funding eligibility.

► Improving communication of emergency information to the public. These recommendations include:

• Actions to Alert and Inform—Revitalize and Publicize the Underutilized Emergency Alert System. The FCC should revitalize and publicize the underutilized EAS through education and the exploration of complementary notification technologies.

• Actions to Alert and Inform—Commence Efforts to Ensure that Persons with Disabilities and Non-English-Speaking Americans Receive Meaningful Alerts. The FCC should commence efforts to ensure that persons with disabilities and non-English-speaking Americans receive meaningful alerts, including resolving technical hurdles to these individual's utilization of EAS, publicizing best practices for serving these individuals, and encouraging state and local emergency agencies to make critical emergency information accessible to persons with disabilities and non-English-speaking Americans.

• Actions to Alert and Inform—Ensure Consistent and Reliable Emergency Information Through a Consolidated and Coordinated Public Information Program. The FCC should work with federal, state and local agencies to ensure consistent and reliable emergency information through a consolidated and coordinated public information program.

* * * * *

The Katrina Panel commends Chairman Martin and the Commission for their actions to assist industry and first responders before, during and after Hurricane Katrina and for forming this Panel to identify steps to be taken to enhance readiness and recovery in the future. The Panel hopes that its observations and recommendations prove useful to the Commission and assist our Nation in preparing for and responding to future hurricanes and any other disasters that might lay ahead for us.

INTRODUCTION

The Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks ("Katrina Panel" or "Panel") hereby submits its report to the Federal Communications Commission ("Commission" or "FCC"). The Panel is charged with studying the impact of Hurricane Katrina on the telecommunications and media infrastructure[1] in the areas affected by the hurricane. As directed by the Commission, this report presents the Panel's findings as well as recommendations for improving disaster preparedness, network reliability and communications among first responders.

I. Panel Formation and Charge

On September 15, 2005, FCC Chairman Kevin J. Martin announced that he would establish an independent expert panel to review the impact of Hurricane Katrina on the communications infrastructure.[2] Chairman Martin made the announcement at the FCC's Open Meeting focusing on the effects of Hurricane Katrina, which was held in

[1] Throughout this report, the terms "communications infrastructure" and "communications networks" are intended to refer to both telecommunications (e.g., telephony, wireless, satellite, WISP) and media (e.g., radio, television, cable) infrastructure. "Communications providers" is intended to refer to the operators of these networks.

[2] Statement of Kevin J. Martin, Chairman, Federal Communications Commission, Open Meeting on the Effects of Hurricane Katrina, Atlanta, GA, at 3 (Sept. 15, 2005), available at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-261095A1.pdf* [hereinafter "Martin Sept. 15 Statement"]; see also FCC Takes Steps to Assist in Hurricane Katrina Disaster Relief, 2005 FCC LEXIS 5109 (rel. Sept. 15, 2005) (Commission news release).

Atlanta, Georgia. He stated that the Panel would be composed of public safety and communications industry representatives.[3] The twenty-seven members of the Panel, reflecting that diverse composition, are identified in Appendix A. Chairman Martin appointed Nancy J. Victory of Wiley Rein & Fielding LLP, the former Assistant Secretary of Commerce for Communications and Information and Administrator of the National Telecommunications and Information Administration, to chair the Panel.[4]

In accordance with the requirements of the Federal Advisory Committee Act, the FCC published a notice announcing the establishment of the Katrina Panel in the **Federal Register** on January 6, 2006.[5] The Panel's charter details the Katrina Panel's objectives and the scope of its activity.[6] Specifically, the Charter directs the Panel:

- To study the impact of Hurricane Katrina on all sectors of the telecommunications and media industries, including public safety communications;
- To review the sufficiency and effectiveness of the recovery effort with respect to this infrastructure; and
- To make recommendations to the Commission by June 15, 2006 regarding ways to improve disaster preparedness, network reliability, and communication among first responders such as police, fire fighters, and emergency medical personnel.[7]

Pursuant to the Charter, the Panel became operational on January 9, 2006. The Charter also provides that the Panel will terminate on June 15, 2006 and must carry out its duties before that date.

II. Process and Activities of the Panel

In order to gather information to fulfill the directives of its Charter, the Panel called upon the experiences of its members, many of whom were directly involved in the recovery efforts following Hurricane Katrina. The Panel also solicited broad public input by providing processes by which interested parties could submit written comments[8] and provide oral presentations.[9] The Panel additionally invited certain experts to present to the Panel or demonstrate new technologies and applications. The written comments received by the Panel, as well as transcripts of the Panel's meetings, are publicly available at the FCC's Public Reference Room and on the Panel's website. Finally, the Panel also reviewed publicly available information regarding matters under the Panel's consideration.

The Panel met five times to hear oral presentations, to discuss draft findings and recommendations, and to finalize and approve this report. Those meetings occurred on January 30, March 6–7, April 18, May 12, and June 9, 2006. The March 6–7 meeting was held in Jackson, Mississippi, where the Panel was able to hear oral presentations by interested parties. All other meetings of the Panel occurred in Washington, DC. All of these meetings were public, with prior notice of their date, time and location provided to the public.[10]

The Panel formed informal working groups ("IWGs"), made up of small numbers of Panel members, to help it effectively review and process the necessary information within the time required. The working groups met numerous times in person and telephonically during the Panel's existence. These working groups were not decision-making bodies. Rather, they compiled and sorted information in particular issue areas for presentation to the full Panel. The Panel had three informal working groups:

- IWG–1: Infrastructure Resiliency. This working group focused its discussions and efforts on four main areas: (1) Reviewing how and why certain portions of the communications networks failed; (2) identifying which portions of the communications networks continued to work and withstood the hurricane and why; (3) examining how communications technology can be made less vulnerable to failing; and (4) studying what steps can be taken, pre-event, to strengthen the communications infrastructure. Marion Scott, Vice President—Operations, CenturyTel, served as the Chair of this working group and Steve Dean, Fire Chief of Mobile, Alabama, served as Vice-Chair.
- IWG–2: Recovery Coordination and Procedures. This working group focused on seven main issues: (1) Examining ways to increase the speed with which communications networks can be restored post-event; (2) reviewing whether communications technology could have been used more effectively during the recovery period, including issues relating to consumer education and post-event deployment of communications technology; (3) reviewing the intra-industry procedures that communications providers use to coordinate recovery efforts; (4) reviewing the industry-government procedures that private communications firms and federal, state and local governments use to coordinate recovery efforts; (5) studying ways that private industry can obtain faster and more efficient access to impacted areas; (6) reviewing the security and protection procedures utilized by private communications industry members when they send their first responders to impacted areas; and (7) reviewing how well emergency communications services, including Telecommunications Service Priority, Government Emergency Telecommunications Service, and Wireless Priority Service, performed during Katrina and the extent to which emergency responders used these services. Steve Davis, Senior Vice President—Engineering, Clear Channel Radio, served as the Chair of this working group and Lt. Colonel Joseph Booth, Deputy Superintendent, Louisiana State Police, served as Vice-Chair.
- IWG–3: Emergency Communications. This working group focused on six main issues: (1) Identifying means for ensuring or enabling rapid deployment of interoperable communications in the wake of an event like Hurricane Katrina that can be implemented in the short term; (2) identifying any coordination that needs to occur among public safety entities to facilitate implementation of

[3] Martin Sept. 15 Statement at 3.

[4] Chairman Kevin J. Martin Names Nancy J. Victory as Chair of the Federal Communication Commission's Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, 2005 FCC LEXIS 6514 (rel. Nov. 28, 2005) (Commission news release).

[5] See Federal Communications Commission, Federal Advisory Committee Act, Notice, 71 Fed. Reg. 933 (Jan. 6, 2006), available at *http://www.fcc.gov/eb/hkip/hkipnoe.pdf*. Access to the public comments filed with and notices generated by the Katrina Panel (unless otherwise noted with a URL designation in the citations which follow) is through the Panel's website, available at *http://www.fcc.gov/eb/hkip/*.

[6] See FCC Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, Charter (filed Jan. 9, 2006), available at *http://www.fcc.gov/eb/hkip/HKIPCharter.pdf*.

[7] Id. at 1–2.

[8] See, e.g., Federal Communications Commission, Federal Advisory Committee Act; Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, Notice of opportunity to provide oral presentations, 71 Fed. Reg. 5846 (Feb. 3, 2006), *available at http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/06-1057.pdf*.

[9] Id.

[10] See, e.g., *Notice of Appointment Of Members To Serve On Federal Communications Commission's Independent Panel Reviewing The Impact Of Hurricane Katrina On Communications Networks; And Independent Panel's First Meeting Scheduled For January 30, 2006*, Public Notice, 21 FCC Rcd 197 (2006). The Commission also published notices in the **Federal Register** announcing Panel meetings. *See, e.g.*, Federal Communications Commission, Federal Advisory Committee Act; Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, Notice of public meeting, 71 Fed. Reg. 2233 (Jan. 13, 2006). The Panel's website at &fnl;*http://www.fcc.gov/eb/hkip/Meetings.html* contains more information about meeting notices.

such a system in the wake of a disaster; (3) reviewing Hurricane Katrina's impact on the Gulf Coast Region's 911 and E–911 systems; (4) reviewing the impact of the hurricane on PSAPs and the procedures used to re-route emergency calls; (5) examining whether and how the communications networks could have provided greater 911 connectivity for private citizens; and (6) reviewing the adequacy of emergency communications to the public before, during and after the hurricane, and the best ways to alert and inform the public about emergencies in the future. Steve Delahousey, Vice President—Operations, American Medical Response, served as the Chair of this working group and Jim Jacot, Vice President, Cingular Network Group, served as Vice-Chair.

Typically, discussion about various findings and recommendations occurred first within the working groups. The working groups then presented draft findings and recommendations to the full Panel for further discussion. Certain issues were referred back to the working groups for additional discussion and revision.

The Panel held its final meeting on June 9, 2006. During this meeting, the Panel discussed the final draft report, including recommendations to the Commission. The Panel then unanimously approved this report for submission to the Commission.[11]

PANEL OBSERVATIONS REGARDING THE IMPACT OF HURRICANE KATRINA ON THE COMMUNICATIONS SECTOR AND THE SUFFICIENCY AND EFFECTIVENESS OF THE RECOVERY EFFORT

The Katrina Panel has been charged with studying the impact of Hurricane Katrina on all sectors of the telecommunications and media industries, including public safety communications. The Panel has also been directed to review the effectiveness of the recovery effort with respect to this infrastructure. To inform its views on these issues, the Panel heard oral presentations and reviewed written comments from numerous government and industry representatives, as well as other interested members of the public. The Panel members also brought to bear their own experiences with Hurricane Katrina and its aftermath. As a result of digesting and discussing all of this information, the Panel members identified a number of areas where problems were observed or communications recovery and restoration efforts could have been more effective. The Panel also identified areas where successes were achieved—successes that should be repeated. These observed problems and successes, which are detailed below, generally formed the basis for the Panel's recommendations to the Commission.

The Panel's observations below are divided into four sections. Section I, Network Reliability and Resiliency, discusses the successes and failures in the resiliency and reliability of various types of communications networks from an operational perspective. This section looks at the effects of both the hurricane itself and the subsequent levee breaches on communications infrastructure. Section II, Recovery Coordination and Procedures, reviews the challenges communications infrastructure providers encountered in restoring and maintaining communications service, particularly with regard to access and credentialing issues, restoration of power, and security. Section III, First Responder Communications, examines the challenges posed to public safety and emergency first responders in the days following Hurricane Katrina. And finally Section IV, Emergency Communication to the Public, focuses on the adequacy and effectiveness of emergency communications to the public before, during and after Hurricane Katrina.

I. Network Reliability and Resiliency

The sheer force of Hurricane Katrina and the extensive flooding resulting from the breached levees severely tested the reliability and resiliency of communications networks in the Gulf Coast region. Katrina also affected areas of the Gulf Coast in varied fashions. In the high impact zones near Gulfport, MS and New Orleans, LA, the hurricane created much heavier damage to the infrastructure due to strong winds and, in New Orleans, extensive flooding in the days after the storm. In less impacted areas, damage was less severe and recovery efforts were more easily accomplished. Katrina taxed each type of communications infrastructure in a variety of ways: (1) strong winds and rain made it difficult for technical staff to support and maintain the networks and blew antennas out of alignment; (2) heavy flooding following Katrina overwhelmed a large portion of the communications infrastructure, damaging equipment and impeding recovery; (3) single points of failure in vital communications links led to widespread communications outages across a variety of networks; and (4) the duration of power outages far outlasted most generator fuel reserves, leading to the failure of otherwise functional infrastructure. However, there were resiliency successes in the aftermath: (1) a large portion of the communications infrastructure withstood the storm's wind and rain with only minor damage (as distinguished from post-storm flooding from levee breaches and power outages, which had a more devastating impact); (2) satellite networks, although taxed by extensive numbers of additional users, remained available and usable throughout the affected region; and (3) the communications networks operated by utilities appeared to have a very high rate of survivability. By examining the failures in network resiliency and reliability, along with the successes, we can better prepare communications infrastructure to withstand or quickly recover from future catastrophic events.

A. Effect of Hurricane Katrina on Various Types of Communications Networks

Hurricane Katrina and its aftermath had a devastating impact on communications networks in the Gulf Coast region. In the affected areas of Louisiana, Mississippi and Alabama, more than three million customer telephone lines were knocked out of service. Both switching centers and customer lines sustained damage. Thirty-eight 911 call centers went down. Approximately 100 broadcast stations were unable to transmit and hundreds of thousands of cable customers lost service.[12] Even generally resilient public safety networks experienced massive outages. In short, Katrina had a catastrophic impact over a huge geographic area. Further, due to the unique circumstances associated with this disaster, repair and activation of the communications infrastructure in the region was not a matter of days, but rather a long and slow process.

To understand the precise impact that Hurricane Katrina had on communications networks, it is useful to distinguish between the impact of the

[11] The Panel would like to recognize and express appreciation to Lisa Fowlkes and Jean Ann Collins, the Designated and Alternate Designated FACA Officers for the Panel, for their important contributions in enabling the Panel to carry out its mission under the Charter. In addition, the Panel would like to thank Michael A. Lewis, Thomas Dombrowsky, and Brendan T. Carr of Wiley Rein & Fielding LLP for their considerable assistance in preparing this report.

[12] See Written Statement of Kevin J. Martin, Chairman, Federal Communications Commission, Hearing on Public Safety Communications from 9/11 to Katrina: Critical Public Policy Lessons, Before the Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, United States House of Representatives, at 2 (Sept. 29, 2005), available at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-261417A1.pdf* [hereinafter "Martin Sept. 29 Written Statement"].

storm itself (*i.e.*, hurricane force winds and rain) and the effect of what came later—extensive flooding from breached levees and widespread, long term power outages. As detailed below, it appears that most communications infrastructure in the areas impacted by Katrina fared fairly well through the storm's wind and rain, in most cases sustaining only minor damage or damage that should have been promptly repairable. Indeed, the tower industry reported that of all the towers in the path of the 2005 hurricanes in the Southeastern and Gulf Coast areas of the United States, less than 1 percent suffered any structural damage.[13] The coastal areas that bore the brunt of the storm suffered the worst infrastructure damage from the hurricane. Not to diminish the significant impact of the hurricane itself, what made Katrina unique and particularly catastrophic were the unique conditions after the winds subsided—substantial flooding and widespread, extended power outages. These developments impacted communications networks greatly, causing irreparable damage to submerged electronics and prolonged outages in many cases. The Panel's observations on how each type of communications infrastructure withstood Katrina and its challenging aftermath is presented below.

1. Public Safety Communications Networks. Public safety communications networks are generally built to be reliable in extreme conditions.[14] To ensure this, the systems are planned to accommodate everyday peak service times as well as large incidents. They are also designed to account for radio system disruptions, such as power outages, transmission failures, system interconnect failures, and personal radio equipment failures. However, these systems are generally not designed for widespread catastrophes of long duration—the situation resulting from Katrina.[15] As a result of the storm and its aftermath, public safety networks in the Gulf states experienced a large number of transmission outages that impacted the functionality of both primary and back-up systems. The loss of power and the failure of switches in the wireline telephone network also had a huge impact on the ability of public safety systems to function.[16] Public safety personnel's apparent lack of familiarity with the operation of back-up or alternate systems (such as satellite systems) also limited functionality.

a. Tower Failures. In general, public safety's antenna towers remained standing after the storm. The winds did blow antennas out of alignment, requiring readjustment. However, the main cause of transmission failures was loss of power (as discussed below). Most public safety radio systems by design are able to handle and manage a single or isolated subsystem failure or loss.[17] However, Katrina affected parts of four states, causing transmission losses at a much greater number and over a larger area than public safety planning had envisioned.

b. Power Failures. Power for radio base stations and battery/chargers for portable radio devices are carefully planned for public safety systems. However, generators are typically designed to keep base stations operating for 24 to 48 hours. The long duration of power outages in the wake of Katrina substantially exceeded the capabilities of most of public safety's back-up generators and fuel reserves.[18] Similarly, portable radios and back-up batteries generally have an 8 to 10 hour duty cycle.[19] Without access to power to recharge the devices and backup batteries, portable devices quickly ran out of power.

c. Wireline and Network Infrastructure Failures. Katrina and the subsequent levee breaches caused significant failures of the Public Switched Telephone Network ("PSTN"), particularly in the New Orleans area.[20] Public safety radio networks rely on interconnection with the PSTN or by fixed microwave links to get communications through to public safety responders. Given PSTN failures, as well as damage to fixed microwave links, public safety communications were significantly affected.

d. Training Issues. Because of failures of the primary public safety networks, public safety personnel had to utilize back-up or alternative communications technologies with which they may not have had substantial experience. Confusion or unfamiliarity with the capabilities or operational requirements of the alternative technology seemed to result in limitations in functionality.[21] For example, some public safety personnel handed satellite phones were not familiar with their special dialing requirements and, as a result, thought the phones did not work.[22] Public safety personnel did not seem to have adequate training on alternative communications technologies, such as paging, satellite, license-exempt WISP systems, and thus were not able to transition seamlessly to these alternatives when existing public safety communications networks failed. Additionally, because alternative technologies were used so infrequently, there were reported problems with upkeep and maintenance of the equipment.[23]

2. Public Safety Answering Points (PSAPs). Handling of 911 calls was identified as a problem during Katrina. As a result of the storm and subsequent flooding, thirty-eight 911 call centers ceased to function.[24] Limited training and advanced planning on how to handle rerouting of emergency calls under this situation created serious problems.[25] As an example, the City of Biloxi was able to relocate their 911 call center prior to landfall; however, representatives relocated to the facility did not have full 911 capabilities. This severely hampered their ability to effectively route 911 calls to the appropriate agencies. The Katrina experience identified that there appeared to be a lack of 911 PSAP failovers and some deficits in training on routing and handling of calls when a crisis and rerouting occurs. Nevertheless, the vast majority of 911 call centers, especially in the less impacted portions of the region, were up and running by September 9.[26]

3. Wireline. According to FCC data, more than 3 million customer phone lines were knocked out in the Louisiana, Mississippi and Alabama area following Hurricane Katrina.[27] The wireline

[13] See Comments of PCIA—The Wireless Infrastructure Association, at 1 (May 15, 2006).

[14] See, e.g., Written Statement of Chief Harlin R. McEwen, Chairman, Communications and Technology Committee, International Association of Chiefs of Police, at 2 (Mar. 6, 2006) [hereinafter "McEwen Mar. 6 Written Statement"].

[15] Id. at 4.

[16] See id. at 6.

[17] See id. at 5.

[18] See id.

[19] Id. at 6.

[20] *Id.*

[21] See, e.g., Oral Testimony of Dr. Sandy Bogucki, U.S. Department of Health and Human Services, Tr. at 54–55 (Mar. 6, 2006) [hereinafter "Bogucki Mar. 6 Oral Testimony"].

[22] Written Testimony of David Cavossa, Executive Director, Satellite Industry Association, Before the FCC's Independent Panel Reviewing the Impact of Hurricane Katrina, at 4–5 (Mar. 3, 2006) [hereinafter "Cavossa-SIA Written Testimony"]; Bogucki Mar. 6 Oral Testimony, Tr. at 55.

[23] See Bogucki Mar. 6 Oral Testimony, Tr. at 55.

[24] See Martin Sept. 29 Written Statement at 2.

[25] See, e.g., Comments of Comcare at 2 (May 11, 2006) (there was no plan to bring in additional telecommunicators to the region to keep up with the influx of 911 calls from victims and rescue response teams).

[26] See Martin Sept. 29 Written Statement at 27.

[27] See Written Statement of Kenneth P. Moran, Director, Office of Homeland Security, Enforcement Bureau, FCC, on Hurricane Katrina, Before the Committee on Energy and Commerce, United States House of Representatives, at 2 (Sept. 7, 2005), available at *http://hraunfoss.fcc.gov/edocs_public/*

telephone network sustained significant damage both to the switching centers that route calls and to the lines used to connect buildings and customers to the network.[28] Katrina highlighted the dependence on tandems and tandem access to SS7 switches.[29] The high volume routes from tandem switches, especially in and around New Orleans were especially critical and vulnerable. Katrina highlighted the need for diversity of call routing and avoiding strict reliance upon a single routing solution. One tandem switch, which was critical for 911 call routing, was lost from September 4 to September 21. This switch went down due to flooding that did not allow for fuel to be replenished. Due to the high winds and severe flooding, there were multiple breaks in the fiber network supporting the PSTN. Katrina demonstrated that in many areas there may be a lack of multiple fiber routes throughout the wireline network and that aerial fiber was more at risk than underground fiber. As with other private sector communications providers, lack of access to facilities (due to both flooding and inadequate credentialing), lack of commercial power, and lack of security greatly hampered recovery efforts. Nevertheless, ten days after Katrina, nearly 90 percent of wireline customers in the Gulf region who had lost service had their service restored.[30] However, the vast majority of these customers were in the less impacted regions of the Gulf; regions that were harder hit sustained more infrastructure damage and continued to have difficulty in restoring service.

4. Cellular/PCS. Local cellular and personal communications service ("PCS") networks received considerable damage with more than 1,000 base station sites impacted.[31] In general, cellular/PCS base stations were not destroyed by Katrina, although some antennas required adjustment after the storm. Rather, the majority of the adverse effects and outages encountered by wireless providers were due to a lack of commercial power or a lack of transport connectivity to the wireless switch (wireline T1 line lost or fixed microwave backhaul offline). The transport connectivity is generally provided by the local exchange carrier. With either failure, wireless providers would be required to make a site visit to return the base station to operational status. Wireless providers cited security for their personnel, access and fuel as the most pressing needs and problems affecting restoration of wireless service. However, within one week after Katrina, approximately 80 percent of wireless cell sites were up and running.[32] Consistent with other systems, the 20 percent of base stations still affected were in the areas most impacted by Katrina. Cellular base stations on wheels ("COWs") were successfully used as needed to restore service throughout the affected region. Over 100 COWs were delivered to the Gulf Coast region.[33] In addition to voice services, text messaging was used successfully during the crisis and appeared to offer communications when the voice networks became overloaded with traffic. Additionally, wireless providers' push-to-talk services appeared to be more resilient than interconnected voice service inasmuch as they do not necessarily rely upon connectivity to the PSTN.[34]

5. Paging. Paging systems seemed more reliable in some instances than voice/cellular systems because paging systems utilize satellite networks, rather than terrestrial systems, for backbone infrastructure.[35] Paging technology is also inherently redundant, which means that messages may still be relayed if a single transmitter or group of transmitters in a network fails.[36] Paging signals penetrate buildings very well, thus providing an added level of reliability.[37] Additionally, pagers benefited from having a long battery life and thus remained operating longer during the power outages.[38] Other positive observations concerning paging systems included that they were effective at text messaging and were equipped to provide broadcast messaging.[39] Finally, although it is unclear whether this function was utilized, group pages can be sent out during times of emergencies to alert thousands of pager units all at the same time.[40]

6. Satellite. Satellite networks appeared to be the communications service least disrupted by Hurricane Katrina.[41] As these networks do not heavily depend upon terrestrial-based infrastructure, they are typically not affected by wind, rain, flooding or power outages.[42] As a result, both fixed and mobile satellite systems provided a functional, alternative communications path for those in the storm-ravaged region.[43] Mobile satellite operators reported large increases in satellite traffic without any particular network/infrastructure issues.[44] More than 20,000 satellite phones were deployed to the Gulf Coast region in the days following Katrina.[45] Broadband capacity

ottochmatch/DOC-260895A1.pdf [hereinafter "Moran Sept. 7 Written Statement"].

[28] Id. at 2–3.

[29] See, e.g., Oral Testimony of Woody Glover, Director, St. Tammany Parish Communications District, Tr. at 64–67 (Mar. 6, 2006) [hereinafter "Woody Glover Mar. 6 Oral Testimony"].

[30] Martin Sept. 29 Written Statement at 43.

[31] Moran Sept. 7 Written Statement at 3.

[32] Martin Sept. 29 Written Statement at 44.

[33] S. Comm. on Homeland Security and Gov't Affairs, 109th Cong., Hurricane Katrina: A Nation Still Unprepared at 18–4, May 2006, available at *http://hsgoc.senote.gov/_files/Kotrino/FullReport.pdf* [hereinafter "Senate Report on Katrina"].

[34] See Written Testimony of Dave Flesses, VP, Network Operations, Sprint Nextel Corp, Before the FCC's Independent Panel Reviewing the Impact of Hurricane Katrina, at 3 (Jan. 30, 2006) [hereinafter "Sprint Nextel Jan. 30 Written Testimony").

[35] See, e.g., Written Testimony of Vincent D. Kelly, President and Chief Executive Officer, USA Mobility, Before the FCC's Independent Panel Reviewing the Impact of Hurricane Katrina at 7 (Mar. 6, 2006) [hereinafter "Vincent Kelly-USA Mobility Mar. 6 Written Testimony"]; Oral Testimony of Bruce Deer, President, American Association of Paging Carriers, Tr. at 122–123 (Mar. 6, 2006) [hereinafter "Deer Mar. 6 Oral Testimony"].

[36] See, e.g., Vincent Kelly-USA Mobility Mar. 6 Written Testimony at 7–8.

[37] Deer Mar. 6 Oral Testimony, Tr. at 123.

[38] Id.

[39] See, e.g., Vincent Kelly-USA Mobility Mar. 6 Written Testimony at 3.

[40] See, e.g., Comments of Interstate Wireless, Inc., at 1 (May 10, 2006).

[41] See, e.g., Comments of Globalstar LLC, at 1 (Jan. 27, 2006) [hereinafter "Globalstar Comments"].

[42] See, e.g., Senate Report on Katrina at 18–9 ("satellite phones do not rely on terrestrial * * * infrastructure that is necessary for land mobile radio, land-line, and cellular communications"); Written Statement of Tony Trujillo, Chairman, Satellite Industry Association, Hearing on Public Safety Communications From 9/11 to Katrina: Critical Public Policy Lessons, Before the Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, United States House of Representatives, at 3 (Sept. 29, 2005), available at *http://energycommerce.house.gov/108/09292005Hearing1648/Trujillo.pdf* [hereinafter "Trujillo Sept. 29 Written Statement"].

[43] See, e.g., Written Statement of Colonel Jeff Smith, Deputy Director, Louisiana Office of Homeland Security and Emergency Preparedness. Hurricane Katrina: Preparedness and Response by the State of Louisiana, Before the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, United States House of Representatives, at 12 (Dec. 14, 2005), available at *http://kotrina.house.gov/hearing/12–14–05/smith_121405.doc* [hereinafter "Jeff Smith Written Statement"]; Written Statement of Bruce Baughman, Director, Alabama State Emergency Management Agency, Hurricane Katrina: Preparedness and Response by the State of Alabama, Before the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, United States House of Representatives, at 4 (Nov. 9, 2005), available at *http://katrino.house.gov/hearings/11_09_05/baughmon_110905.doc*; Written Statement of Robert Latham, Director, Mississippi Emergency Management Agency, Hurricane Katrina: Preparedness and Response by the State of Mississippi, Before the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, United States House of Representatives, at 4 (Dec. 7, 2005), available at *http://katrina.house.gov/hearings/12_07_05/lothom_120705.pdf.*

[44] Globalstar Comments at 2.

[45] Trujillo Sept. 29 Written Statement at 4.

was provided by fixed satellite operators for voice, video and data network applications. Nevertheless, there were functionality issues with satellite communications – largely due to lack of user training and equipment preparation.[46] Some satellite phones require specialized dialing in order to place a call. They also require line of sight with the satellite and thus do not generally work indoors.[47] Users who had not been trained or used a satellite phone prior to Katrina reported frustration and difficulty in rapid and effective use of these devices.[48] Satellite phones also require charged batteries. Handsets that were not charged and ready to go were of no use as there was often no power to recharge handsets. Additionally, most of Louisiana's parishes (all but three) did not have satellite phones on hand because they had previously chosen to discontinue their service as a cost-saving measure.[49] Finally, users expressed the observation that satellite data networks (replacing wireline T1 service) were more robust and had fewer difficulties in obtaining and maintaining communications with the satellite network than voice services.

7. Broadcasting. The television and radio broadcasting industry was also hard hit by Katrina. Approximately 28 percent of television stations experienced downtime in the storm zone; approximately 35 percent of radio stations failed in one fashion or another.[50] In addition, in New Orleans and the surrounding area, only 4 of the 41 broadcast radio stations remained on the air in the wake of the hurricane.[51] Some broadcasters continued broadcasting only by partnering with other broadcasters whose signals were not interrupted.[52] Broadcasters reported very few tower losses as a result of Katrina. Instead, the wind displacing and causing misaligning antennas was the biggest cause of broadcast outages. Although this type of damage could be readily repaired, the lengthy power outages—which substantially exceeded back-up generator capabilities—prevented many broadcast stations from coming back on the air. Power outages at the viewer/listener end were also an issue as they prevented broadcast transmissions from being successfully received. Additionally, the lack of security for broadcast facilities and repair personnel impeded recovery efforts. Nevertheless, within three weeks after Katrina, more than 90 percent of broadcasters were up and running in the affected region.[53] However, in the areas most impacted by the storm, the vast majority of stations remained down much longer.

8. Cable. As with the broadcasting industry, cable companies in the region reported limited infrastructure damage to their head ends following Katrina. In the areas hardest hit by the storm itself, aerial cable infrastructure was heavily damaged. Some cable facilities are underground; the storm's wind and rain had only minimal effects on them. However, the opposite was true in areas where the levees' breach caused heavy flooding. There, underground facilities were heavily damaged and the electronics in those facilities were generally completely lost. The cable industry indicated that new cable plants generally allowed for multiple points of failure and system workarounds that permitted the network to operate in spite of some widespread faults in the infrastructure. However, lack of power to cable facilities and security proved to be key problems. The cable operator serving New Orleans indicated that, even where its network was intact, lack of power/fuel prevented it from restoring operations in those areas.[54] Also, similar to broadcasting, power outages at the viewer end prevented cable programming from being successfully received.

9. Utilities. Electric utility networks (including utility-owned commercial wireless networks) appeared to have a high rate of survivability following Katrina.[55] These communications systems did not have a significant rate of failure because: (1) the systems were designed to remain intact to aid restoration of electric service following a significant storm event; (2) they were built with significant onsite back-up power supplies (batteries and generators); (3) last mile connections to tower sites and the backbone transport are typically owned by the utility and have redundant paths (both T1 and fixed microwave); and (4) the staff responsible for the communications network have a focus on continuing maintenance of network elements (for example, exercising standby generators on a routine basis).

10. License Exempt Wireless (WISPs). The License Exempt Wireless or wireless internet service provider ("WISP") infrastructure, in general, was not heavily damaged by Katrina or the subsequent flooding, although some antennas required adjustment because of high winds. Rather, the majority of the adverse effects and outages encountered by WISP providers were due to a lack of commercial power and difficulty with fuel resupply. WISP providers cited access difficulties as their most pressing problem in restoring their networks.

11. Amateur Radio Service. As with other communications services, amateur radio stations were also adversely affected by Katrina. Equipment was damaged or lost due to the storm and trained amateurs were difficult to find in the immediate aftermath. However, once called into help, amateur radio operators volunteered to support many agencies, such as FEMA, the National Weather Service, Hurricane Watch and the American Red Cross.[56] Amateurs provided wireless communications in many locations where there was no other means of communicating and also provided other technical aid to the communities affected by Katrina.[57]

B. Major Problems Identified Following Katrina

In reviewing the detailed reports from each communications sector, there were three main problems that caused the majority of communications network interruptions: (1) Flooding; (2) lack of power and/or fuel; and (3) failure of redundant pathways for communications traffic. In addition, a fourth item—inadvertent line cuts during restoration—resulted in additional network damage, causing

[46] See, e.g., Senate Report on Katrina at 18–9 (problems with satellite phones do not appear to have been caused by the phones themselves or the satellite networks; a combination of user error and obstruction of satellite signals were most likely the problems); Cavossa-SIA Testimony at 4–5; Bogucki Mar. 6 Public Testimony, Tr. at 55.

[47] Cavossa-SIA Written Testimony at 5.

[48] Id. at 4.

[49] See Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, H.R. Rep. No. 109–377, at 172–73 (2006), available at *http://www.gpo.access.gov/serialset/creports/Katrina.html*, [hereinafter "House Report"].

[50] See, e.g.. Martin Sept. 29 Written Statement at 45; Written Statement of Kevin J. Martin, Chairman, Federal Communications Commission, Hearing on Communications in a Disaster, Before the Senate Comm. on Commerce, Science, and Transportation at 2 (Sept. 22, 2005) (an estimated 100 broadcast stations were knocked off the air).

[51] Moran Sept. 7 Written Statement at 3.

[52] Oral Testimony of Dave Vincent, Station Manager, WLOX–TV, Before the FCC's Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, Tr. at 309 (Mar. 6, 2006) [hereinafter "Vincent-WLOX–TV Mar. 6 Oral Testimony"] (WLOX in Biloxi partnered with WXXV in Gulfport, Mississippi, which carried WLOX's signal until they could get back on the air).

[53] Martin Sept. 29 Written Statement at 45.

[54] See, e.g., Comments of Greg Bicket, Cox Communications, at 1 (Jan. 27, 2006).

[55] See, e.g., UTC Comments, Hurricanes of 2005: Performance of Gulf Coast Critical Infrastructure Communications Networks, at 2 (Jan. 27, 2006).

[56] See Hurricane Katrina Amateur Radio Emergency Communications Relief Effort Operations Review Summary, Written Statement submitted by Gregory Sarratt, W4OZK, at 2 (Mar. 7, 2006).

[57] Id. at 4.

new outages or delaying service restoration. Each of these areas of concern is detailed below.

1. Flooding. Hurricanes typically have flooding associated with them due to the torrential rainfall and storm surge associated with the storms. However, in addition to these sources of flooding, the levee breaks in New Orleans caused catastrophic flooding that was extremely detrimental to the communications networks.[58] While communications infrastructure had been hardened to prepare against strong winds from a hurricane, the widespread flooding of long duration associated with Katrina destroyed or disabled substantial portions of the communications networks and impeded trained personnel from reaching and operating the facilities.[59] In addition, as detailed below, the massive flooding caused widespread power outages that were not readily remedied (electric substations could not be reached nor were there personnel available to remedy the outages). The flooding also wiped out transportation options, preventing fuel for generators from getting where it needed to be.

2. Power and Fuel. Katrina caused extensive damage to the power grid. Significant portions of electrical facilities in Mississippi, Alabama and Louisiana—including both power lines and electric plants—were severely impaired due to wind and flooding. As a result, power to support the communications networks was generally unavailable throughout the region.[60] This meant that, for communications systems to continue to operate, backup batteries and generators were required. While the communications industry has generally been diligent in deploying backup batteries and generators and ensuring that these systems have one to two days of fuel or charge, not all locations had them installed. Furthermore, not all locations were able to exercise and test the backup equipment in any systemic fashion. Thus, some generators and batteries did not function during the crisis. Where generators were installed and operational, the fuel was generally exhausted prior to restoration of power. Finally, flooding, shortages of fuel and restrictions on access to the affected area made refueling extraordinarily difficult.[61] In some instances, fuel was confiscated by federal or local authorities when it was brought into the Katrina region.[62]

3. Redundant pathways. The switches that failed, especially tandems, had widespread effects on a broad variety of communications in and out of the Katrina region. In addition, T1 and other leased lines were heavily used by the communications networks throughout the region, with those failures leading to loss of service. As an example, a major tandem switch in New Orleans was isolated, which meant that no communications from parts of New Orleans to outside the region could occur. This switch, an access tandem that carried long distance traffic through New Orleans and out to other offices, had two major routes out of the city (one to the east and one to the west). The eastern route was severed by a barge that came ashore during the hurricane and cut the aerial fiber associated with the route. If only this route had been lost, the access tandem traffic could have continued. However, the western route was also severed—initially by large trees falling across aerial cables, then subsequently by construction crews removing debris from highway rights-of-way. While there were provisions for rerouting traffic out of the city, the simultaneous loss of both of these major paths significantly limited communications service in parts of New Orleans.

4. Line cuts. During the restoration process following Katrina, there were numerous instances of fiber lines cut accidentally by parties seeking to restore power, phone, and cable, remove trees and other debris, and engage in similar restoration activities.[63] BellSouth indicated in its comments to the Katrina Panel that several of its major routes were cut multiple times.[64] For example, on Monday, September 12th, a major fiber route from Hammond, Louisiana to Covington, Louisiana was cut by a tree trimming company.[65] Cox Communications reported that, by the eleventh day after the storm, more outages of its network in the region were caused by human damage than storm damage. Public safety entities also noted similar cuts in service during the restoration process.[66]

In addition to these major causes of network interruptions, security and access to facilities were consistently mentioned as significant issues affecting restoration of communications services. These problems are discussed in detail in the following section.

II. Recovery Coordination and Procedures

After Katrina's wind and rain subsided, challenges to communications service maintenance and restoration continued. Flooding, which submerged and damaged equipment and blocked access for restoration, was a major problem. The Panel also observed significant challenges to the recovery effort resulting from (1) inconsistent and unclear requirements for communications infrastructure repair crews and their subcontractors to gain access to the affected area; (2) limited access to power and/or generator fuel; (3) limited security for communications infrastructure and personnel and lack of pre-positioned back-up equipment; (4) lack of established coordination between the communications industry and state and local officials as well as among federal, state and local government officials with respect to communications matters; and (5) limited use of available priority communications services. On the other hand, lines of communication between the communications industry and the federal government were established and seemed generally effective in facilitating coordination, promptly granting needed regulatory relief, and gathering outage information. In addition, ad hoc, informal sharing of fuel and equipment among communications industry participants helped to maximize the assets available and bolster the recovery effort. However, additional industry coordination of personnel and assets internally and among governments could have substantially facilitated restoration of communications networks.

A. Access to the Affected Area and Key Resources.

1. Perimeter Access and Credentialing. Communications

[58] See, e.g., House Report at 164 (reporting that flooding knocked out two telephone company switches and hindered the communications abilities of six out of eight police districts in New Orleans, as well as the police department headquarters).

[59] See, e.g., Oral Testimony of Dr. Juliette M. Saussy, Director, Emergency Medical Services of the City of New Orleans, Louisiana, Tr. at 43–44 (Mar. 6, 2006) [hereinafter "Saussy Mar. 6 Oral Testimony"].

[60] House Report. at 166.

[61] Id. at 164.

[62] See, e.g., Senate Report on Katrina at 18–4 (citing Committee staff interview of William Smith, Chief Technology Officer, BellSouth, conducted on Jan. 25, 2006) (FEMA commandeered communications fuel reserves in order to refuel helicopters).

[63] See, e.g., Woody Glover Mar. 6 Oral Testimony, Tr. at 66 (Mar. 6, 2006).

[64] See Comments by William L. Smith, BellSouth, Before the FCC's Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, at 7 (Jan. 30, 2006) [hereinafter "Smith-BellSouth Jan. 30 Written Statement").

[65] Id.

[66] See, e.g., Comments of Robert G. Bailey, National Emergency Number Association, Harris County Emergency Communications, at 1 (Jan. 30, 2006) [hereinafter "Bailey Jan. 30 Written Testimony"].

restoration efforts were hampered significantly by the inability of communications infrastructure repair crews and their contracted workers to access the impacted area post-disaster.[67] For important safety and security reasons, law enforcement personnel set up a perimeter around much of the impacted region and imposed restrictions on who could access the area. Communications infrastructure repair crews from all sectors of the industry had great difficulty crossing the perimeter to access their facilities in need of repair.[68] This seemed to be a particular problem for smaller or non-traditional communications companies,[69] who tended to have lower levels of name recognition with law enforcement personnel guarding the perimeter.

Although some jurisdictions provided credentials to communications infrastructure repair crews to permit them to access the affected area, the process appeared to be unique for each local jurisdiction. Communications providers reported that credentials that permitted access through one checkpoint would not be honored at another.[70] In many cases, different checkpoints required different documentation and credentialing before permitting access.[71] As a result, repair crews needed to carry multiple credentials and letters from various federal, state and local officials.[72] There was no uniform credentialing method in place whereby one type of credential would permit access at any checkpoint.[73] Communications providers were also not clear about which agency had authority to issue the necessary credentials.[74] And there did not appear to be any mechanism in place for issuing credentials to those who needed them prior to Katrina making landfall.

Once communications infrastructure repair crews gained access to the impacted area, they had no guarantee they would be allowed to remain there. The enforcement of curfews and other security procedures at times interrupted repair work and required communications restoration crews to exit the area. In at least one instance, law enforcement personnel insisted that communications technicians cease their work splicing a key telecommunications cable and exit the area in order to enforce a curfew.[75] Although such practices may have been necessary from a security standpoint, they did interrupt and hamper the recovery process.

The problems with access were not all one-sided. Law enforcement personnel also expressed frustration with the access situation, particularly with respect to the different credentials issued and not knowing what to ask for or what to honor. It was also reported that credentialed communications infrastructure repair personnel sometimes allowed non-credentialed individuals to ride in their vehicles through checkpoints, which compromised the security of the area. It also caused law enforcement personnel at the perimeter to be wary of persons seeking to access the affected area and the credentials they presented, potentially further slowing the access process.

2. Fuel. Problems with maintaining and restoring power for communications infrastructure significantly affected the recovery process. As described in Section I.B.2 above, many facilities could have been up and operating much more quickly if communications providers had access to sufficient fuel. The commercial power upon which the vast majority of communications networks depended for day-to-day operations was knocked out over a huge geographic area. Back-up generators and batteries were not present at all facilities. Where they were deployed, most provided only enough power to operate particular communications facilities for 24–48 hours—generally a sufficient period of time to permit the restoration of commercial power in most situations, but not enough for a catastrophe like Hurricane Katrina.

Access to fuel reserves or priority power restoration appeared extremely limited for the communications industry.[76] Only a few communications providers had stockpiles of fuel or special supplier arrangements. However, if the fuel was not located fairly near to the perimeter, it was difficult and expensive to get it where it was needed in a timely fashion. Perimeter access issues also impeded the ability to bring reserve fuel into the region. Moreover, many roads and traditional means of accessing certain facilities could not be used due to the extensive flooding that followed Hurricane Katrina. And many communications providers did not anticipate the need for alternative means of reaching their facilities. In addition, some providers reported having their limited fuel reserves confiscated by law enforcement personnel for other pressing needs.[77] Although electric and other utilities maintain priority lists for commercial power restoration, it does not appear that commercial communications providers were on or eligible for such lists. Indeed, one wireless provider speaking at the Katrina Panel's January 2006 meeting—more than 4 months after Katrina's landfall—reported that it had 23 cell sites in the impacted area still running on backup generators.[78] Most communications providers also did not appear to be able to access any government fuel reserves.

On a positive note, several companies apparently shared their reserve fuel with other communications providers who needed it, even their competitors.[79]

[67] See, e.g., Oral Testimony of William L. Smith, Chief Technology Officer, BellSouth Corp., Before the FCC's Independent Panel Reviewing the Impact of Hurricane Katrina, Tr. at 188 (Jan. 30, 2006) [hereinafter "Smith-BellSouth Jan. 30 Oral Testimony"]; see also Statement of Jim Jacot, Vice President, Cingular Network Group, Before the FCC's Independent Panel Reviewing the Impact of Hurricane Katrina, Tr. at 125 (Jan. 30, 2006) [hereinafter "Jacot-Cingular Jan. 30 Oral Testimony"]; Trujillo Sept. 29 Written Statement at 9; Comments of M/A-Com at 7 (Jan. 30, 2006).

[68] See, e.g., Senate Report on Katrina at 18–4 (repair workers sometimes had difficulty gaining access to their equipment and facilities because the police and National Guard refused to let crews enter the affected area); Federal Support to Telecommunications Infrastructure Providers in National Emergencies: Designation as "Emergency Responders (Private Sector)", The President's National Security Telecommunications Advisory Committee, Legislative and Regulatory Task Force, at 7 (Jan. 31, 2006) [hereinafter "Jan. 31 NSTAC Report"].

[69] See, e.g., Comments of the Satellite Industry Association at 6 (January 27, 2006) (describing how satellite system repair crews had difficulty obtaining access to the impacted area); Comments of Xspedius Communications, LLC, at 2, 6 (Mar. 6, 2006) [hereinafter "Comments of Xspedius"].

[70] See, e.g., Senate Report on Katrina at 18–4 (citing Committee staff interview of Christopher Guttman-McCabe, Vice President, Regulatory Affairs, CTIA, conducted on Jan. 24, 2006) (industry representatives said that their technicians would benefit from having uniform credentialing that is recognized by the multiple law enforcement agencies operating in a disaster area).

[71] See, e.g., Vincent-WLOX-TV Mar. 6 Written Testimony at 5 (stating that a credential that permitted access in one county was sometimes not honored in a different county).

[72] See, e.g., Comments of Xspedius at 2–3.

[73] See, e.g., Senate Report on Katrina at Findings at 8 (efforts by private sector to restore communications efforts were hampered by the fact that the government did not provide uniform credentials to gain access to affected areas).

[74] See, e.g., Comments of Xspedius at 3.

[75] Smith-BellSouth Jan. 30 Oral Testimony, Tr. at 191; see also Jacot-Cingular Jan. 30 Oral Testimony, Tr. at 125.

[76] See, e.g., Comments of Mississippi Assn. of Broadcasters at 1–2 (Jan. 27, 2006).

[77] See, e.g., id.; House Report at 167 ("[O]ne of Nextel's fuel trucks was stopped at gunpoint and its fuel taken for other purposes while en route to refuel cell tower generators, and the Mississippi State Police redirected a fuel truck carrying fuel designated for a cell tower generator to fuel generators at Gulfport Memorial Hospital.").

[78] See Jacot-Cingular Jan. 30 Oral Testimony, Tr. at 123.

[79] See, e.g., Vincent-WLOX–TV Mar. 6 Oral Testimony, Tr. at 312 (describing how the radio

This sharing occurred on a purely ad hoc basis.[80] There did not appear to be any forum or coordination area for fostering industry sharing of fuel or other equipment.

3. Security. Limited security for key communications facilities and communications infrastructure repair crews also hampered the recovery effort.[81] Security concerns, both actual and perceived, led to delays in the restoration of communications networks.[82] Communications providers reported generators being stolen from key facilities, even if they were bolted down. Lack of security for communications infrastructure repair workers at times delayed their access to certain facilities to make repairs.[83] Some providers employed their own security crews.[84] However, obtaining credentials to allow these individuals to access the affected area was sometimes a problem. Further, communications infrastructure repair crews generally did not receive security details from law enforcement. Clearly, law enforcement had other very significant responsibilities in the wake of Katrina. In addition, communications providers are apparently not considered "emergency responders" under the Robert T. Stafford Disaster Relief and Emergency Assistance Act[85] and the National Response Plan and thus are not eligible to receive non-monetary Federal assistance, like security protection for critical facilities and repair personnel.[86] In one instance, however, a major communications provider successfully sought governmental security for its Poydras St. office in New Orleans, which serves as a regional hub for multiple telecommunications carriers. Both the Louisiana State Police and the FBI provided security so that BellSouth workers could return to the office and keep it in service.[87]

Apparently, several companies that had their own security forces shared them with other communications providers by forming a convoy to go to a particular area.[88] Such arrangements seemed to occur on a purely informal basis. There did not appear to be any forum or staging area for fostering industry sharing of security forces or other resources.

4. Pre-positioning of Equipment. Limited pre-positioning of communications equipment may have slowed the recovery process. While some individual companies and organizations had some backup communications technologies on-hand for use after a disaster, most did not appear to locate strategic stockpiles of communications equipment that could be rapidly deployed and immediately used by persons in the impacted area.

B. Coordination Between Industry and Government

1. Industry—Federal Government Coordination. Despite problems related above at the scene of the disaster, at the federal level, industry and government recovery coordination for the communications sector appeared to function as intended. Under the National Response Plan, the lead federal agency for emergency support functions regarding communications is the National Communications System ("NCS"). NCS manages the National Coordination Center for Telecommunications ("NCC") in Washington, DC, which is a joint industry-federal government endeavor with 36 member companies.[89] The NCC meets on a regular basis during non-emergency situations; during and immediately after Katrina, it met daily and conducted analysis and situational monitoring of ongoing events and response capabilities.[90] The Katrina Panel heard that this group played an important and effective role in coordinating communications network recovery and allowing for information sharing among affected industry members.[91] Yet, NCC membership is limited to only certain providers and does not represent a broad cross-section of the communications industry (for example, no broadcasters, WISPs, or cable providers are members).[92] Accordingly, certain industry sectors or companies that might have been helpful were not a part of this coordination effort. State and local government are also not a part of this coordination effort.

The FCC was widely praised as playing a critical role in helping to restore communications connectivity in the wake of Hurricane Katrina.[93] During and immediately after Katrina, the Commission stayed open 24 hours a day, seven days a week to respond to the disaster.[94] Within hours of Katrina's landfall in the Gulf Coast region, the Commission established an internal Task Force to coordinate its response efforts,[95] focusing on providing regulatory relief where necessary, coordinating efforts with other federal agencies, and providing information and assistance to evacuees. To assist communications providers in their recovery, the Commission established emergency procedures to streamline various waiver and special temporary authority processes to speed needed relief,[96] reached out to various providers to determine their needs, and assisted communications providers in obtaining access to necessary resources.[97]

These actions by the Commission appeared substantially to assist the industry in the recovery effort. The emergency, 24/7 contacts the Commission made available and the

station shared fuel with a nearby news organization).

[80] See, e.g., Oral Testimony of Steve Davis, Senior Vice President of Engineering, Clear Channel Radio, Before the FCC's Independent Panel Reviewing the Impact of Hurricane Katrina, Tr. at 81–82 (Jan. 30, 2006) [hereinafter "Steve Davis-Clear Channel Jan. 30 Oral Testimony"].

[81] See, e.g., Senate Report on Katrina at 18–4.

[82] The Federal Response To Hurricane Katrina Lessons Learned, February 2006, at 40, available at *http://www.whitehouse.gov/reports/katrina-lessons-learned/*.

[83] Jan. 31 NSTAC Report at 5.

[84] See, e.g., Senate Report on Katrina at 18–4 (when government security proved unavailable, many telecommunications providers hired private security to protect their workers and supplies); Written Statement of Dave Flessas, Vice President for Network Operations, Sprint Nextel Corp., Before the FCC's Independent Panel Reviewing the Impact of Hurricane Katrina, at 2 (Jan. 30, 2006) (security issues forced Sprint to hire armored guards to protect its employees and contractors); Jan. 31 NSTAC Report at 5.

[85] Pub. L. No. 93–288, as amended [hereinafter "Stafford Act"].

[86] See, e.g., Smith-BellSouth Jan. 30 Written Statement at 9; Jacot-Cingular Jan. 30 Oral Testimony, Tr. at 125; *see also* Oral Testimony of Captain Thomas Wetherald, Deputy Operations Director, National Communications System, Before the FCC's Independent Panel Reviewing the Impact of Hurricane Katrina, Tr. at 24 (Apr. 18, 2006) [hereinafter "Capt. Wetherald Apr. 18 Oral Testimony"].

[87] Smith-BellSouth Jan. 30 Written Statement at 8–9.

[88] See, e.g., Comments of Xspedius at 3.

[89] The NSTAC Report on the National Coordinating Center (4/27/06 Draft), The President's National Security Telecommunications Advisory Committee, May 10, 2006, at 9–10 [hereinafter "May 10 NSTAC Report"].

[90] See Written Statement of Dr. Peter M. Fonash, Director, National Communications System, U.S. Department of Homeland Security, Ensuring Operability During Catastrophic Events, Before the Subcommittee on Emergency Preparedness, Committee on Homeland Security, United States House of Representatives, at 2, 6 (Oct. 26, 2005), available at *http://hsc.house.gov/files/TestimonyFonash.pdf*.

[91] See, e.g., Capt. Wetherald Apr. 18 Oral Testimony, Tr. at 17–18.

[92] See May 10 NSTAC Report at 4.

[93] See, e.g., The Federal Response to Hurricane Katrina: Lessons Learned at 142–43 (February 2006).

[94] See, e.g., Martin Sept. 29 Written Statement at 3.

[95] Moran Sept. 7 Written Statement at 4.

[96] See, e.g., International Bureau Announces Procedures to Provide Emergency Communications in Areas Impacted by Hurricane Katrina, FCC Public Notice (rel. Sept. 1, 2005), available at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-260835A1.pdf*.

[97] See Steve Davis-Clear Channel Jan. 30 Oral Testimony, Tr. at 83 (describing how the Audio Division of the FCC's Media Bureau helped radio licensees secure access to fuel).

new streamlined processes clearly accelerated the time frame for receiving necessary regulatory approvals. However, the extensive communications outages made accessing this new information about who to contact and how to comply with the new processes difficult. Similarly, repair crews often did not know what repairs they needed to make until they reached the site.

In addition, while it was generally clear to communications providers that the Commission was the right agency to contact for regulatory relief after the disaster, the roles of other federal agencies in the recovery effort were not as clear to a large portion of the industry.[98] Communications providers who needed federal assistance (such as obtaining fuel authorizations or access to the impacted area), often did not know whom to contact. Industry participants also appeared generally unclear about which federal agency was responsible for implementing important recovery programs or distributing resources to communications companies operating in the impacted area. Competing requests for outage information from government entities at the federal, state and local level added to the confusion about agency roles. And responding to duplicative, repeated inquiries in the aftermath of Hurricane Katrina was cited by some as a distraction to communications providers' restoration efforts.

2. Industry—State and Local Government Coordination. In general, coordination between communications providers and state and local government officials in the affected region for communications network recovery purposes did not appear to exist except on an ad hoc basis. For the most part, there did not appear to be in existence any organized mechanism for communications providers to share information with local officials or to seek their assistance with respect to specific recovery issues, like access and fuel. Following Katrina, the Panel heard that state and local government representatives were exchanging business cards with communications providers in their area for the first time. Local government officials noted that they sometimes did not know where to turn to figure out why communications to and from key government locations did not work and how to express their priorities for communications service restoration. In addition, coordinating credentialing, access, fuel sharing, security and other key recovery efforts was difficult because there were no identified staging areas or coordination points for the communications industry.

3. Federal Government, State and Local Government Coordination. The Panel is not aware of pre-established mechanisms through which the federal government coordinated with state and local governments concerning communications network restoration issues in the wake of Katrina. For example, the Panel heard that civilian public safety officials were often unable to communicate with military officials brought in to assist local law enforcement. In addition, state and local governments are not a part of the NCC[99] and, therefore, were not able to directly coordinate with that industry-federal government group. As noted above, and due in part to a lack of pre-arranged recovery procedures, state and local government officials did not seem to be part of communications network recovery efforts. This meant that their restoration priorities may not have been effectively conveyed to communications providers and that communications providers did not have an identified place to turn for assistance with access and other recovery issues.

C. Emergency Communications Services and Programs

The federal government, through the NCS, has established several programs for priority communications services during and following an emergency.[100] These are the Government Emergency Telecommunications Service ("GETS"), which enables an eligible user to get priority call completion for wireline telephone calls; the Wireless Priority Service ("WPS"), which enables an eligible user to get access to the next free channel when making a wireless call; and Telecommunications Service Priority ("TSP"), which enables a qualifying user to get priority restoration and provisioning of telecommunications services.[101] During and after Katrina, these priority services seemed to work well for those who subscribed to them. However, only a small percentage of those eligible for the services appeared to do so. This is particularly true of public safety users—many eligible public safety entities have not signed up for these services. It also appears to be true for some communications providers, including broadcast, WISP, and cable companies. These priority services could be an extremely useful tool in network restoration efforts. Yet, they are tools that appear not fully utilized. Like other emergency tools, they require training and practice. In some cases, users who had access to these services did not fully understand how to use them (e.g., that a WPS call requires inputting a GETS code so the call would get priority treatment when it reached the landline network).

III. First Responder Communications

In the days following Hurricane Katrina, the ability of public safety and emergency first responders to communicate varied greatly across the affected region. The areas in and around New Orleans were seriously impacted.[102] New Orleans EMS was forced to cease 911 operations in anticipation of Katrina's landfall and, after the levees were breached, a total loss of EMS and fire communications ensued.[103] The communications infrastructure in coastal areas was heavily damaged due to winds or flooding.[104] As a result, more than 2,000 police, fire and EMS personnel were forced to communicate in single channel mode, radio-to-radio, utilizing only three mutual aid frequencies.[105] Some mutual-aid channels required each speaker to wait his or her turn before speaking, sometimes up to twenty minutes.[106] This level of destruction did not extend to inland areas affected by the hurricane so, in contrast to New Orleans, neither Baton Rouge nor Jackson County, Mississippi, completely lost their communications capabilities and were soon operating at pre-Katrina capabilities.[107] In the

[98] See, e.g., Written Statement of C. Patrick Roberts, President of the Florida Association of Broadcasters, Before the FCC's Independent Panel Reviewing the Impact of Hurricane Katrina, at 3 (Mar. 7, 2006) (observing that America must have a more cohesive and comprehensive program among federal, state, and local governments to prepare for disasters); see also Sprint-Nextel Jan. 30 Written Testimony at 4–5 (recognizing that there is a need to clarify the roles and responsibilities of the government agencies that are involved in telecommunications restoration).

[99] See May 10 NSTAC Report at 3.

[100] See, e.g., Capt. Wetherald Apr. 18 Oral Testimony, Tr. at 18.

[101] See, e.g., Written Statement of Dr. Peter Fonash, Deputy Manager, National Communications System, S. Comm. on Homeland Security and Gov't Affairs, Hearing on Managing Law Enforcement and Communications in a Catastrophe at 3–4 (Feb. 6, 2006), available at *http://hsgac.senate.gov/_files/020606Fonash.pdf.*

[102] See, e.g., Saussy Mar. 6 Oral Testimony, Tr. at 43.

[103] Id.

[104] Jeff Smith Written Statement at 12.

[105] Presentation of Major Mike Sauter, Office of Technology and Communications, New Orleans Police Department, Before the FCC's Independent Panel Reviewing the Impact of Hurricane Katrina, at 1 (Feb. 1, 2006) [hereinafter "Sauter Written Statement"].

[106] See, e.g., Senate Report on Katrina at 21–6 (NOFD and NOPD were forced to use a mutual aid channel, rather than the 800 MHz trunk system they were supposed to operate on; transmission over the mutual aid channel was limited and could not reach certain parts of the city).

[107] See Oral Testimony of George W. Sholl, Director, Jackson County Emergency

hardest hit areas, however, the disruption of public safety communications operability, as well as a lack of interoperability, frustrated the response effort and caused tremendous confusion among official personnel[108] and the general public.

State and local first responders are required to act and communicate within minutes after disasters have occurred and not hours or days later when Federal or other resources from outside the affected area become available. As further described below, the lack of effective emergency communications after the storm revealed inadequate planning, coordination and training on the use of technologies that can help to restore emergency communications. Hurricane Katrina also highlighted the long-standing problem of interoperability among public safety communications systems operating in different frequency bands and with different technical standards.[109] One advantage that New Orleans had was the fact that no broadcasters were using the 700 MHz spectrum set aside for public safety, thus freeing it up immediately for first responder use.[110] As a result of this availability, communications providers were able to provide emergency trucks and hundreds of radios that operated on this spectrum as soon as first responders needed them.[111] Finally, 911 emergency call handling suffered from a lack of preprogrammed routing of calls to PSAPs not incapacitated by the hurricane.

A. Lack of Advanced Planning for Massive System Failures

It was described to the Panel that public safety officials plan for disasters but that Hurricane Katrina was a catastrophe.[112] This left many state and local agencies, those who are required to respond first to such emergencies, ill-prepared to restore communications essential to their ability to do their jobs.[113] Very few public safety agencies had stockpiles of key equipment on hand to implement rapid repairs or patches to their systems. Had they been available, spare radios, batteries and chargers as well as portable repeaters or self-sufficient communications vehicles (also known as "communications on wheels") would have enabled greater local communications capabilities.[114] Further, when the primary communications system failed, many public safety entities did not have plans for an alternative, redundant system to take its place.[115] Similarly, public safety entities, including state and local government offices, did not appear to have plans in place for call forwarding or number portability to route their calls to alternative locations when they relocated. The apparent absence of contingency plans to address massive system failures, including widespread power outages,[116] was a major impediment to the rapid restoration of first responder communications.

Public safety agencies rely heavily on their equipment vendors to support them during such disasters by providing replacement parts and spare radios. Motorola stated that 72 hours prior to Katrina's landfall, it had mobilized more than 100,000 pieces of equipment and more than 300 employees to support their customers.[117] Similarly, M/A-Com supported the restoration and maintenance of the New Orleans 800 MHz system as well as the systems for Mobile, Biloxi, Gulfport, and St. Tammany Parish.[118] Reports indicate that these efforts with established vendors were generally well-executed, except for problems with access into New Orleans.

However, the Panel was made aware of a variety of non-traditional, alternative technologies that could have served as effective, back-up communications for public safety until their primary systems were repaired. As noted in Section I, satellite infrastructure was generally unaffected by the storm and could have provided a viable back-up system. Two-way paging operations remained generally operational during the storm and did provide communications capabilities for some police, fire emergency medical personnel, but could have been more widely utilized.[119] Other types of non-traditional technology that can be deployed quickly, such as WiFi and WiMax, or self-contained communications vehicles, could also have been effectively utilized. These all appear deserving of exploration as back-up communications options to primary public safety systems.

First responders' lack of training on alternative, back-up communications equipment was also an impediment in the recovery effort.[120] This lack of training may have accounted for a sizeable number of communications failures during the first 48 hours after Katrina.[121] Public safety officials noted that that there was little time after Katrina to investigate the capabilities of new technologies for which none of their personnel had been adequately trained. This highlights the need for public safety entities to have contingency communications plans with training as a key component. The lack of training issue evidenced itself in particular with the distribution of satellite phones. These phones proved to be a beneficial resource to some, while others described the service as spotty and capacity strained. In many cases, it appears that complaints about spotty coverage really resulted from the user's lack of understanding about how to use the phone (*e.g.*, some satellite phones have a unique dialing pattern and they generally do not work indoors).[122] However, the uncontrolled distribution of satellite phones could also have triggered capacity issues in certain areas.[123] Additionally, public safety officials reminded the Panel that users must be properly trained before they can be expected to competently use technologies during high stress events.[124]

Finally, it seems that communications assets that were available and could have been used by first responders were

Communications District, Before the FCC's Independent Panel Reviewing the Impact of Hurricane Katrina, at Tr. at 58–59 (Mar. 6, 2006) [hereinafter "Scholl Mar. 6 Oral Testimony"].

[108] Saussy Mar. 6 Oral Testimony, Tr. at 43–44.

[109] See, e.g., Written Statement of Colonel (ret.) Terry J. Ebbert, Director, Homeland Security for New Orleans, Hurricane Katrina: Preparedness and Response by the State of Louisiana, Before the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, United States House of Representatives, at 3–4 (Dec. 14, 2005), available at *http://katrina.house.gov/hearings/12_14_05/ebbert_121405.doc.*

[110] See Written Statement of Kelly Kirwin, Vice President, Motorola Comm. & Electronics, Before the FCC's Independent Panel Reviewing the Impact of Hurricane Katrina, at 5 (Jan. 30, 2006) [hereinafter "Kirwin Jan. 30 Written Statement"] (in some major cities (*e.g.*, New York, Los Angeles, San Francisco), the 700 MHz spectrum would not be available to first responders).

[111] See id.

[112] Written Statement of Sheriff Kevin Beary, Major County Sheriffs Assn. at 1 (Jan. 30, 2006) [hereinafter "Beary Jan. 30 Written Statement"].

[113] Saussy Mar. 6 Oral Testimony, Tr. at 43–44.

[114] Beary Jan. 30 Written Statement at 1.

[115] Presentation of Sheriff Ted Sexton, Sr. National Sheriffs Assn at 5 (Jan. 30, 2006); McEwen Mar. 6 Oral Testimony, Tr. at 35–36.

[116] McEwen Mar. 6 Written Statement at 5–6.

[117] Kirwin Jan. 30 Written Statement at 2.

[118] Comments of M/A-Com at 7 (Jan. 30, 2006).

[119] Vincent Kelly-USA Mobility Mar. 6 Written Testimony at 7–9; Deer Mar. 6 Oral Testimony, Tr. at 122–23.

[120] See, e.g., Written Statement of James Monroe III, Chief Executive Officer, Globalstar LLC, Before the FCC's Independent Panel Reviewing the Impact of Hurricane Katrina at 4 (Mar. 6, 2006) [hereinafter "Monroe-Globalstar Written Statement"] (some first responders failed to keep handset batteries charged, others did not realize that satellite phones require a clear line of sight between the handset and the satellite).

[121] Id.

[122] Cavossa-SIA Written Testimony at 4–5.

[123] See Report of Ed Smith, Chief, Baton Rouge Fire Department, Hurricane Katrina Independent Panel Meeting, at 1 (Jan. 30, 2006) [hereinafter "Written Report of Ed Smith"].

[124] See, e.g., Scholl Oral Testimony, Tr. at 57–58, 61–62.

not requested or deployed. There have been reports that federal government communications assets operated and maintained by FEMA and USDA were available, but not utilized, for state and local public safety operations.[125] This underutilization may have been due to the fact that FEMA's pre-staged communications vehicles apparently were located 250–350 miles away from the devastated areas,[126] and that FEMA did not request deployment of these vehicles until twenty-four hours after landfall.[127] Further, first responders were not made aware of these assets and/or did not know how to request them.[128] As noted above, many public safety officials failed to subscribe to the GETS, TSP and WPS priority programs, despite their eligibility.[129] Communications assets made available by the private sector also appear to have been underutilized by first responders. The Panel heard that manufacturers of alternative public safety communications systems were unable to gain the attention of key public safety officials to effectuate their proposed donation of equipment and services. Some offered equipment or access to their network in Katrina's aftermath but "found no takers".[130] These and other outlets could have provided some measure of communications capabilities, while repairs to primary systems were completed.

B. Lack of Interoperability

Because of its scope and severity, Hurricane Katrina demanded a coordinated response from federal and affected state and local agencies, as well as volunteers from states both neighboring and distant. The Panel heard evidence that, in many cases, responders in different agencies were unable to communicate due to incompatible frequency assignments.[131] When the existing infrastructure for the New Orleans system was incapacitated by flooding, communications were almost completely thwarted as too many users attempted to use the three mutual aid channels in the 800 MHz band.[132] In addition, communications between the military and first responders also appeared to suffer from lack of interoperability.[133] In some cases, the military was reduced to using human runners to physically carry messages between deployed units and first responders.[134] In another case, a military helicopter had to drop a message in a bottle to warn first responders about a dangerous gas leak.[135]

While most observers characterized "operability" as the primary communications failure following Katrina,[136] increased ability to interoperate with other agencies would have provided greater redundant communications paths and a more coordinated response. While technological solutions, such as IP gateways to integrate frequencies across multiple bands,[137] are a critical tool for improving interoperability, the Panel was reminded that technology is not the sole driver of an optimal solution.[138] Training, agreement on standard operating procedures, governance or leadership and proper usage are all critical elements of the interoperability continuum.[139] However, the Panel heard testimony that Project SAFECOM, which is intended to provide a solution for interoperability among Federal, state and local officials, will take years to achieve its objectives.[140] However, the Panel is also aware of more expedient proposals, such as the M/A-COM, Inc. proposal to mandate construction of all Federal and non-Federal mutual aid channels to provide baseline interoperability to all emergency responders that operate across multiple frequency bands using disparate technologies.[141]

C. PSAP Rerouting

When a PSAP becomes disabled, 911 emergency calls from the public are typically diverted to a secondary neighboring PSAP using preconfigured traffic routes. In many cases, Katrina disabled both the primary and secondary PSAPs, which resulted in many unanswered emergency calls. Additionally, many PSAPs in Louisiana did not have protocols in place to identify where 911 calls should go and had not arranged for any rerouting, resulting in dropped emergency calls.[142] The Panel heard testimony that Katrina has highlighted a need to identify additional back-up PSAPs at remote locations. However, FCC regulations may currently restrict the ability of local phone companies to establish pre-configured routes across LATA boundaries.[143] In addition, the routing of calls to more distant PSAPs would require specific planning to ensure appropriate and timely response to emergency calls.

[125] The Federal Response To Hurricane Katrina Lessons Learned, February 2006, at 55.

[126] Senate Report on Katrina at 12–19 (citing Committee staff interview of James Attaway, Telecommunications Specialist, Region VI, FEMA, conducted on Jan. 13, 2006).

[127] Senate Report on Katrina at 12–19 (citing Committee staff interview of William Milani, Chief Mobile Operations Section, FEMA, conducted on Jan. 13, 2006).

[128] See, e.g., Monroe-Globalstar Written Statement at 5 (first responders generally did not have pre-emergency deployment plans that they could invoke in advance of the actual emergency).

[129] During and after Katrina, the NCS issued 1,000 new GETS access code numbers to first responders, and the GETS system was used to make more than 35,000 calls between August 28 and September 9. House Report at 176. During Katrina, the NCS enabled and distributed more than 4,000 new WPS phones. Id. The NCS also completed more than 1,500 TSP assignments following Hurricane Katrina. Id. at 177. It would have been helpful if these assets had been in place before the disaster and first responders were fully trained in how to use them.

[130] Statement of Jerry Knoblach, Chairman & CEO, Space Data Corporation, Before the Federal Communications Commission's Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, at 6 (Mar. 7, 2006).

[131] A Failure to Communicate: A Stocktake of Government Inaction to Address Communications Interoperability Failures Following Hurricane Katrina, First Response Coalition, December 2005.

[132] Sauter Written Statement at 1; Written Report of Ed Smith at 1.

[133] See Written Statement of Dr. William W. Pinsky on behalf of the American Hospital Association, The State of Interoperable Communications: Perspectives from the Field, Before the Subcommittee on Emergency Preparedness, Science, and Technology, Committee on Homeland Security, United States House of Representatives, at 5 (Feb. 15, 2006), available at *http://hsc.house.gov/files/TestimonyPinsky.pdf.*

[134] See, e.g., Written Statement of The Honorable Timothy J. Roemer, Director, Center for National Policy, Public Safety Communications From 9/11 to Katrina: Critical Public Policy Lessons, Before the Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, United States House of Representatives, at 5 (Sept. 29, 2005), available at *http://energycommerce.house.gov/108/hearings/09292005Hearing1648/Roemer.pdf* (describing the use of human couriers by the National Guard).

[135] Heather Greenfield, Katrina Revealed Gaps In Emergency Response System, The Wash. Times, Dec. 28, 2005, at B1, available at *http://woshingtontimes.com/metro/20051227-095134-3753r.htm.*

[136] The Federal Response to Hurricane Katrina—Lessons Learned, February 2006, at 55; Saussy Mar. 6 Oral Testimony, Tr. at 44.

[137] See, e.g., Presentation to the Meeting of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, Dr. John Vaughan, Vice President TYCO Electronics: M/A–COM, March 6, 2006; see also Presentation to the FCC's Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, Wesley D. Smith, Technical Director, ARINC (Mar. 7, 2006).

[138] See Interoperability Continuum Brochure, Project Safecom, Dept. of Homeland Security (April 5, 2005), available at *http://www.safecomprogram.gov/NR/rdonlyres/5C103F66-A36E-4DD1-A00A-54C477B47AFC/0/ContinuumBrochure40505.pdf.*

[139] Id. at 4.

[140] Oral Testimony of Dr. David G. Boyd, Director of SAFECOM, Dept. of Homeland Security, Tr. at 29–30 (Apr. 18, 2006); see also Stephen Losey, Defense re-examines homeland role, tactics, Federal Times.com (Oct. 18, 2005), available at *http://www.federaltimes.com/index.php?S=1174164.*

[141] See Further Comments of M/A–Com, Inc. (May 30, 2006).

[142] House Report at 173.

[143] Bailey Jan. 30 Written Testimony at 3.

D. Emergency Medical Communications

There are indications that the emergency medical community was lacking in contingency communications planning and information about technologies and services that might address their critical communications needs.[144] In particular, this group of first responders did not seem to avail itself of existing priority communications services, such as GETS, WPS and TSP. It also appeared that emergency medical personnel were not always integrated into a locality's public safety communications planning.

IV. Emergency Communications to the Public

The communications infrastructure, in all of its forms, is a key asset in delivering information to the American public. In emergencies and disaster situations, ensuring public safety is the first priority. The use of communications networks to disseminate reliable and relevant information to the public is critical—before, during and after such events. Moreover, to the extent a more well-informed citizenry is better able to prepare for and respond to disasters, there should be less strain on already taxed resources, thereby benefiting recovery efforts.

The Emergency Alert System ("EAS") and its predecessor systems have long made use of broadcast radio and television stations as the principal tools for communicating with the public about emergencies and disaster situations. The Panel heard stories of heroic efforts by broadcasters and cable operators to provide members of the public impacted by Katrina with important storm-related information. However, there were also reports of missed opportunities to utilize the EAS and limitations in existing efforts to deliver emergency information to all members of the public. New technologies may address some of these limitations by facilitating the provision of both macro- and micro-level information about impending disasters and recovery efforts.

A. Lack of Activation

The EAS can be activated by the federal government as well as by state and local officials to disseminate official news and information to the public in the event of an emergency. The Panel understands that the National Weather Service used the EAS to provide severe weather warnings to citizens in the Gulf States in advance of Katrina making landfall.[145] However, the Panel also heard that the EAS was not utilized by state and local officials to provide localized emergency evacuation and other important information.[146] That means that an existing and effective means of distributing timely information to our citizens was not fully utilized.

B. Limitations in Coverage

The primary source of emergency information about Katrina came through broadcast (including satellite broadcast) and cable infrastructure, whether through the EAS or local or national news programming. Citizens who were not watching TV or listening to the radio at the time of the broadcast missed this emergency information. Damage to communications infrastructure made it difficult for news and emergency information to reach the public, as did power outages.[147] As a result, a fairly large percentage of the public likely were uninformed. The Panel heard about notification technologies that may permit emergency messages to be sent to wireline and wireless telephones as well as personal digital assistants and other mobile devices.[148] For example, the Association of Public Television Stations has developed a means for utilizing the digital transmissions of public television stations to datacast emergency information to computers or wireless devices.[149] In addition, the St. Charles Parish Public School District used a telephone-based, time-sensitive notification technology to send out recorded evacuation messages to over 21,000 phone numbers in advance of Katrina's landfall.[150] The District continued to utilize this technology to provide members of the public with specific information regarding conditions in the community in the storm's aftermath. While the use of phone-based technologies for post-disaster communications is necessarily dependent on the state of the telephone network, such technologies—which are less subject to disruption from power outages—offer the potential for complementing the traditional broadcast-based EAS.

The Panel also understands that the FCC is considering extending the reach of the existing emergency alert system to other technologies, such as wireless and the Internet.[151] The Panel understands that there are ongoing collaborative industry-government efforts to overcome the hurdles to extending alerts to other technologies.

C. Reaching Persons With Disabilities and Non-English-Speaking Americans

Ensuring emergency communications reach all Americans, even those with hearing and visual disabilities or who do not speak English, remains a major challenge. Unfortunately, accessibility to suitable communications devices for the deaf and hard of hearing was difficult during and after Hurricane Katrina.[152] This problem was intensified by the fact that Katrina brought humidity, rain, flooding, and high temperatures (which translate into perspiration), all of which reduce the effectiveness of hearing aids and cochlear implants.[153] For persons with visual impairments, telephone and broadcast outages made information very hard to obtain, and many people with vision loss were unable to evacuate.[154]

The broadcast industry has taken significant steps to provide on-screen sign language interpreters and close captioning. Broadcasters also sometimes broadcast critical information in a second language where there are a significant number of non-English speaking residents in the community. For example, a Spanish-language radio station in the New Orleans area provided warnings, and information about family members and disaster relief assistance.[155]

[144] See House Report at 269.

[145] The Federal Response to Hurricane Katrina——Lessons Learned, February 2006, at 28.

[146] Comments of Hilary Styron of the National Organization on Disability Emergency Preparedness Initiative at 2 (Mar. 6, 2006) [hereinafter "Styron Mar. 6 Written Testimony"].

[147] Martin Sept. 29 Written Statement at 2.

[148] Comments of Notification Technologies, Inc., EB Docket No. 04–296 (Jan. 24, 2006).

[149] Written Testimony of John M. Lawson, President and CEO, Association of Public Television Stations, Before the FCC's Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks (April 18, 2006).

[150] Id. at 12.

[151] Review of the Emergency Alert System, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 18,625, 18,653 (¶ 69) (2005).

[152] See, e.g., Styron Mar. 6 Written Testimony at 2 (over 80% of shelters did not have access to communications devices for the deaf; over 60% of shelters did not have captioning capabilities utilized on the televisions screens and several broadcasters did not caption their emergency information, even though it is required by the FCC); Oral Testimony of Cheryl Heppner, Vice Chair, Deaf and Hard of Hearing Consumer Advocacy Network, FCC Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, Tr. at 283 (Mar. 6, 2006) [hereinafter "Heppner Mar. 6 Oral Testimony"] (many television stations did not provide visual information).

[153] Heppner Mar. 6 Oral Testimony, Tr. at 282.

[154] Comment of the American Council of the Blind and American Foundation for the Blind, at 2 (May 3, 2006).

[155] See, e.g., Comments by the National Council of La Raza, In the Eye of the Storm: How the Gov't

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However, the Panel also heard that written or captioned information was at times inadequate and that station logos or captions sometimes covered up the sign-language interpreter or close-captioning.[156] Additionally, personnel who provided these critical services often evacuated, leaving the station with no ability to deliver these services. Further, specialized radios relied upon by the hearing-impaired, because they can display text messages, are not currently designed to be battery-operated and thus became useless when power goes out.[157] The distribution of emergency weather information in languages other than English appeared limited, based primarily on the willingness and ability of local weather forecasting offices and the availability of ethnic media outlets.[158] Innovative notification technologies, such as those described above, may provide a partial answer to the emergency communications needs of persons with disabilities and non-English-speaking members of the public as such technologies can be used to deliver targeted messages in a specified format.

Relatedly, individuals with disabilities often had a difficult time using communications capabilities at shelters or other recovery areas.[159] Phone and computer banks provided at these locations generally did not have capabilities to assist the hearing or speech-impaired.[160]

D. Inconsistent or Incorrect Emergency Information

One of the benefits of the EAS is that it facilitates the communication of a uniform message to the public by an authoritative or credible spokesperson, thereby minimizing confusion and contributing to an orderly public response. However, as noted above, the EAS was not activated in several jurisdictions. Moreover, while broadcasters, cable operators and satellite providers went to considerable lengths to provide the public with information regarding Katrina and its impact, the Panel understands that inconsistent or erroneous information about critical emergency issues was sometimes provided within the affected region. For example, information regarding conditions in one portion of New Orleans did not necessarily accurately depict conditions in other areas of the city. The dissemination of targeted information from an authoritative source through the EAS or other notification technologies might have assisted with this problem.

RECOMMENDATIONS

Based upon its observations regarding the impact of Hurricane Katrina on communications networks and the sufficiency and effectiveness of the recovery effort, the Panel has developed a number of recommendations to the FCC for improving disaster preparedness, network reliability and communications among first responders. As with its observations, these recommendations are grouped into four sections. The first contains recommendations for steps to better pre-position the communications industry and the government for disasters in order to achieve greater network reliability and resiliency. The second section presents suggestions for improving recovery coordination to address existing shortcomings and to maximize the use of existing resources. The third section focuses on first responder communications issues, recommending essential steps for improving the operability and interoperability of public safety and 911 communications in times of crisis. And finally, the last group of recommendations presents the Panel's suggestions for improving emergency communications to the public. All of our citizens deserve to be sufficiently informed should a major disaster strike in the future.

Pre-Positioning for Disasters—A Proactive, Rather Than Reactive Program for Network Reliability and Resiliency

1. Pre-positioning for the Communications Industry—A Readiness Checklist—The FCC should work with and encourage each industry sector, through their organizations or associations, to develop and publicize sector-specific readiness recommendations. Such a checklist should be based upon relevant industry best practices as set forth by groups such as the Media Security and Reliability Council ("MSRC") and the Network Reliability and Interoperability Council ("NRIC"). Any such checklist should include the following elements:

a. Developing and implementing business continuity plans, which would at a minimum address:

i. Power reserves,

ii. Cache of essential replacement equipment,

iii. Adequate sparing levels,

iv. Credentialing,

v. Emergency Operations Center ("EOC") coordination,

vi. Training/disaster drills, and

vii. Appropriate disaster preparedness checklists;

b. Conducting exercises to evaluate these plans and train personnel;

c. Developing and practicing a communications plan to identify "key players" and multiple means of contacting them (including alternate communications channels, such as alpha pagers, Internet, satellite phones, VOIP, private lines, BlackBerry-type devices, etc.);

d. Routinely archiving critical system backups and providing for their storage in a "secure off-site" facilities.

2. Pre-positioning for Public Safety—An Awareness Program for Non-Traditional Emergency Alternatives—The FCC should take steps to educate the public safety community about the availability and capabilities of non-traditional technologies that might provide effective back-up solutions for existing public safety communications systems. Examples of these technologies would be pagers, satellite technology and phones, portable towers and repeaters, point-to-point microwave links, license-exempt WISP systems, other systems less reliant on the PSTN, and bridging technologies/gateways that would facilitate interoperability. One means for the FCC to do this would be to organize an exhibit area or demonstration of these technologies in conjunction with one or more large public safety conferences, such as:

a. APCO International Annual Conference and Exposition August 6–10, 2006; Orlando, FL

b. IAFC Fire Rescue International September 14–16, 2006; Dallas, TX

c. International Association of Chiefs of Police Conference October 14–18, 2006; Boston, MA

d. NENA Annual Conference and Trade Show June 9–14, 2007; Fort Worth, TX

e. National Sheriff's Association Annual Conference June 23–27, 2007; Salt Lake City, UT

f. National Fraternal Order of Police August 13–16, 2007; Louisville, KY

The FCC should also consider organizing a similar exhibit/demonstration for other industry sectors that might benefit from this information

3. Pre-positioning for FCC Regulatory Requirements—An A Priori Program for

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and Private Response to Hurricane Katrina Failed Latinos at 5 (Apr. 24, 2006) [hereinafter "La Raza Comments"].

[156] Heppner Mar. 6 Oral Testimony, Tr. at 283–84; Remarks by Cheryl Heppner, Deaf and Hard of Hearing Consumer Advocacy Network, at 2 (Mar. 6, 2006).

[157] Heppner Mar. 6. Oral Testimony at 283–85.

[158] See, e.g., La Raza Comments at 5 (citing Interview with official at the National Weather Service, Jan. 6, 2006).

[159] Id.; Styron Mar. 6 Written Testimony at 2.

[160] See, e.g., id.; Comments of the Consortium for Citizens With Disabilities at 1–2 (April 13, 2006); Styron Mar. 6 Oral Testimony, Tr. at 291.

Disaster Areas—The FCC should explore amending its rules to permit automatic grants of certain types of waivers or special temporary authority (STA) in a particular geographic area if the President declares that area to be a "disaster area". As a condition of the waiver or STA, the FCC could require verbal or written notification to the Commission staff contemporaneously with activation or promptly after the fact. Further, the FCC should examine expanding the on-line filing opportunities for STA requests, including STA requests for AM broadcast stations. Examples of possible rule waivers and STAs to study for this treatment include:

a. Wireline.

i. Waiver of certain carrier change requirements to allow customers whose long distance service was disrupted to be connected to an operational long distance provider.

ii. Waiver of aging residential numbers rules for customers in the affected area. This allows carriers to disconnect temporarily customers' telephone service, upon request, and reinstate the same number when the service is reconnected.

iii. Waiver of number portability requirements to allow rerouting of traffic to switches unaffected by the crisis.

iv. Waiver of reporting filings, such as Form 477 on local competition and broadband data, during the crisis.

b. Wireless.

i. Waiver of amateur radio and license exempt rules permitting transmissions necessary to meet essential communications needs.

ii. Waiver of application filing deadlines (*e.g.*, renewals, construction notifications, discontinuance notices, etc.), construction requirements, and discontinuance of service requirements.

iii. Streamlined STA process, such that parties in the affected area may simply notify the FCC in writing or verbally of a need to operate in order to restore service.

c. Broadcast and Cable.

i. Waiver of non-commercial educational ("NCE") rules to permit NCE television and radio stations in the affected area to simulcast and rebroadcast commercial station programming during a crisis.

ii. Waiver of requirements for notifying the FCC of use of emergency antennas within 24 hours.

iii. Waiver of limits on AM nighttime operations, so long as operation is conducted on a noncommercial basis.

iv. Waiver of rules on limited and discontinued operations.

v. Tolling of broadcast station construction deadlines.

vi. Automatic STAs, or STAs granted through written or oral notification, for broadcast stations to go silent.

vii. Waiver of restrictions on simulcast programming of commonly owned stations within the same band.

viii. Waiver of location and staffing requirements of a main studio within the community.

ix. Waiver of activation and post-event Section 73.1250 reporting requirements related to transmission of point-to-point communications during a declared emergency.

d. Satellite.

i. Waiver of requirements for notifying the FCC of use of emergency antenna equipment within 24 hours.

ii. Streamlined STA process for satellite operators responding to a declared emergency.

4. Pre-positioning for Government Outage Monitoring—A Single Repository and Contact with Consistent Data Collection—The FCC should coordinate with other federal and state agencies to identify a single repository/point of contact for communications outage information in the wake of an emergency. The Panel suggests that the FCC is the federal agency best situated to perform this function. The FCC should work with affected industry members and their trade associations to establish a consolidated data set and geographic area for data collection. Once broad agreement is reached on the appropriate outage information to be collected, it should be consistently applied and not subject to routine changes. To the extent practical, the frequency of voluntary reporting and duration of reporting requirements should be specified as part of any emergency outage reporting plan. The Panel suggests that reporting no more than once a day would strike the right balance between supplying important outage information and not distracting resources from critical recovery efforts. Additionally, any proprietary information that is gathered through voluntary outage reporting must be kept confidential, with only aggregated information provided to appropriate government entities, such as the local EOC, during a crisis situation. Any carrier-specific data should be disclosed to other agencies only with appropriate confidentiality safeguards (such as non-disclosure agreements) in place.

Recovery Coordination—Critical Steps for Addressing Existing Shortcomings and Maximizing Use of Existing Resources

1. Remedying Existing Shortcomings—National Credentialing Guidelines for Communications Infrastructure Providers—The Panel generally supports the National Security Telecommunications Advisory Committee's ("NSTAC's") recommendation for a national standard for credentialing telecommunications repair workers, but believes this should be broadened to include repair workers of all communications infrastructure providers (including wireline, wireless, WISP, satellite, cable and broadcasting infrastructure providers). Specifically, the Panel recommends that the FCC work with other appropriate federal departments and agencies and the communications industry to promptly develop national credentialing requirements and process guidelines for enabling communications infrastructure providers and their contracted workers access to the affected area post-disaster. The FCC should encourage states to develop and implement a credentialing program consistent with these guidelines as promptly as possible and encourage appropriate communications industry members to secure any necessary credentialing. Under this program, credentials should be available to be issued to communications infrastructure providers at any time during the year, including before, during and after a disaster situation. The credentials should be issued directly to communications infrastructure providers, which will then be responsible for distributing these credentials to their employees and contracted workers. These credentials, together with company-issued employee or contractor identification should be sufficient to permit access. As a condition of credentialing, the program should require that communications infrastructure providers receiving credentials ensure that their employees and contracted workers receiving credentials complete basic National Incident Management System ("NIMS") training (*i.e.*, "Introduction to NIMS"). The FCC should work with the communications industry to develop an appropriate basic NIMS training course (no more than one hour) for communications repair workers that can be completed online. Once developed, this communications-specific training course should replace "Introduction to NIMS" as the requirement for credentialing. The FCC should also

encourage states to recognize and accept credentials issued by other states.

2. Remedying Existing Shortcomings—Emergency Responder Status for Communications Infrastructure Providers—The Panel supports the NSTAC's recommendation that telecommunications infrastructure providers and their contracted workers be afforded emergency responder status under the Stafford Act and that this designation be incorporated into the National Response Plan, as well as state and local emergency response plans. However, the Panel suggests that this recommendation be broadened to include all communications infrastructure providers (including wireline, wireless, WISP, satellite, cable and broadcasting infrastructure providers) and their contracted workers. The FCC should work with Congress and the other appropriate federal departments and agencies to implement this broadened recommendation.

3. Remedying Existing Shortcomings—Utilization of State/Regional Coordination Bodies—The FCC should work with state and local government and the communications industry (including wireline, wireless, WISP, satellite, cable and broadcasting) to better utilize the coordinating capabilities at regional, state and local EOCs, as well as the Joint Field Office ("JFO"). The FCC should encourage, but not require, each regional, state and local EOC and the JFO to engage in the following activities:

a. Facilitate coordination between communications infrastructure providers (including wireline, wireless, WISP, satellite, cable and broadcasting providers, where appropriate) and state and local emergency preparedness officials (such as the state emergency operations center) in the state or region at the EOC or JFO. The parties should meet on a periodic basis to develop channels of communications (both pre- and post-disaster), to construct joint preparedness and response plans, and to conduct joint exercises.

b. Develop credentialing requirements and procedures for purposes of allowing communications infrastructure providers, their contracted workers and private security teams, if any, access to the affected area post-disaster. These requirements and procedures should be consistent with any nationally-developed credentialing guidelines. Where possible, web-based applications should be created to pre-clear or expedite movement of communications infrastructure providers into a disaster area.

c. Develop and facilitate inclusion in the state's Emergency Preparedness Plan, where appropriate, one or more clearly identified post-disaster coordination areas for communications infrastructure providers, their contracted workers, and private security teams, if any, to gather post-disaster where credentialing, security, escorts and further coordination can be achieved. The state's Emergency Preparedness Plan should describe the process for informing communications infrastructure providers where these coordination area(s) will be located.

d. Post-disaster, share information and coordinate resources to facilitate repair of key communications infrastructure. Specifically, this would include identifying key damaged infrastructure; if necessary, assigning priorities for access and scarce resources (fuel, security, etc.) to repair this infrastructure. Additionally, the coordination body and staging area can provide a means for industry to share and maximize scarce resources (share surplus equipment, double and triple up on security escorts to a particular area, etc.).

e. Facilitate electric and other utilities' maintenance of priority lists for commercial power restoration. Include commercial communications providers on this priority list and coordinate power restoration activities with communications restoration.

The Panel would also support communications infrastructure providers in a state or region forming an industry-only group for disaster planning, coordinating recovery efforts and other purposes. Nevertheless, the Panel believes that coordinating capabilities and staffing of regional, state and local EOCs, as well as the JFO, need to be better utilized for the purposes described above.

4. Maximizing Existing Resources—Expanding and Publicizing Emergency Communications Programs (GETS, WPS and TSP)—To facilitate the use of existing emergency communications services and programs, the FCC should:

a. Work with the National Communications System ("NCS") to actively and aggressively promote GETS, WPS and TSP to all eligible government, public safety, and critical industry groups. As part of this outreach effort, the Commission should target groups that have relatively low levels of participation. For example, the Panel recommends that the Commission reach out to the emergency medical community and major trauma centers to make them aware of the availability of these services.

b. Work with the NCS to clarify whether broadcast, WISP, satellite, and cable company repair crews are eligible for GETS and WPS under the Commission's existing rules. If so, the Commission should promote the availability of these programs to those entities and urge their subscribership. If the Commission determines that these entities are not eligible, the Panel recommends that the Commission revise its rules so that these entities can subscribe to WPS and GETS.

c. Work with the NCS to explore whether it is technically and financially feasible for WPS calls to automatically receive GETS treatment when they reach landline facilities (thus avoiding the need for a WPS caller to also enter GETS information). The Commission may desire to set up an industry task force to explore this issue.

d. Work with the NCS and the communications sector to establish and promote best practices to ensure that all WPS, GETS, and TSP subscribers are properly trained in how to use these services.

5. Maximizing Existing Resources—Broadening NCC to Include All Communications Infrastructure Sectors—The FCC should work with the NCS to broaden the membership of the National Coordination Center for Telecommunications ("NCC") to include adequate representation of all types of communications systems, including broadcast, cable, satellite and other new technologies, as appropriate.

6. Maximizing Existing Resources—FCC Web site for Emergency Coordination Information—The FCC should create a password-protected Web site, accessible by credentialed entities (under recovery coordination recommendation #1), listing the key state emergency management contacts (especially the contacts for communications coordinating bodies), as well as post-disaster coordination areas for communications providers. During an emergency, this Web site should be updated on a 24/7 basis.

7. Maximizing Existing Resources—FCC Web site for Emergency Response Team Information—The FCC should create a Web site to publicize the agency's emergency response team's contact information and procedures for facilitating disaster response and outage recovery.

First Responder Communications—Essential Steps for Addressing Lessons Learned From Hurricane Katrina

1. Essential Steps in Pre-positioning Equipment, Supplies and Personnel—An Emergency Restoration Supply Cache and Alternatives Inventory—To facilitate the restoration of public safety communications capabilities, the FCC should:

a. Encourage state and local jurisdictions to retain and maintain, including through arrangements with the private sector, a cache of equipment components that would be needed to immediately restore existing public safety communications within hours of a disaster. At a minimum, the cache should include the necessary equipment to quickly restore communications capabilities on all relevant mutual aid channels. Such a cache would consist of:

i. RF gear, such as 800 MHz, UHF, VHF, Mutual Aid, IP Gateway, and dispatch consoles;

ii. trailer and equipment housing;

iii. tower system components (antenna system, hydraulic mast);

iv. power system components (generator, UPS, batteries, distribution panel); and

v. fuel.

The cache should be maintained as a regional or statewide resource and located in areas protected from disaster impacts. The cache should be included as an element of the National Response Plan.

b. Encourage state and local jurisdictions to utilize the cache through training exercises on a regular basis.

c. Support the ongoing efforts of the NCC to develop and maintain a database of state and local public safety system information, including frequency usage, to allow for more efficient spectrum sharing, rapid on-site frequency coordination, and emergency provision of supplemental equipment in the event of system failures.

d. Urge public safety licensees to familiarize themselves with alternative communications technologies to provide communications when normal public safety networks are down. Such technologies include satellite telephones, two-way paging devices, and other technologies less reliant on the PSTN. Most importantly, public safety agencies should be reminded/encouraged to train and use such devices prior to emergencies.

e. Support the efforts of the NCC to develop an inventory of available communications assets (including local, state, federal civilian and military) that can be rapidly deployed in the event of a catastrophic event. The list should include land mobile radios, portable infrastructure equipment, bridging technologies/gateways, and backup power system components. This information should include the steps necessary for requesting the deployment of these assets. The FCC should work with the NCC and the appropriate agencies to educate key state and local emergency response personnel on the availability of these assets and how to request them.

f. Coordinate with the NCS/NCC to assure that, immediately following any large disaster, there is an efficient means by which federal, state and local officials can identify and locate private sector communications assets that can be made rapidly available to first responders and relief organizations. One such means to be considered would be a Web site maintained by either the FCC or NCC through which the private sector could register available assets along with product information. The Web site should be designed with a special area for registering available equipment to assist persons with disabilities in their communications needs.

2. Essential Steps in Enabling Emergency Communications Capabilities—Facilitating First Responder Interoperability—To facilitate interoperability among first responder communications, the FCC should:

a. Consistent with recent legislation, maintain the schedule for commencing commercial spectrum auctions before January 28, 2008 to fully fund the $1 billion public safety interoperability program.

b. Work with National Telecommunications and Information Administration ("NTIA") and the Department of Homeland Security ("DHS") to establish appropriate criteria for the distribution of the $1 billion in a manner that best promotes interoperability with the 700 MHz band. Among other things, such criteria should mandate that any radios purchased with grant monies must be capable of operating on 700 MHz and 800 MHz channels established for mutual aid and interoperability voice communications.

c. Encourage the expeditious development of regional plans for the use of 700 MHz systems and move promptly to review and approve such plans.

d. Expeditiously approve any requests by broadcasters to terminate analog service in the 700 MHz band before the end of the digital television transition in 2009 in order to allow public safety users immediate access to this spectrum.

e. Work with the NTIA and DHS to develop strategies and policies to expedite allowing Federal (including the military), state and local agencies to share spectrum for emergency response purposes, particularly the Federal incident response channels and channels established for mutual aid and interoperability.

f. Publicize interoperability successes and/or best practices by public safety entities to serve as models to further interoperability.

3. Essential Steps in Addressing E–911 Lessons Learned—A Plan for Resiliency and Restoration of E–911 Infrastructure and PSAPs—In order to ensure a more robust E–911 service, the FCC should encourage the implementation of these best practice recommendations issued by Focus Group 1C of the FCC-chartered NRIC VII:

a. Service providers and network operators should consider placing and maintaining 911 circuits over diverse interoffice transport facilities (e.g., geographically diverse facility routes, automatically invoked standby routing, diverse digital cross-connect system services, self-healing fiber ring topologies, or any combination thereof). See NRIC VII Recommendation 7–7–0566.

b. Service providers, network operators and property managers should ensure availability of emergency/backup power (e.g., batteries, generators, fuel cells) to maintain critical communications services during times of commercial power failures, including natural and manmade occurrences (e.g., earthquakes, floods, fires, power brown/blackouts, terrorism). The emergency/backup power generators should be located onsite, when appropriate. See NRIC VII Recommendation 7–7–5204.

c. Network operators should consider deploying dual active 911 selective router architectures to enable circuits from the caller's serving end office to be split between two selective routers in order to eliminate single points of failure. Diversity should also be considered on interoffice transport facilities connecting each 911 selective router to the PSAP serving end office. See NRIC VII Recommendations 7–7–0571.

d. Network operators, service providers, equipment suppliers and public safety authorities should establish alternative methods of communication for critical personnel. See NRIC VII Recommendation 7–7–1011.

In addition, the FCC should:

a. Recommend the designation of a secondary back-up PSAP that is more than 200 miles away to answer calls when the primary and secondary PSAPs are disabled. This requires the FCC to eliminate any regulatory prohibition against the transport of 911 across LATA boundaries. The Panel recommends that the FCC expeditiously initiate such a rulemaking. This rulemaking should also consider

permitting a backup E–911 tandem across a LATA boundary.

b. Recommend that the FCC urge the DHS, Fire Grant Act, and other applicable federal programs to permit state or local 911 commissions or emergency communications districts, which provide 911 or public safety communications services, to be eligible to apply for 911 enhancement and communications enhancement/interoperability grants.

4. Essential Steps in Addressing Lessons Learned Concerning Emergency Medical and Hospital Communications Needs—An Outreach Program to Educate and Include the Emergency Medical Community in Emergency Communications Preparedness—The FCC should work to assist the emergency medical community to facilitate the resiliency and effectiveness of their emergency communications systems. Among other things, the FCC should:

a. Educate the emergency medical community about emergency communications and help to coordinate this sector's emergency communications efforts;

b. Educate the emergency medical community about the various priority communications services (i.e., GETS, WPS and TSP) and urge them to subscribe;

c. Work with Congress and the other appropriate federal departments and agencies to ensure emergency medical personnel are treated as public safety personnel under the Stafford Act; and

d. Support DHS efforts to make emergency medical providers eligible for funding for emergency communications equipment under the State Homeland Security Grant Program.

Emergency Communications to the Public—Actions To Alert and Inform

1. Actions to Alert and Inform—Revitalize and Publicize the Underutilized Emergency Alert System—To facilitate and complement the use of the existing Emergency Alert System ("EAS"), the FCC should:

a. Educate state and local officials about the existing EAS, its benefits, and how it can be best utilized.

b. Develop a program for educating the public about the EAS and promote community awareness of potential mechanisms for accessing those alerts sent during power outages or broadcast transmission failures.

c. Move expeditiously to complete its proceeding to explore the technical and financial viability of expanding the EAS to other technologies, such as wireless services and the Internet, recognizing that changes to communications networks and equipment take time to implement.

d. Consistent with proposed legislation, work with Congress and other appropriate federal departments and agencies to explore the technical and financial viability of establishing a comprehensive national warning system that complements existing systems and allows local officials to increase the penetration of warnings to the public as well as target, when necessary, alerts to a particular area.

e. Work with the DHS and other appropriate federal agencies on pilot programs that would allow more immediate evaluation and testing of new notification technologies.

f. Work with the Department of Commerce to expand the distribution of certain critical non-weather emergency warnings over NOAA weather radios to supplement the EAS.

2. Actions to Alert and Inform—Commence Efforts to Ensure that Persons with Disabilities and Non-English-Speaking Americans Receive Meaningful Alerts—To help to ensure that all Americans, including those with hearing or visual disabilities or who do not speak English, can receive emergency communications, the FCC should:

a. Promptly find a mechanism to resolve any technical and financial hurdles in the current EAS to ensure that non-English-speaking people or persons with disabilities have access to public warnings, if readily achievable.

b. Work with the various industry trade associations and the disabled community to create and publicize best practices for serving persons with disabilities and non-English-speaking Americans.

c. Encourage state and local government agencies who provide emergency information (through video or audio broadcasts or Web sites) to take steps to make critical emergency information accessible to persons with disabilities and non-English-speaking Americans.

3. Actions to Alert and Inform—Ensure Consistent and Reliable Emergency Information Through a Consolidated and Coordinated Public Information Program—Public information functions should be coordinated and integrated across jurisdictions and across functional agencies, among federal, state, local and tribal partners, and with private sector and non-governmental organizations. The FCC should work with all involved parties to help facilitate the following:

a. Integration of media representatives into the development of disaster communications plans (ESF #2). These plans should establish systems and protocols for communicating timely and accurate information to the public during crisis or emergency situations.

b. Designation of a public information officer at each EOC. This individual should be accessible to the media to handle media and public inquiries, emergency public information and warnings, rumor monitoring and response, and other functions required to coordinate, clear with appropriate authorities, and disseminate accurate and timely information related to the incident, particularly regarding information on public health, safety and protection.

c. During large-scale disasters, the formation of a Joint Information Center ("JIC") for the collocation of representatives from federal, regional, state, local and/or tribal EOCs tasked with primary incident coordination responsibilities. The JIC would provide the mechanism for integrating public information activities across jurisdictions and with private sector and non-governmental organizations. Media operations should be an integral part of the JIC.

CONCLUSION

The Katrina Panel commends Chairman Martin and the Commission for their actions to assist industry and first responders before, during and after Hurricane Katrina and for forming this Panel to identify steps to be taken to enhance readiness and recovery in the future. The Panel thanks the Commission for the opportunity to address the important issues associated with this devastating hurricane's effect on our nation's communications networks. In this effort, the Panel members have brought to bear a broad background of public safety and industry experiences, including (for many) first-hand knowledge of the devastation wrought by Katrina. The Panel has also benefited from information provided in the many comments and expert presentations. The Panel hopes that its resulting observations and recommendations prove useful to the Commission in helping to ensure that the communications industry, first responders, and government at all levels are better prepared for future hurricanes and any other disasters that might lie ahead for us.

APPENDIX A—Members of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks

Chair: Nancy J. Victory, Partner, Wiley Rein & Fielding LLP

Carson Agnew, Executive Vice President, Mobile Satellite Ventures, LP
Michael R. Anderson, Chairman, PART–15.ORG
Robert G. (Gil) Bailey, ENP, Telecommunications Manager, Harrison County, MS Emergency Communications Commission
Kevin Beary, Sheriff, Orange County, FL
Greg Bicket, Vice President/Regional Manager, Cox Communications
Lt. Colonel Joseph Booth, Deputy Superintendent, Louisiana State Police
Steve Davis, Senior Vice President—Engineering, Clear Channel Radio
Robert G. Dawson, President & CEO, SouthernLINC Wireless
Stephen A. Dean, Fire Chief, City of Mobile, AL
Steve Delahousey, Vice President—Operations, American Medical Response
Dave Flessas, Vice President—Network Operations, Sprint Nextel Corp.
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Kelly Kirwan, Vice President—State and Local Government and Commercial Markets Division, The Americas Group, Government, Enterprise, and Mobility Solutions, Motorola Communications and Electronics, Inc.
Jonathan D. Linkous, Executive Director, American Telemedicine Association
Adora Obi Nweze, Director, Hurricane Relief Efforts, NAACP; President, Florida State Conference, NAACP; Member, National Board of Directors, NAACP
Eduardo Peña, Board Member, League of United Latin American Citizens
Billy Pitts, President of Government Affairs, The NTI Group
Major Michael Sauter, Commander, Office of Technology and Communications, New Orleans Police Department
Marion Scott, Vice President—Operations, CenturyTel
Kay Sears, Senior Vice President of Sales and Marketing, G2 Satellite Solutions, PanAmSat Corporation
Edmund M. "Ted" Sexton, Sr., President, National Sheriffs Association
Edwin D. Smith, Chief, Baton Rouge Fire Department
William L. Smith, Chief Technology Officer, BellSouth Corporation
Patrick Yoes, President, Louisiana Fraternal Order of Police, National Secretary, Fraternal Order of Police

[FR Doc. 06–6013 Filed 7–6–06; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU50

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Laguna Mountains Skipper (Pyrgus ruralis lagunae)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the proposed designation of critical habitat for the Laguna Mountains skipper (*Pyrgus ruralis lagunae*) and the availability of a draft economic analysis of the proposed designation of critical habitat. The draft economic analysis estimates the potential total future impacts to range from $6.5 million to $8.9 million (undiscounted) over 20 years. Discounted future costs are estimated to be $3.7 million to $5.1 million over this same time period ($351,000 to $480,000 annually) using a real rate of 7 percent, or $5.0 million to $6.9 million ($337,000 to $461,000 annually) using a real rate of 3 percent. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted on the proposed rule need not be resubmitted as they have already been incorporated into the public record and will be fully considered in our final determination.

DATES: We will accept public comments and information until August 7, 2006.

ADDRESSES: Written comments and materials may be submitted to us by any one of the following methods:

1. You may submit written comments and information to Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011;

2. You may hand-deliver written comments and information to our Carlsbad Fish and Wildlife Office at the above address;

3. You may fax your comments to 760/431–9624.

4. You may send your comments by electronic mail (e-mail) to *FW8pchskipper@fws.gov*. For directions on how to submit e-mail comments, see the "Public Comments Solicited" section.

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

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the address listed in **ADDRESSES** (telephone, 760/431–9440; facsimile, 760/431–9624.)

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We will accept written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation, published in the **Federal Register** on December 13, 2005 (70 FR 73699), and on our draft economic analysis of the proposed designation. We will consider information and recommendations from all interested parties. We particularly seek comments concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat, as provided by section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether it is prudent to designate critical habitat and whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on: the amount and distribution of Laguna Mountains skipper habitat; which areas should be included in the designation that were occupied at the time of listing and contain the physical and biological features that are essential to the conservation of the species and why; and which areas not occupied at the time of listing are essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities;

(5) Whether the draft economic analysis identifies all State and local costs, and, if not, what other costs should be included;

(6) Whether the draft economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the listing of the species or the designation of critical habitat;

(7) Whether the economic analysis correctly assesses the effect on regional costs associated with land- and water

use controls that derive from the designation;

(8) Whether the designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from any final designation;

(9) Whether the economic analysis appropriately identifies all costs and benefits that could result from the critical habitat designation;

(10) Whether there is information about areas that could be used as substitutes for the economic activities planned in critical habitat areas that would offset the costs and allow for the conservation of critical habitat areas; and

(11) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

All previous comments and information submitted during the initial comment period on the proposed rule need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning the draft economic analysis and the proposed rule by any one of several methods (see **ADDRESSES** section). Our final determination concerning designation of critical habitat for the Laguna Mountains skipper will take into consideration all comments and any additional information received during both comment periods. On the basis of public comment on the critical habitat proposal, the draft economic analysis, and the final economic analysis, we may during the development of our final determination find that areas proposed are not essential or are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

If you wish to submit comments electronically, please submit them in an ASCII file and avoid the use of any special characters or any form of encryption. Also, please include "Attn: Laguna Mountains skipper" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** or submit your comments in writing using one of the alternate methods listed in the **ADDRESSES** section. Please note that the Internet address *FW8pchskipper@fws.gov* will be closed at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. We will not consider anonymous comments and we will make all comments available for public inspection in their entirety.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office at the address listed under **ADDRESSES**. Copies of the proposed critical habitat rule for the Laguna Mountains skipper and the draft economic analysis are also available on the Internet at *http://www.fws.gov/carlsbad*. In the event that our Internet connection is not functional, please obtain copies of documents directly from the Carlsbad Fish and Wildlife Office.

Background

On December 13, 2005, we published a proposed rule in the **Federal Register** (70 FR 73699) to designate critical habitat for the Laguna Mountains skipper. We proposed to designate approximately 6,662 acres (ac) (2,696 hectares (ha)) of critical habitat in two units on Laguna and Palomar Mountains in San Diego County, California. For more information on the Laguna Mountains skipper, refer to the final rule listing the species as endangered, published in the **Federal Register** on January 16, 1997 (62 FR 2313).

Critical habitat is defined in section 3 of the Act as the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat on the basis of the best scientific data available, after taking into consideration the economic impact, impact to national security, and any other relevant impacts of specifying any particular area as critical habitat. We have prepared a draft economic analysis of the December 13, 2005 (70 FR 73699), proposed designation of critical habitat for the Laguna Mountains skipper.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of the Laguna Mountains skipper, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the Laguna Mountains skipper in areas containing features essential to the conservation of this species. The analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (e.g., lost economic opportunities associated with restrictions on land use).

This analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this analysis looks retrospectively at costs that have been incurred since the date the species was listed as an endangered species and considers those costs that may occur in the 20 years following the designation of critical habitat.

Laguna Mountains skipper conservation activities are likely to primarily impact recreational camping and utility maintenance activities. The draft economic analysis estimates the potential total future impacts to range from $6.5 million to $8.9 million (undiscounted) over 20 years. Discounted future costs are estimated to be $3.7 million to $5.1 million over this same time period ($351,000 to $480,000 annually) using a real rate of 7 percent, or $5.0 million to $6.9 million ($337,000 to $461,000 annually) using a real rate of 3 percent. Differences in the low and high impact estimates result primarily from uncertainty regarding the potential impacts to utility companies conducting

maintenance activities and making repairs in proposed critical habitat. The low-end estimate of costs assumes grazing on private lands is not affected and biologists' time on site during utility repairs and maintenance is limited to one day per project. Costs under this estimate are dominated (88 percent) by welfare losses to campers in Subunits 1A and 1C. The high-end estimate of costs assumes grazing activities on private lands in proposed critical habitat will be restricted and that utility projects will last longer than a single day. Costs under this estimate are dominated by lost camping opportunities (64 percent) and to a lesser extent costs to utilities (22 percent). In the low-end estimate, 95 percent of the costs are associated with Subunits 1A and 1C. In the high-end estimate, Subunits 1A and 1C again dominate total costs, accounting for 83 percent of total estimated impacts.

Required Determinations—Amended

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues. However, because the draft economic analysis indicates the potential economic impact associated with a designation of all habitat with features essential to the conservation of this species would total no more than $480,000 annually, applying a 7 percent discount rate, we do not anticipate that this final rule will have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the time line for publication in the **Federal Register**, the Office of Management and Budget (OMB) did not formally review the proposed rule.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (e.g., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the Laguna Mountains skipper would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (e.g., hiking, residential development). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this proposed critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

Our draft economic analysis determined that costs involving conservation measures for the Laguna Mountains skipper would be incurred for activities involving (1) Grazing activities, (2) recreational camping activities, (3) recreational hiking activities, (4) utility activities, (5) rural development, (6) other activities on Federal lands, and (7) Laguna Mountains skipper management activities on State lands. Of these seven categories, impacts of skipper conservation are not anticipated to affect small entities in five of these categories: hiking, utilities, rural development, other activities on Federal lands, and management activities on State lands. Residential development is unlikely to be impacted by skipper conservation activities (see Chapter 6 of draft economic analysis). Since neither Federal nor State governments are defined as small entities by the Small Business Administration (SBA), the economic impacts borne by the United States Forest Service (USFS) and the California Department of Fish and Game (CDFG) resulting from implementation of skipper conservation activities or modifications to activities on Federal lands are not relevant to this analysis (for further discussion see Chapters 5, 6, 7, and 8 of draft economic analysis). Likewise, neither of the major utility companies involved (SDG&E and AT&T)

would fit the SBA definition of small entities. Accordingly, the small business analysis focuses on economic impacts to grazing and recreational camping activities.

The proposed designation includes areas of USFS and private lands that are used for livestock grazing. On some Federal allotments that contain Laguna Mountains skipper habitat, meadow areas have been excluded from grazing, thus reducing the carrying capacity, or permitted Animal Unit Months (AUMs), on those allotments. Historically, returns to cattle operations have been low throughout the West. In recent years, these returns have been lower due to the recent wildfires and droughts in California. As a result, any reductions in grazing effort for the Laguna Mountains skipper may affect the sustainability of ranching operations in these areas. The analysis assumes that in the future, grazing efforts on proposed critical habitat areas will be reduced, or in the high-end estimate, eliminated on private land due to skipper concerns. Private ranchers could be affected either by reductions in federally-permitted AUMs that they hold permits to, or by reductions on grazing efforts on private property to avoid adverse impacts on Laguna Mountains skipper habitat. The expected reduction in AUMs is based on an examination of historic grazing levels, section 7 consultations, and discussions with range managers, wildlife biologists, and permittees. Based on this analysis, the high-end impact on grazing activities is estimated at an annual reduction of 1,980 AUMs, of which 1,363 are Federally permitted and 617 are private. The majority of these AUM reductions fall on two ranchers: one operating in Subunit 1A and another operating in Subunit 2A. Therefore, cumulatively over 20 years, two ranchers could be affected by total reductions in AUMs due to Laguna Mountains skipper conservation activities. These impacts doe not represent a substantial number of small entities and the potential impact is not considered significant.

This analysis considers lower and upper bounds of potential economic impact on recreational camping activities. The lower bound equals no economic impact. In the upper bound, economic impacts are estimated for recreational campers whose activities may be interrupted by Laguna Mountains skipper conservation activities resulting in a decrease in the number of camping trips. This scenario concludes that camping trips may decrease by as many as 5,352 trips per year. If fewer camping trips were to occur within proposed critical habitat areas, local establishments providing services to campers may be indirectly affected by Laguna Mountains skipper conservation activities. Decreased visitation may reduce the amount of money spent in the region across a variety of industries, including food and beverage stores, food service and drinking places, accommodations, transportation and rental services.

The draft economic analysis uses regional economic modeling—in particular a software package called IMPLAN—to estimate the total economic effects of the reduction in economic activity in camping-related industries in the one county (San Diego County) associated with Laguna Mountains skipper conservation activities. Commonly used by State and Federal agencies for policy planning and evaluation purposes, IMPLAN translates estimates of initial trip expenditures (e.g., food, lodging, and gas) into changes in demand for inputs to affected industries. Changes in output and employment are calculated for all industries and then aggregated to determine the regional economic impact of reduced recreational camping-related expenditures potentially associated with Laguna Mountains skipper conservation activities.

This analysis uses the average expenditures reported by the 2001 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation for California for fishing, hunting and wildlife-associated recreation, or approximately $26.23 per trip. This per-trip estimate of expenditures is then combined with the number of camping trips potentially lost due to Laguna Mountains skipper conservation activities (a 1-year loss of 5,352 trips per year) to estimate the regional economic impacts. When compared to the $192 billion dollar regional economy of San Diego County, the potential loss generated by a decrease in camping trips is a relatively small impact (i.e., less than 0.01 percent). Therefore based on these results, this analysis determines no significant effect on camping-related industries due to Laguna Mountains skipper conservation activities in San Diego County.

We may also exclude areas from the final designation if it is determined that designation of critical habitat in localized areas would have an impact to a substantial number of businesses and a significant proportion of their annual revenues. Based on the above data, we have determined that this proposed designation would not result in a significant economic impact on a substantial number of small entities. As such, we are certifying that this proposed designation of critical habitat would not result in a significant economic impact on a substantial number of small entities. Please refer to Appendix A of our draft economic analysis of the proposed designation for a more detailed discussion of potential economic impacts to small business entities.

Executive Order 13211

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 because it raises novel legal and policy issues. On the basis of our draft economic analysis, the proposed critical habitat designation is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action, and no Statement of Energy Effects is required. Please refer to Appendix A of our draft economic analysis of the proposed designation for a more detailed discussion of potential effects on energy supply.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, Tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal

governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.".

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) The draft economic analysis did not identify or examine small governments that fall within proposed critical habitat areas because there were no estimates of impacts to small governments. Consequently, we do not believe that this rule will significantly or uniquely affect small governments. As such, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing critical habitat for the Laguna Mountains skipper. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for the Laguna Mountains skipper does not pose significant takings implications.

Author

The primary authors of this notice are the staff of the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 27, 2006.

Matt Hogan,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E6–10577 Filed 7–6–06; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 71, No. 130
Friday, July 7, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 30, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Vegetable Surveys.

OMB Control Number: 0535–0037.

Summary of Collection: The primary function of the National Agricultural Statistics (NASS) is to prepare and issue current official state and national estimates of crop and livestock production. Vegetable estimates are an integral part of this function. The vegetable program is complex in that some crops are processing only, some are fresh market only, and others are dual crops (both processing and fresh market). Vegetable processors are surveyed the first week of April for their intended acreage of vegetables for processing and the first week of July for acreage contracted. The fresh market vegetable program consists of weekly estimates during the growing season for tomatoes in Florida. NASS will collect information using surveys.

Need and Use of the Information: NASS will collect information to estimate acreage planted and harvested, production, price, and utilization for the varies crops. The estimates provide vital statistics for growers, processors, and marketers to use in making production and marketing decisions.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 26,720.

Frequency of Responses: Reporting: Annually; Other (seasonally).

Total Burden Hours: 3,872.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–10580 Filed 7–6–06; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 30, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: Suggestions for Changes to NAL Agricultural Thesaurus Form.

OMB Control Number: 0518–0035.

Summary of Collection: The National Agricultural Thesaurus is a publication of the National Agricultural Library (NAL). The collection of suggestions for changes to the NAL Agricultural Thesaurus will provide Web site users with the opportunity to suggest the addition of new terminology of interest to them. The thesaurus staff will review each suggestion via a Proposal Review Board and provide feedback to the user.

Need and Use of the Information: Information to be submitted includes, user contact information (name, affiliation, e-mail, phone), the proposed changes to the thesaurus, the field of study or subject area of the term being proposed, justification for the change, and any reference material which the

user would like to provide as background information. The information collected will help NAL thesaurus staff to make improvements to the content and organization of the thesaurus. Failure of the NAL thesaurus staff to collect this information would significantly inhibit public relations with their users.

Description of Respondents: Federal Government; Not-for-profit institutions; Business or other for-profit; State, local or tribal government.

Number of Respondents: 100.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 17.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–10581 Filed 7–6–06; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0083]

National Wildlife Services Advisory Committee; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the National Wildlife Services Advisory Committee.

DATES: The meeting will be held August 1, 2, and 3, 2006, from 8 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the USDA Center at Riverside, 4700 River Road, Riverdale, MD.

FOR FURTHER INFORMATION CONTACT: Mrs. Joanne Garrett, Director, Operational Support Staff, WS, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737–1234; (301) 734–7921.

SUPPLEMENTARY INFORMATION: The National Wildlife Services Advisory Committee (the Committee) advises the Secretary of Agriculture concerning policies, program issues, and research needed to conduct the Wildlife Services (WS) program. The Committee also serves as a public forum enabling those affected by the WS program to have a voice in the program's policies.

The meeting will focus on operational and research activities and will be open to the public. Among the topics to be discussed will be the following:

Wildlife Service's efforts to increase operational capacity through prioritizing research objectives;

Pertinent national programs, including the avian and disease programs and how to increase their effectiveness; and

Ensuring that Wildlife Services remains an active participant in agricultural protection.

Due to time constraints, the public will not be able to participate in the Committee's discussions. However, written statements concerning meeting topics may be filed with the Committee before or after the meeting by sending them to Mrs. Joanne Garrett at the address listed under **FOR FURTHER INFORMATION CONTACT**, or may be filed at the meeting. Please refer to Docket No. APHIS–2006–0083 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act (5 U.S.C. App. 2).

Parking and Security Procedures

Please note that a fee of $2.25 is required to enter the parking lot at the USDA Center. The machine accepts $1 bills and quarters.

Upon entering the building, visitors should inform security personnel that they are attending the National Wildlife Services Advisory Committee meeting. Identification is required. Visitor badges must be worn at all times while inside the building.

Done in Washington, DC, this 30th day of June 2006.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–10642 Filed 7–6–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) to request an extension and revision of currently approved information collections in support of the Regulations—Financing Commercial Sales of Agricultural Commodities under Title I of Public Law 83–480; Request for Vessel Approval, Form CCC–105 and Request for Vessel Approval, Form CCC–105 (cotton); and Declaration of Sale, Form FAS–359.

DATES: Comments on this notice must be received by September 5, 2006.

Additional Information or Comments: Contact William Hawkins, Director, Program Administration Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1031, Washington, DC 20250–1031, telephone (202) 720–3241.

SUPPLEMENTARY INFORMATION:

Title: Regulations—Financing Commercial Sales of Agricultural Commodities under Title I, Public law 480; Request for Vessel Approval, Form CCC–105 and Request for Vessel Approval, Form CCC–105 (cotton); and Declaration of Sale, Form FAS–359.

OMB Number: 0551–0005 (Records and Rule Keeping), 0551–0008 (request for Vessel Approval Form), and 0551–0009 (Declaration of Sale Form) were combined into OMB Number 0551–0005 in 2003.

Expiration Date of Approval: November 30, 2006.

Type of Request: Extension and revision of currently approved information collections.

Abstract: Title I of The Agricultural Trade Development and Assistance Act of 1954, as amended, (Pub. L. 83–480) authorizes the CCC to finance the sale and exportation of agricultural commodities on concessional credit terms. Suppliers of commodities and ocean transportation must retain records for 3 years. Prospective commodity suppliers must provide information for the Department to determine eligibility. Commodity suppliers must report details of sales for price approval and submit to USDA, for approval, information on any amendments to the sales. Form FAS–359, "Declaration of Sale," is the written record, signed by the commodity supplier, of the terms of sale as reported by telephone. When signed by the General Sales Manager, it provides evidence of the USDA price approval required for CCC financing. Shipping agents nominated by importing countries must submit information to allow identification of possible conflicts of interest. Shipping agents or embassies submit pertinent shipping information on Form CCC–105 to facilities approval by CCC of shipping arrangements. This approval is necessary to assure compliance with cargo preference requirements at the lowest cost to CCC. Agents submit this document in order that USDA can generate the CCC–106, a necessary payment document. Ocean carriers then receive payment for ocean freight.

The information collected is used by CCC to manage, plan, evaluate the use of, and account for government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: The public reporting burden for these collections is estimated to average 8 hours per Recordkeeping, 30 minutes per Vessel Approval and 15 minutes per Declaration of Sale response.

Respondents: Suppliers of commodities and ocean transportation; prospective commodity suppliers; shipping agents; and businesses or other for-profit entities.

Estimated Number of Respondents: 25 per annum.

Estimated Total Annual Burden on Respondents: 88.75 hours.

Copies of this information collection can be obtained from Tamoria Thompson-Hall, the Agency Information Collection Coordinator, at (202) 690–1690.

Requests for Comments: Send comments regarding (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; (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 automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to William Hawkins, Director, Program Administration Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1031, Washington, DC 20250–1031, or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD). 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.

Signed at Washington, DC on June 19, 2006.

Michael W. Yost,

Administrator, Foreign Agricultural Service.

[FR Doc. 06–6028 Filed 7–6–06; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Proposed collection: comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of USDA Farm Service Agency's (FSA) and Rural Development, henceforth collectively known as Rural Development, or individually as Housing and Community Programs, Business and Cooperative Programs, Utility Programs, to request an extension for a currently approved information collection in support of compliance with applicable acts for planning and performing construction and other development work.

DATES: Comments on this notice must be received by September 5, 2006 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Larry B. Fleming, Architect, Program Support Staff, RHS, U.S. Department of Agriculture, Stop 0761, 1400 Independence Avenue, SW., Washington, DC 20250–0761, Telephone (202) 720–8547 or (202) 720–9619 or via e-mail at *larry.fleming@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: RD 1924–A, "Planning and Performing Construction and Other Development".

OMB Number: 0575–0042.

Expiration Date of Approval: November 30, 2006.

Type of Request: Extension of a currently approved information collection.

Abstract: The information collection under OMB Number 0575–0042 enables the Agencies to effectively administer the policies, methods, and responsibilities in the planning and performing of construction and other development work for the related construction programs.

Section 501 of Title V of the Housing Act of 1949, as amended, authorizes the Secretary of Agriculture to extend financial assistance to construct, improve, alter, repair, replace, or rehabilitate dwellings; farm buildings; and/or related facilities to provide decent, safe, and sanitary living conditions and adequate farm buildings and other structures in rural areas.

Section 506 of the Act requires that all new buildings and repairs shall be constructed in accordance with plans and specifications as required by the Secretary and that such construction be supervised and inspected.

Section 509 of the Act grants the Secretary the power to determine and prescribe the standards of adequate farm housing and other buildings. The Housing and Urban Rural Recovery Act of 1983 amended section 509(a) and section 515 to require residential buildings and related facilities comply with the standards prescribed by the Secretary of Agriculture, the standard prescribed by the Secretary of Housing and Urban Development, or the standards prescribed in any of the nationally recognized model building codes.

Similar authorizations are contained in sections 303, 304, 306, and 339 of the Consolidated Farm and Rural Development Act, as amended, which authorized loans and grants for essential community services.

In several sections of both acts, loan limitations are established as percentages of development costs, requiring careful monitoring of those costs. Also, the Secretary is authorized to prescribe regulations to ensure that Federal funds are not wasted or dissipated and that construction will be undertaken in an economic manner and will not be of elaborate or extravagant design or materials.

The Rural Utilities Service (RUS) is the credit Agency for rural water and wastewater development within Rural Development of the United States Department of Agriculture (USDA). The Rural-Business-Cooperative Service (RBS) is the credit Agency for rural business development within Rural Development of USDA. These Agencies adopted use of forms in RD Instruction 1924–A. Information for their usage is included in this report.

Other information collection is required to conform to numerous Public Laws applying to all Federal agencies, such as: Civil Rights Acts of 1964 and

1968, Davis-Bacon Act, Historic Preservation Act, Environmental Policy Act, and to conform to Executive Orders governing use of Federal funds. This information is cleared through the appropriate enforcing Agency or other executive Department.

The Agencies provide forms and/or guidelines to assist in the collection and submission of information; however, most of the information may be collected and submitted in the form and content which is accepted and typically used in normal conduct of planning and performing development work in private industry when a private lender is financing the activity. The information is usually submitted via hand delivery or U.S. Postal Service to the appropriate Agency office. Electronic submittal of information is also possible through e-mail or USDA's Service Center eForms Web site.

The information is used by the Agencies to determine whether a loan/grant can be approved, to ensure that the Agency has adequate security for the loans financed, to provide for sound construction and development work, and to determine that the requirements of the applicable acts have been met. The information is also used to monitor compliance with the terms and conditions of the Agencies' loan/grant programs and to monitor the prudent use of Federal funds.

If the information were not collected and submitted, the Agencies would not have control over the type and quality of construction and development work planned and performed with Federal funds. The Agencies would not be assured that the security provided for loans is adequate, nor would the Agencies be certain that decent, safe, and sanitary dwelling or other adequate structures were being provided to rural residents as required by the different acts.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .33 hours per response.

Respondents: Individuals or households, farms, business or other for-profit, non-profit institutions, and small businesses or organizations.

Estimated Number of Respondents: 25,340.

Estimated Number of Responses per Respondent: 15.

Estimated Number of Responses: 368,980.

Estimated Total Annual Burden on Respondents: 118,438 hours.

Copies of this information collection can be obtained from Brigitte Sumter, Regulations and Paperwork Management Branch, at (202) 692–0042.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the Agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information, including the validity of 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 Brigitte Sumter, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Stop 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742. 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: June 30, 2006.

Russell T. Davis,

Administrator, Rural Housing Service.

Dated: June 30, 2006.

David Rouzer,

Acting Administrator, Rural Business-Cooperative Service.

Dated: June 30, 2006.

Curtis Anderson,

Acting Administrator, Rural Utilities Service.

Dated: June 30, 2006.

John Williams,

Acting Administrator, Farm Service Agency.

[FR Doc. 06–6031 Filed 7–6–06; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–930–6310–PN–LITU; HAG 06–0114]

Notice of Availability of the Draft Supplement to the 2004 Final Environmental Impact Statement To Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines, Oregon, Washington, and California

AGENCIES: USDA, Forest Service; DOI, Bureau of Land Management.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*), the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*), and the National Forest Management Act of 1976 (NFMA, 16 U.S.C. 1600–1614 *et seq.*), the USDA Forest Service and Bureau of Land Management (collectively the Agencies) have prepared a *Draft Supplement to the 2004 Final Environmental Impact Statement To Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines* (Draft Supplement). The *Final Environmental Impact Statement To Remove or Modify the Survey and Manage Mitigation Measure Standards and Guidelines* (2004 FSEIS), dated January 2004, examined the environmental effects of a proposal by the Agencies to amend 28 land and resource management plans on National Forests and Bureau of Land Management Districts within the range of the northern spotted owl in western Oregon, western Washington, and northern California.

The Draft Supplement is available for public review.

DATES: Written comments on the Draft Supplement will be accepted for 90 days following the date the Environmental Protection Agency publishes the Notice of Availability of the Draft Supplement in the **Federal Register**. The Agencies ask that those submitting comments on the Draft Supplement make these comments as specific as possible with reference to page numbers and chapters of the document.

ADDRESSES: If you wish to comment, you may submit your written comments to Survey and Manage SEIS Team, P.O. Box 2965, Portland, Oregon 97208, or via e-mail to *ORSMSEIS@blm.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Haske, Chief, Branch of Forest Resources and Special Status Species, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208, telephone (503) 808–6038 or Alan Christensen, Group Leader, Wildlife, Fisheries, Watershed, Soils and Range, USDA Forest Service, P.O. Box 3623, Portland, Oregon 97208, telephone (503) 808–2922.

Requests to receive copies of the Draft Supplement should be sent to the address listed above. Alternately, the Draft Supplement is available on the Internet at *http://www.reo.gov/s-m2006*. Copies are also available for inspection at USDA Forest Service and Bureau of Land Management offices in western

Washington, western Oregon and northern California.

SUPPLEMENTARY INFORMATION: In January 2004, the Agencies approved the 2004 FSEIS analyzing a proposal to amend 28 land and resource management plans by removing the Survey and Manage Standards and Guidelines, to conserve rare and little known species, and reduce cost and effort and allow for achievement of healthy forests and timber outputs. The Agencies released a Record of Decision adopting the proposal in March, 2004. In August, 2005 the U.S. District Court of the Western District of Washington found the 2004 FSEIS failed to: (1) "* * * analyze potential impacts to Survey and Manage species if they are not added to or are removed from the USDA Forest Service's and BLM's respective programs for special status species;" (2) "* * * provide a thorough analysis of their assumption that the late-successional reserves would adequately protect species that the Survey and Manage standard was introduced to protect, particularly in light of their previous positions in earlier environmental impact statements;" and (3) "* * * disclose and analyze flaws in their methodology for calculating the acreage in need of hazardous fuel treatments. Part of the cost analysis was similarly flawed because it relied on the acreage in need of hazardous fuel treatments in calculating the cost of the Survey and Manage standard." The Draft Supplement provides the additional information and analysis to address the deficiencies noted by the court, and provides and analyzes new information available since publication of the 2004 FSEIS.

Following public comments, the Agencies will prepare a Final Supplement. No sooner than 30 days following release of the Final Supplement, the Agencies will prepare a new Record of Decision. A decision to select one of the action alternatives would amend the management direction in 28 land and resource management plans in the Northwest Forest Plan area. Comments received in response to this solicitation, including names and addresses, will be considered part of the public record on this proposal and will be available for public review during regular business hours. Comments, including names and addresses, may be published as part of the Final Supplement. If you wish to withhold your name or address from public review, or from disclosure under the Freedom of Information Act (FOIA), you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by law. Additionally, pursuant to 7 CFR 1.27(d), any person may request that submissions be withheld from the public record by showing how the FOIA permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only limited circumstances, such as to protect trade secrets. The requester will be informed of the Agencies' decision regarding the request for confidentiality. Where the request is denied, the comments will be returned to the requester and the requester will be notified that the comments may be resubmitted with or without name and address. Comments submitted anonymously will be accepted and considered, however, anonymous comments do not create standing or a record of participation. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

The Agencies believe it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. Reviewers should structure their participation so that it is meaningful to alert the Agencies of their positions and contentions [*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)]. Also, environmental objections that could be raised at the Draft Supplement stage, but are not raised until after completion of the Final Supplement, may be waived or dismissed by the courts [*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)]. Because of these court rulings, it is important that those interested in this proposed action provide comments by the close of the 90-day comment period, so that the Agencies can meaningfully consider and respond to them in the Final Supplement.

The responsible official for lands administered by the USDA Forest Service will be the Secretary of Agriculture. The responsible official for public lands administered by the Bureau of Land Management will be the Secretary of the Interior.

No public hearings or meetings are planned.

Dated: June 30, 2006.

Cynthia Ellis,

Regulatory Affairs, Bureau of Land Management, Washington, DC.

Dated: June 30, 2006.

Andria Weeks,

Regulatory Liaison Officer, United States Forest Service, Washington, DC.

[FR Doc. E6–10541 Filed 7–6–06; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF AGRICULTURE

Forest Service

Fishlake National Forest, Utah, EIS for Oil and Gas Leasing

AGENCY: Forest Service, USDA and Bureau of Land Management, USDI.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service of the Fishlake National Forest gives notice of the intent to prepare an environmental impact statement (EIS) to document the analysis and disclose the environmental and human effects of oil and gas leasing on lands administered by the Fishlake National Forest. The Federal Onshore Oil and Gas Leasing Reform Act of 1987 (FOOGLRA) requires the Forest Service to evaluate National Forest System lands for potential oil and gas leasing.

As the agency responsible for lease issuance and administration, the Bureau of Land Management (BLM) will participate as a cooperating agency.

DATES: Comments concerning the scope of the analysis should be received by August 10, 2006 to be most helpful. The draft environmental impact statement is scheduled for completion by the winter of 2006, and the final environmental impact statement is expected before summer of 2007.

ADDRESSES: Send written comments to: Carter Reed, Oil and Gas Team Leader, Fishlake National Forest, 115 East 900 North, Richfield, UT 84701; phone: (435) 636–3547; fax: (435) 896–0347; e-mail *comments-intermtn-fishlake@fs.fed.us*. Please include "Oil and Gas Leasing Analysis Project" on the subject line.

FOR FURTHER INFORMATION CONTACT: Davida Carnahan, Public Affairs Officer, 115 East 900 North, Richfield, UT 84701; phone: (435) 896–1070.

For technical information contact: Carter Reed, Oil and Gas Team Leader, (435) 636–3547.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

FOOGLRA requires the Forest Service to evaluate National Forest System

(NFS) lands for potential oil and gas leasing and establishes Forest Service consent authority for leasing prior to the BLM offering NFS lands for lease. Since the FOOGLRA was signed into law, there has been little industry interest in leasing the lands administered by the Fishlake National Forest, and no leasing has been authorized by the Fishlake National Forest; however, interest has recently escalated due to the increased demand for oil and gas, high prices, and discoveries of oil and gas reserves in other areas with similar geologic conditions. The BLM Utah State Office has received numerous Expressions of Interest for leasing portions of the Fishlake National Forest.

Proposed Action

The Forest Supervisor of the Fishlake National Forest and Utah State Director, Bureau of Land Management propose to conduct the analysis and decide which lands to make available for oil and gas leasing. The analysis area includes lands administered by the Fishlake National Forest. As part of the analysis, the Forest Service will identify those areas that would be available for leasing subject to the terms and conditions of the standard oil and gas lease form, or subject to constraints that would require the use of lease stipulations such as those prohibiting surface occupancy. The analysis will also: (1) Identify alternatives to the proposed action, including that of not allowing leasing (no action), (2) project the type/amount of post-leasing activity that is reasonably foreseeable, and (3) analyze the reasonably foreseeable impacts of projected post-leasing activity [36 CFR 228.102(c)].

Possible Alternatives

All alternatives studied in detail must fall within the scope of the purpose and need for action and will generally tier to and comply with the Fishlake forest plan. Law requires evaluation of a "no-action alternative". Under the No Action/No Lease alternative, no oil and gas leasing would occur. Alternatives to be evaluated would range from the No Action/No Lease alternative (most restrictive) to the Standard Lease Terms alternative (least restrictive) where all lands legally open to leasing would be made administratively available for leasing with only the standard BLM terms and conditions contained on BLM Lease Form 3100–11. Other alternatives which fall somewhere between the No Action/No Leasing alternative and Lease with Standard Terms alternative would also be developed and evaluated, which would involve making some lands unavailable for leasing and other lands available for leasing with lease stipulations for the protection of other resources and interests.

The Forest is expecting that the public input will generate either thematic concerns or area-specific issues that may be addressed by modifying the proposed action to create a new alternative or alternatives.

Lead and Cooperating Agencies

The Forest Service is the lead agency. The Bureau of Land Management will participate as a cooperating agency.

Responsible Officials

Mary Erickson, Forest Supervisor, Fishlake National Forest, 115 East 900 North, Richfield, UT 84701, Acting Utah State Director, Bureau of Land Management.

Nature of Decision To Be Made

The Forest Supervisor, Fishlake National Forest, will decide which lands administered by the Fishlake National Forest will be administratively available for oil and gas leasing, along with associated conditions or constraints for the protection of non-mineral interests [36 CFR 228.102(d)]. The Forest Supervisor will also authorize the BLM to offer specific lands for lease, subject to the Forest Service ensuring that the required stipulations are attached to the leases [36 CFR 228.102(e)].

The BLM is responsible for issuing and administration of oil and gas leases under the Mineral Leasing Act of 1920, as amended, and Federal Regulations in 43 CFR 3101.7. The BLM Utah State Director must decide whether or not to offer for lease specific lands authorized for leasing by the Fishlake National Forest and with what stipulations.

Scoping Process

The first formal opportunity to comment on the Fishlake National Forest Oil and Gas Leasing Analysis Project is during the scoping process (40 CFR 1501.7), which begins with the issuance of this Notice of Intent.

Mail comments to: Carter Reed, Oil and Gas Team Leader, Fishlake National Forest, 115 East 900 North, Richfield, UT 84701.

The Forest Service requests comments on the nature and scope of the environmental, social, and economic issues, and possible alternatives related to oil and gas leasing on lands administered by the Fishlake National Forest.

A series of public opportunities are scheduled to describe the proposal and to provide an opportunity for public input. Six scoping meetings are planned.

July 17: 7 p.m. to 9 p.m., Beaver Ranger District, 575 South Main, *Beaver, Utah.*

July 18: 7 p.m. to 9 p.m., Piute Event Center, 180 W. 500 N., *Junction, Utah.*

July 19: 7 p.m. to 9 p.m., Loa Civic Center, 95 W. Center, *Loa, Utah.*

July 20: 7 p.m. to 9 p.m., Millard High School, 35 N. 200 W., *Fillmore, Utah.*

August 1: 7 p.m. to 9 p.m., Snow College, Room 147C, *Richfield, Utah.*

August 2: 7 p.m. to 9 p.m., American Legion Hall, 50 S. State St., *Salina, Utah.*

Written comments will be accepted at these meetings. The Forest Service will work with tribal governments to address issues that would significantly or uniquely affect them.

Preliminary Issues

Important goals for the project are to meet the legal requirements for evaluating National Forest System lands and make the required decisions. The intent of the applicable laws and regulations (see Summary) are to lease appropriate National Forest System lands and provide a reasonable opportunity to explore for, discover, and produce economic oil and gas reserves from available Federal lands, while meeting the requirements of environmental laws and protecting other resources and interests not compatible with such activities. Issues are anticipated to involve potential effects to wildlife, water, vegetation, recreation, public safety, roadless character, visual resources, cultural and paleontological resources, and social and economic settings. Specific issues will be developed through review of public comments and internal review.

Comment Requested

This Notice of Intent initiates the scoping process which guides the development of the environmental impact statement. The Forest has also received substantial input at public meetings held for the Forest Plan revision, including issues relative to mineral exploration and development. Through these efforts the Forest has an understanding of the broad range of perspectives on the resource issues and social values attributed to resource activities on the Fishlake National Forest. Consequently *site-specific* comments or concerns are the most important types of information needed for this EIS. Because the Oil and Gas Leasing EIS is a stand-alone document, only public comment letters which address relevant issues and concerns

will be considered and formally addressed in an appendix in the FEIS.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement is expected to be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.** The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel.* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by providing comments during scoping comment period and during the comment period following the draft EIS so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing their points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.)

Dated: June 27, 2006.

Mary C. Erickson,

Fishlake Forest Supervisor.

[FR Doc. 06–5950 Filed 7–6–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Honey Survey.

DATES: Comments on this notice must be received by September 5, 2006 to be assured of consideration.

ADDRESSES: Comments may be mailed to Ginny McBride, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024 or sent electronically to *gmcbride@nass.usda.gov* or faxed to (202) 720–6396.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Honey Survey.

OMB Control Number: 0535–0153.

Expiration Date of Approval: November 30, 2006.

Type of Request: Intent to revise and extend a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production, prices, and disposition. The Honey Survey collects information on the number of colonies, honey production, stocks, and prices. The survey provides data needed by the U.S. Department of Agriculture and other government agencies to administer programs and to set trade quotas and tariffs. State universities and agriculture departments also use data from this survey. The Honey Survey has approval from OMB for a three year period; NASS intends to request that the survey be approved for another three years.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 6,600.

Estimated Total Annual Burden on Respondents: 1,100 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS Clearance Officer, at (202) 720–5778. Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information 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.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, May 30, 2006.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. E6–10603 Filed 7–6–06; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Risk Management Agency

Notice of Request for Revision of a Currently Approved Collection

AGENCY: Risk Management Agency, USDA.

ACTION: Revision of a currently approved collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces a public comment period on the information collection requests (ICRs) associated with the Standard Reinsurance Agreement and Appendices II and IV administered by Federal Crop Insurance Corporation (FCIC). Appendix I and III are excluded because Appendix I is the program Integrity Statement which does not contain any document submission requirements, and Appendix III contains the Data Acceptance System requirements.

DATES: Written comments on this notice will be accepted until close of business, September 5, 2006.

ADDRESSES: Interested persons are invited to submit written comments to Dave Miller, Reinsurance Services Division, Federal Crop Insurance Corporation, United States Department of Agriculture (USDA), 1400 Independence Avenue, SW., Stop 0804, Washington, DC 20250. Written comments may also be submitted electronically to: *dave.miller@rma.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dave Miller, Senior Reinsurance Analyst, Risk Management Agency, at the address listed above, telephone (202) 720–9830.

SUPPLEMENTARY INFORMATION:

Title: Standard Reinsurance Agreement; Appendices II and IV.

OMB Number: 0563–0069.

Type of Request: Revised and new Information Collection.

Abstract: The Federal Crop Insurance Act (Act), Title 7 U.S.C. Chapter 36, Section 1508(k), authorizes the FCIC to provide reinsurance to insurers approved by FCIC that insure producers of any agricultural commodity under one or more plans acceptable to FCIC. The Act also states that the reinsurance shall be provided on such terms and conditions as the Board may determine to be consistent with subsections (b) and (c) of this section and sound reinsurance principles.

FCIC executes the same form of reinsurance agreement, called the Standard Reinsurance Agreement (SRA), with sixteen participating insurers approved for the 2006 reinsurance year. Appendix II of the SRA, the Plan of Operations (Plan), sets forth the information the insurer is required to file with RMA for the initial and each subsequent reinsurance year. The Plan's information enables RMA to evaluate the insurer's financial and operational capability to deliver the crop insurance program in accordance with the Act. Estimated premiums by fund by state, and retained percentages along with current policyholders surplus are used in calculations to determine whether to approve the insurer's requested maximum reinsurable premium volume for the reinsurance year per 7 CFR part 400 subpart L. This information has a direct effect upon the insurer's amount of retained premium and associated liability and is required to calculate the insurer's underwriting gain or loss.

Appendix IV is incorporated into the SRA and establishes the minimum annual agent and loss adjuster training requirements, and quality control review procedures and performance standards required of all insurers who deliver any policy reinsured under the Act. In order to evaluate their compliance with the terms of the SRA, FCIC requires each insurer to submit, for each reinsurance year, an Annual Summary Report to FCIC containing details of the results of their completed reviews.

Since the currently approved information collection package does not account for new information collections implemented in the 2005 reinsurance year, we are asking the Office of Management and Budget (OMB) to approve this revised information collection activity for 3 years.

The purpose of this notice is to solicit comments from the public concerning this information collection activity as associated with the SRA in effect for the 2005 and subsequent reinsurance years. These comments will help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

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

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

The SRA includes Conflict of Interest data collection, which in addition to the insurance companies reinsured by FCIC encompasses the insurance companies' employees and their contracted agents and loss adjusters. The estimate below shows the burden that will be placed upon the following affected entities.

Estimate of Burden: The public reporting burden for the collection Appendix II information is estimated to average 279 hours per response.

Respondents/Affected Entities: Insurance companies reinsured by FCIC.

Estimated annual number of respondents: 16.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 16.

Estimated total annual burden on respondents (hours): 4,464.

Estimate of Burden: The public reporting burden for the collection of Conflict of Interest information is estimated to average 1 hour per response.

Respondents/Affected Entities: Approved Insurance Provider's employees and their contracted agents and loss adjusters.

Estimated annual number of respondents: 20,800.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 20,800.

Estimated total annual burden on respondents (hours): 20,800.

Estimate of Burden: The public reporting burden for the agent and loss adjuster training requirements is estimated to average 6 hours per response.

Respondents/Affected Entities: Agent and Loss adjusters participating in the crop insurance program (training).

Estimated annual number of respondents: 18,500.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 18,500.

Estimated total annual burden on respondents (hours): 111,000.

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.

Total burden for this paperwork package will be 136,264.

Signed in Washington, DC, on June 30, 2006.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E6–10607 Filed 7–6–06; 8:45 am]

BILLING CODE 3410–08–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 (USDA Rural Development Utilities Programs) invites comments on this information collection for which USDA Rural Development Utilities Programs intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by September 5, 2006.

FOR FURTHER INFORMATION CONTACT: Richard C. Annan, Director, Program Development and Regulatory Analysis, USDA Rural Development Utilities Programs, 1400 Independence Ave., SW., STOP 1522, Room 5818 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0784. FAX: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 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 RUS is submitting to OMB for extension.

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: Richard C. Annan, Director, Program Development and Regulatory Analysis, USDA Rural Development Programs, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–8435.

Title: Preloan Procedures and Requirements for Telecommunications Program.

OMB Control Number: 0572–0079.

Type of Request: Extension of a currently approved information collection.

Abstract: This program is necessary in order for the USDA Rural Development Utilities Programs (Agency) to determine an applicant's eligibility to borrow from the Agency under the terms of the RE Act. This information is also used by the Agency to determine that the Government's security for loans made by the Agency is reasonable adequate and that the loans will be repaid within the time agreed.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 9.17 hours per response.

Respondents: Business or other for-profit; not-for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 8.12.

Estimated Total Annual Burden on Respondents: 3,721.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853, FAX: (202) 720–8435.

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: June 27, 2006.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E6–10604 Filed 7–6–06; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

DATES: *Effective Date:* August 6, 2006.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On May 5, 2006, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (71 FR 26451) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product is added to the Procurement List:

Products

Product/NSNs: Bandoleer Ammunition Pouch;
8465–01–524–7309–6 Mag Assembly, Universal Camouflage;
8465–01–465–2144–6 Mag Assembly, Woodland Camouflage;
8465–01–491–7517–6 Mag Assembly, Desert Camouflage.

NPA: Mississippi Industries for the Blind, Jackson, MS.

NPA: The Arkansas Lighthouse for the Blind, Little Rock, AR.

Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA.

Deletions

On May 12, 2006, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (71 FR 27676) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

Product/NSN: Binder, Loose-leaf; 7510–00–285–1765.
NPA: ForSight Vision, York, PA.
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.
Product/NSN: Holder, Toilet Paper; 4510–00–364–3035.
NPA: Jewish Vocational Services, Inc., Dunwoody, GA.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E6–10657 Filed 7–6–06; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: August 6, 2006.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS, CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. If approved, the action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for addition to Procurement List for production by the nonprofit agency listed:

Services

Service Type/Location: Base Information Transfer Center & Postal Service, Air Force Education & Training Command, 469 C Street, Building 530, Columbus Air Force Base, MS.
NPA: Ability Works, Inc. of Monroe County, MS.
Contracting Activity: 14th Contracting Squadron, Columbus AFB, MS.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E6–10658 Filed 7–6–06; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China; Initiation of New Shipper Reviews

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

EFFECTIVE DATE: July 7, 2006.

SUMMARY: The Department of Commerce ("the Department") has determined that requests for new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China ("PRC"), received in May 2005, meet the statutory and regulatory requirements for initiation. The period of review ("POR") of these new shipper reviews is November 1, 2005, through April 30, 2006.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos or Irene Gorelik, 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) 482–2243 and (202) 482–6905, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on fresh garlic from the PRC on November 16, 1994. *See Antidumping Duty Order: Fresh Garlic from the People's Republic of China*, 59 FR 59209 (November 16, 1994). The Department received four timely requests for a new shipper review in accordance with 19 CFR 351.214(c), dated as follows:

Date	Requester
May 18, 2006	Shenzhen Xinboda Industrial Co., Ltd. ("Xinboda")
May 25, 2006	Shandong Wonderland Organic Food Co., Ltd. ("Shandong Wonderland")

Date	Requester
May 30, 2006	Jinxiang Tianma Freezing Storage Co., Ltd. ("Tianma Freezing")
May 31, 2006	Weifang Hongqiao International Logistic Co., Ltd. ("Weifang Hongqiao")

On June 16, 2006, Weifan Hongqiao submitted a revised public version of its request. Xinboda, Shandong Wonderland, and Tianma Freezing each identified itself as the producer and exporter of the fresh garlic on which it based its request for a new shipper review. Weifang Hongqiao identified itself as the exporter and Jinxiang Dingtai Garlic Production Co., Ltd. ("Jinxiang Dingtai") as the producer of the fresh garlic on which it based its request for a new shipper review.

As required by 19 CFR 351.214(b)(2) and (b)(2)(iii)(A), Xinboda, Shandong Wonderland, Tianma Freezing and Weifang Hongqiao certified that they did not export fresh garlic to the United States during the period of investigation ("POI"), and that each company has never been affiliated with any exporter or producer which exported fresh garlic to the United States during the POI. In addition, as required by 19 CFR 351.214(b)(2)(ii)(B) and (iii)(A), Jinxing Dintai, Weifang Hongqiao's producer, certified that it did not export fresh garlic to the United States during the POI and that it has never been affiliated with any exporter or producer which exported fresh garlic to the United States during the POI. Furthermore, Xinboda, Shandong Wonderland, Tianma Freezing, and Weifang Hongqiao have also certified that their export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B).

Pursuant to 19 CFR 351.214(b)(2)(iv) each exporter submitted documentation establishing: (A) the date on which the subject merchandise was first entered, or withdrawn from warehouse, for consumption; (B) the volume of its first shipment and any subsequent shipments; and (C) the date of its first sale to an unaffiliated customer in the United States. The Department conducted Customs database queries to confirm that each company's shipment had officially entered the United States via assignment of an entry date in the Customs database by U.S. Customs and Border Protection ("CBP").

Initiation of Reviews

In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.214(d)(1), and based on information on the record, we are initiating new shipper reviews for Xinboda, Shandong Wonderland, Tianma Freezing, and Weifang Hongqiao. *See* Memoranda to the File titled "New Shipper Initiation Checklist" for Xiboda, Shandong Wonderland, Tianma Freezing, and Weifang Hongqiao, dated June 27, 2006. We intend to issue the preliminary results of this review not later than 180 days after the date on which this review was initiated, and the final results of this review within 90 days after the date on which the preliminary results are issued. See section 751(a)(2)(B)(iv) of the Act.

As noted above, pursuant to 19 CFR 351.214(g)(1)(i)(B), the POR for a new shipper review initiated in the month immediately following the semiannual anniversary month will be the six-month period immediately preceding the semiannual anniversary month. Therefore, the POR for the new shipper reviews of Xinboda, Shandong Wonderland, Tianma Freezing, and Weifang Hongqiao will be November 1, 2005, through April 30, 2006.

It is the Department's usual practice in cases involving non–market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country–wide rate provide evidence of the absence of *de jure* and *de facto* government control over the company's export activities. Accordingly, we will issue questionnaires to Xinboda, Shandong Wonderland, Tianma Freezing, and Weifang Hongqiao including a "separate rates" section. The reviews will proceed if the responses provide sufficient indication that Xinboda, Shandong Wonderland, Tianma Freezing, and Weifang Hongqiao, are not subject to either de jure or de facto government control with respect to their exports of fresh garlic. However, if the exporter does not demonstrate the company's eligibility for a separate rate, then the company will be deemed not separate from the PRC–wide entity, which exported during the POI, and its new shipper review will be rescinded. *See* 19 CFR 351.214(b)(2)(iii)(A); *see also Notice of Preliminary Results of Antidumping Duty New Shipper Review and Rescission of New Shipper Reviews: Freshwater Crawfish Tail Meat from the People's Republic of China*, 69 FR 53669 (September 2, 2004) and *Brake Rotors from the People's Republic of China: Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 64 FR 61581 (November 12, 1999).

In accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e), we will instruct CBP to allow, at the option of the importer, the posting, until the completion of these reviews, of a single entry bond or security in lieu of a cash deposit for certain entries of the merchandise exported by either Xinboda, Shandong Wonderland, Tianma Freezing, or Weifang Hongqiao. We will apply the bonding option under 19 CFR 351.107(b)(1)(i) only to entries from these four exporters for which the respective producers under review are the suppliers.

Interested parties that need access to proprietary information in these new shipper reviews should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: June 27, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–10575 Filed 7–6–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Circumvention and Scope Inquiries on the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Affirmative Final Determination of Circumvention of the Antidumping Duty Order, Partial Final Termination of Circumvention Inquiry and Final Rescission of Scope Inquiry

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

Final Determination

We determine that frozen fish fillets produced by Lian Heng Trading Co. Ltd. ("Lian Heng Trading") and Lian Heng

Investment Co. Ltd. ("Lian Heng Investment") (collectively, "Lian Heng"),[1] are circumventing the antidumping duty order on frozen fish fillets from the Socialist Republic of Vietnam ("Vietnam"), as provided in section 781(b) of the Tariff Act of 1930, as amended ("the Act"). *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 47909 (August 12, 2003) ("*Order*"). In addition, we determine that frozen fish fillets produced by Lian Heng are covered by the antidumping duty order on frozen fish fillets from Vietnam. We are also terminating the circumvention inquiry with respect to L.S.H. (Cambodia) Pte. Ltd. ("L.S.H."), and Sun Wah Fisheries Co. Ltd. ("Sun Wah"), and rescinding the concurrently initiated scope inquiry. *See Memorandum from Stephen J. Claeys, Deputy Assistant Secretary, Import Administration to David M. Spooner, Assistant Secretary, Import Administration ("Decision Memorandum")*, dated June 16, 2006.

EFFECTIVE DATE: July 7, 2006.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482–3208.

SUPPLEMENTARY INFORMATION:

Background

On February 22, 2006, the Department published the preliminary circumvention determination and rescission of scope inquiry. *See Notice of Partial Affirmative Preliminary Determination of Circumvention, Preliminary Rescission of Scope Inquiry and Extension of Final Determination*, 71 FR 9068 (February 22, 2006) ("*Preliminary Determination*") . On March 30, 2006, the Department was notified by the International Trade Commission ("ITC") that consultations pursuant to section 781(e)(2) of the Act were not necessary. *See Memorandum to the File from Alex Villanueva, Program Manager*, dated April 3, 2006. On April 5, 2006, Piazza Seafood World LLC ("Piazza") submitted new information on the record. On April 6, 2006, the Department notified all interested parties that it was retaining Piazza's April 5, 2006, submission in its entirety and that additional information could be placed on the record by C.O.B. April 10, 2006. *See Memorandum to the File from Alex Villanueva, Program Manager*, dated April 6, 2006. The Department also informed parties that the deadline for submission of case and rebuttal briefs would be extended until April 19, 2006, and May 3, 2006, respectively. *See Id.* On April 10, 2006, Petitioners and Piazza submitted additional new information. On April 19, 2006, Petitioners and Piazza filed case briefs. On May 3, 2006, Petitioners and Piazza filed rebuttal case briefs. On June 9, 2006, the Department held a public hearing.

Scope of the Antidumpng Duty 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").[2] 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 this proceeding is dispositive. *See Order* at 47909.

Final Rescission of Scope Inquiry

The Department continues to find that rescission of the scope inquiry is appropriate for the reasons stated in the *Preliminary Determination*. *See Decision Memorandum* at Comment 1.

Termination of the Circumvention Inquiry for L.S.H. and Sun Wah

The Department continues to find that it is appropriate to terminate circumvention inquiry with respect to L.S.H. and Sun Wah for the reasons stated in the *Preliminary Determination*. *See Decision Memorandum* at Comment 4. As a result, no action will be taken with respect to exports of frozen fish fillets to the United States from these companies.

Statutory Provisions Regarding Circumvention

Section 781(b)(1) of the Act provides that the Department may find circumvention of an antidumping duty order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting circumvention inquiries of an antidumping duty order under section 781(b) of the Act, the Department relies upon the following criteria: (A) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is subject to an antidumping duty order; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or produced in the foreign country that is subject to the order; (C) the process of assembly or completion in the foreign country referred to in (B) is minor or insignificant; and (D) the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States and (E) the administering authority determines that action is appropriate to prevent evasion of such order or finding, the administering authority, after taking into account any advice provided by the Commission under section 781(e) of the Act, may include such imported merchandise within the scope of the such order or finding at any time such order or finding is in effect.

Section 781(b)(2) of the Act provides for the determination of whether the

[1] Lian Heng Trading Co. Ltd. ("Lian Heng Trading") or Lian Heng Investment Co. Ltd. ("Lian Heng Investment") (collectively "Lian Heng"). Lian Heng Trading and Lian Heng Investment are two separate entities. However, the two companies share the same Chairman and Chief Executive Officer, and both companies have exported subject merchandise to the United States.

[2] 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.

process is minor or insignificant. In determining whether the process of assembly or completion is minor or insignificant under paragraph (1)(C), the administering authority shall take into account (A) the level of investment in the foreign country, (B) level of research and development in the foreign country, (C) nature of the production process in the foreign country, (D) extent of production facilities in the foreign country, and (E) whether the value of the processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States.

Section 781(b)(3) of the Act further provides that, in determining whether to include merchandise assembled or completed in a foreign country in an antidumping duty order or a finding under paragraph (1), the Department shall take into account: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise described in accordance with section 781(b)(1)(B) of the Act is affiliated with the person who uses the merchandise described in accordance with section 781(b)(1)(B) to assemble or complete in the foreign country the merchandise that is subsequently imported in to the United States; and (C) whether imports into the foreign country of the merchandise described in accordance with section 781(b)(1)(B) have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

Analysis

We considered all of the comments submitted by the parties and find that application of adverse facts available, as applied to the factors under section 781(b)(1) of the Act, is appropriate. Specifically, with respect to section 781(b)(1)(A) of the Act, we find that the product subject to the circumvention inquiry and exported to the United States by Lian Heng, frozen fish fillets, is the same class or kind of merchandise subject to the *Order*. With respect to section 781(b)(1)(B)(ii) of the Act, we find that, before importation, frozen fish fillets are completed by Lian Heng in Cambodia from Vietnamese–origin whole, live fish. With respect to section 781(b)(1)(C) of the Act, we find that, based on adverse facts available due to Lian Heng's failure to provide data that could be verified, the processing of basa and tra fish into frozen fish fillets with respect to Lian Heng's exports from Cambodia is a minor or insignificant process.[3] The Department also continues to find that under section 781(b)(1)(D) of the Act, based on Petitioners' record evidence, and as adverse facts available due to Lian Heng's failure to provide data that could be verified, the value of the Vietnamese–origin whole, live fish is significant compared to the value of the frozen fish fillets. Therefore, pursuant to section 781(b)(1)(E) of the Act, we affirm our preliminary determination that action is appropriate and necessary to prevent Lian Heng from circumventing the antidumping duty order on frozen fish fillets from Vietnam. Additionally, based on the additional factors to consider under section 781(b)(3) of the Act, we find that the patterns of trade and the levels of Cambodian importation of Vietnamese–origin whole, live fish support an affirmative finding of circumvention.

Consequently, under sections 781(b)(1), (2), and (3) of the Act, we find that Lian Heng has circumvented the *Order* by importing Vietnamese–origin whole live fish into Cambodia, where it was subsequently processed and completed into frozen fish fillets for export to the United States. Thus, pursuant to section 781(b) of the Act, frozen fish fillets processed in Cambodia by Lian Heng from Vietnamese–origin whole, live fish for export to the United States should be included in the antidumping duty order on frozen fish fillets from Vietnam. Finally, because the Department continues to find that AFA is appropriate in this final determination, the Department relied on the information supplied by Petitioners, and subsequently used for purposes of initiating this inquiry, to corroborate the secondary information used as adverse facts available, pursuant to section 776(c) of the Act. We find that the information supplied by Petitioners is reliable and relevant because it is based upon information from public sources including government publications regarding the processing of live fish into fish fillets from Cambodia. In addition, Petitioners provided information from Agifish, the largest fish fillets exporter from Vietnam, which the Department verified in the underlying investigation as well as information used by the ITC in making its final injury determination. Therefore, we find that the secondary information used as adverse facts available has probative value.

All issues raised by the interested parties to which we have responded are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this inquiry and the corresponding recommendation in this public memorandum, which are on file in the Central Records Unit ("CRU"), Room B–099 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at http://ia.ita.doc.gov/. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, the Department will continue to direct CBP to suspend liquidation and to require a cash deposit of estimated duties, at the Vietnam–wide rate, on all unliquidated entries of frozen fish fillets produced by Lian Heng that were entered, or withdrawn from warehouse, for consumption from October 22, 2004, the date of initiation of the circumvention inquiry, through July 15, 2005.

For all entries of frozen fish fillets produced by Lian Heng entered on or after July 16, 2005, the Department will direct CBP to allow Lian Heng to certify that no Vietnamese–origin fish was used in the production of the frozen fish fillets. The Department will not request that CBP suspend liquidation, or require a cash deposit of estimated duties, at the Vietnam–wide rate, for any entries of frozen fish fillets accompanied by the certification in Appendix II in this notice. However, the Department will direct CBP to suspend liquidation and to require a cash deposit of estimated duties, at the Vietnam–wide rate of 63.88 percent of any entries of frozen fish fillets not accompanied by this certification in Appendix II of this notice.

The Department will not direct CBP to take any action with respect to Sun Wah and L.S.H. or any other Cambodian exporter other than Lian Heng.

Future Administrative Reviews

If requested, the Department may expand the third administrative review period back to October 22, 2004, the date of initiation of the circumvention inquiry, to include all of Lian Heng's entries covered by this determination. In addition, we hereby serve notice to Lian Heng that any certified entries are subject to verification by the Department. If a review of these certified entries is conducted, the Department will, at a minimum,

[3] To determine whether a process is minor or insignificant pursuant to section 781(b)(1)(C) of the Act, the Department must consider the factors in section 781(b)(2) of the Act.

examine whole fish country of origin documentation that Lian Heng is required to maintain, as an exporter of fish products to the United States, by the United States Food and Drug Administration's Hazard Analysis Critical Control Point ("HACCP")[4] program and by the Bioterrorism Act of 2002.[5] The Department will also examine any other records Lian Heng maintains in its normal course of business supporting its certifications that no Vietnamese–origin fish was used in the production of its frozen fish fillets.

Notice to Parties

This notice also serves as the only reminder to parties subject to the administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. 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.

This final circumvention determination is in accordance with section 781(b) of the Act and 19 CFR 351.225.

Dated: June 30, 2006.

David M. Spooner,

Assistant Secretarystfor Import Administration.

Appendix I

Comment 1: Rescission of Scope Request

Comment 2: Lian Heng Determination
A. Application of AFA and the Criteria under Section 781(b) of the Act
B. Corroboration of AFA
Comment 3: Certification Requirements
Comment 4: Partial Rescission of Circumvention Inquiry

Appendix II

Certification of Lian Heng[1]

CERTIFICATION TO U.S. CUSTOMS AND BORDER PROTECTION

1. Lian Heng hereby certifies that the frozen fish fillets being exported and subject to this certification were not produced from fish of Vietnamese origin of the following species: *Pangasius Bocourti* (commonly known as basa or trey basa), Pangasius Hypophthalmus (also known as *Pangasius Pangasius* and commonly known as tra or trey pra), or *Pangasius Micronemus.*

2. By signing this certificate, Lian Heng also hereby agrees to maintain sufficient documentation supporting the above statement such as country of origin certificates for all fish used to process the exported frozen fish fillets.[2] Further, Lian Heng agrees to submit to verification of the underlying documentation supporting the above statement. Lian Heng agrees that failure to submit to verification of the documentation supporting these statements will result in immediate revocation of Lian Heng's certification rights and that Lian Heng will be required to post a cash deposit equal to the Vietnam–wide entity rate on all entries of frozen fish fillets of the species *Pangasius Bocourti* (commonly known as basa or trey basa), *Pangasius Hypophthalmus* (also known as *Pangasius Pangasius* and commonly known as tra or trey pra), or *Pangasius Micronemus.* In addition, if the Department of Commerce identifies any misrepresentation or inconsistencies regarding the certifications, it may report the matter to U.S. Customs and Border Protection for possible enforcement action.

Signature:
Printed Name:
Title:

[FR Doc. E6–10662 Filed 7–6–06; 8:45 am]

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[4] Hazard Analysis Critical Control Point. Details regarding this program can be found at http://www.cfsan.fda.gov/lrd/haccp.html.

[5] Details regarding the Bioterrorism Act of 2002 can be found at: *http://www.fda.gov/oc/bioterrorism/bioact.html.*

[1] Lian Heng Trading Co. Ltd. ("Lian Heng Trading") or Lian Heng Investment Co. Ltd. ("Lian Heng Investment") (collectively "Lian Heng")

[2] Documentation may include, but is not limited to the records that (EXPORTER OF RECORD) is required to maintain by the United States Food and Drug Administration's HACCP program and Bioterrorism Act of 2002 and other documents kept in the normal course of business.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–818]

Low Enriched Uranium from France: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: July 7, 2006.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley or Myrna Lobo, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3148 or (202) 482–2371, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2006, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on low enriched uranium from France for the period February 1, 2004, through January 31, 2005. *See Low Enriched Uranium from France: Preliminary Results of Antidumping Duty Administrative Review* (71 FR 11386). The current deadline for the final results of this review is July 5, 2006.

Extension of Time Limit for Final Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) requires the Department to issue the final results in an administrative review within 120 days after the date on which the preliminary results were published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to 180 days from the date of publication of the preliminary results.

The Department finds that it is not practicable to complete the review within the original time frame due to the complex nature of the case. As this case involves a unique cost calculation methodology and the consideration of requested cost information received after the issuance of the preliminary results, completion of this review is not practicable within the original time limit of July 5, 2006. Consequently, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is extending the time limit for the completion of the final results of the review until no later than August 21, 2006, which is within 180 days from the publication of the preliminary results.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: June 30, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–879]

Polyvinyl Alcohol From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is conducting the administrative review of the antidumping duty order on polyvinyl alcohol (PVA) from the People's Republic of China (PRC) covering the period October 1, 2004, through September 30, 2005. We have preliminarily determined that sales have not been made below normal value (NV). If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to liquidate the appropriate entries without regard to antidumping duties.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

DATES: *Effective Date:* July 7, 2006.

FOR FURTHER INFORMATION CONTACT: Jill Pollack, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4593.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2005, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on PVA from the PRC for the period October 1, 2004, through September 30, 2005. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 70 FR 57558 (Oct. 3, 2005). On October 26, 2005, the Department received a request to conduct an administrative review of the antidumping duty order on PVA from the PRC from Sinopec Sichuan Vinylon Works (SVW), a producer and exporter of the subject merchandise. On October 27, 2005, Celanese Chemicals, Ltd. and E.I. DuPont de Neumours & Co. (collectively "the petitioners") also requested a review of SVW. On December 1, 2005, the Department published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of PVA from the PRC for the period October 1, 2004, through September 30, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews,* 70 FR 72107 (Dec. 1, 2005).

In December 2005, the Department issued the antidumping duty questionnaire to SVW. We received SVW's responses to this questionnaire in January and February 2006.

On February 15, 2006, the Department invited interested parties to comment on surrogate country selection and to provide publicly available information for valuing the factors of production.

In March 2006, we issued a supplemental section A questionnaire to SVW. We received SVW's response to this supplemental questionnaire in March 2006.

In April 2006, we issued a supplemental section C and D questionnaire to SVW. We received SVW's response to this section C and D supplemental questionnaire in April 2006.

On May 4, 2006, we received comments on surrogate country selection and information for valuing the factors of production from SVW and Solutia, Inc., a domestic interested party. We did not receive comments from the petitioners on surrogate country selection or the valuation of factors of production.

Also in May 2006, we issued a second supplemental section C and D questionnaire to SVW. We received SVW's response to this questionnaire in May 2006.

In May and June 2006, we requested additional information related to the purity levels of reported inputs and the various grades of finished PVA. We received SVW's response to these requests in June 2006.

Period of Review

The period of review (POR) is October 1, 2004, through September 30, 2005.

Scope of Order

The merchandise covered by this order is PVA. This product consists of all PVA hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid, except as noted below.

The following products are specifically excluded from the scope of this order:

(1) PVA in fiber form.

(2) PVA with hydrolysis less than 83 mole percent and certified not for use in the production of textiles.

(3) PVA with hydrolysis greater than 85 percent and viscosity greater than or equal to 90 cps.

(4) PVA with a hydrolysis greater than 85 percent, viscosity greater than or equal to 80 cps but less than 90 cps, certified for use in an ink jet application.

(5) PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end-use certification.

(6) PVA covalently bonded with cationic monomer uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(7) PVA covalently bonded with carboxylic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, certified for use in a paper application.

(8) PVA covalently bonded with thiol uniformly present on all polymer chains, certified for use in emulsion polymerization of non-vinyl acetic material.

(9) PVA covalently bonded with paraffin uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(10) PVA covalently bonded with silan uniformly present on all polymer chains certified for use in paper coating applications.

(11) PVA covalently bonded with sulfonic acid uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(12) PVA covalently bonded with acetoacetylate uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(13) PVA covalently bonded with polyethylene oxide uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(14) PVA covalently bonded with quaternary amine uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(15) PVA covalently bonded with diacetoneacrylamide uniformly present on all polymer chains in a concentration level greater than three mole percent, certified for use in a paper application.

The merchandise subject to this order is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the

written description of the scope of this order is dispositive.

Nonmarket Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy (NME) country. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (the Act), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (Feb. 14, 2003); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (Dec. 18, 2003) (unchanged in the final results). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV on the NME producer's factors of production, valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

The Department has determined that India, Sri Lanka, Indonesia, Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See* the February 9, 2006, memorandum from Ron Lorentzen, Director, Office of Policy, to Irene Darzenta Tzafolias, Acting Director, Office 2, entitled, "Antidumping Duty Administrative Review of Polyvinyl Alcohol from the People's Republic of China (PRC): Request for a List of Surrogate Countries." Customarily, we select an appropriate surrogate country based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. For PRC cases, the primary surrogate country has often been India if it is a significant producer of comparable merchandise. In this case, we found that India is a significant producer of comparable merchandise. *See* the June 6, 2006, memorandum to the file from Jill Pollack, Senior Analyst, entitled "Second Administrative Review of the Antidumping Duty Order on Polyvinyl Alcohol from the People's Republic of China: Selection of a Surrogate Country."

The Department used India as the primary surrogate country and, accordingly, calculated NV using Indian prices to value the PRC producer's factors of production, when available and appropriate. The sources of the surrogate factor values are discussed under the "Normal Value" section below and in the June 30, 2006, memorandum from Jill Pollack to the file entitled, "Preliminary Results of Review of the Antidumping Duty Order on Polyvinyl Alcohol from the People's Republic of China: Factor Valuation Memorandum" (the Factor Valuation Memorandum). We obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of an administrative review, interested parties may submit publicly available information to value factors of production within 20 days after the date of publication of these preliminary results.

Separate Rates

In an NME proceeding, the Department presumes that all companies within the country are subject to government control and should be assigned a single antidumping duty rate unless the respondent demonstrates the absence of both *de jure* and *de facto* government control over its export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026 (Apr. 30, 1996). SVW provided company-specific separate rates information and stated that it met the standards for the assignment of a separate rate. In determining whether a company should receive a separate rates, the Department focuses its attention on the exporter, in this case SVW, rather than the manufacturer. *See Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China*, 60 FR 56045 (Nov. 6, 1995).

The Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as modified by, *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide from the PRC*). The Department's separate rate test is not concerned, in general, with macroeconomic, border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review*, 71 FR 2517 (Jan. 17, 2006) (*Tapered Bearings 2003–2004 Administrative Review*).

SVW has provided separate rates information in its section A questionnaire response. SVW has stated that there is no element of government control over its export activities and has requested a separate, company-specific rate.

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual exporter may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

SVW has placed on the record statements and documents to demonstrate absence of *de jure* control. In its questionnaire responses, SVW reported that, other than abiding by government laws and regulations, which includes paying taxes, it has no relationship with any level of the PRC government. *See* page A–3 of SVW's January 26, 2006, Section A questionnaire response. SVW submitted a copy of the Foreign Trade Law of the PRC to demonstrate that there is no centralized control over its export activities. *See* Attachment A–1 of the January 26 response. SVW also confirmed that the subject merchandise is not subject to export quotas or export control licenses. *See* pages A–5 and A–6 of January 26 response. SVW reported that it is required to obtain a business license, which is issued by the Chongqing Municipal Industry and Commerce Administration. *See* page A–4 of the January 26 response. We

examined the laws and SVW's business license, which it provided in its questionnaire responses, and determined that these documents demonstrate an authority for establishing the absence of *de jure* control over the export activities of SVW and provide evidence demonstrating the absence of government control associated with SVW's business license. *See Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995).

B. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (Dec. 31, 1998). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether a particular exporter is subject to *de facto* government control of its export functions: (1) Whether the exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the exporter has authority to negotiate and sign contracts, and other agreements; (3) whether the exporter has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the exporter retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

In support of demonstrating an absence of *de facto* control, SVW provided documentation, where appropriate, to support the following assertions: (1) SVW established its own export prices; (2) SVW negotiated contracts without guidance from any government entities or organizations; (3) SVW made its own personnel decisions; and (4) SVW retained the proceeds of its export sales and independently used profits according to its business needs. *See* pages A–6 through A–9 of the January 26 response. Additionally, SVW's section A questionnaire response indicates that it does not coordinate with other exporters in setting prices. *See* page A–6 of the January 26 response. SVW also stated that it is an independent entity responsible for its own profits and losses. *See* page A–3 of the January 26 response. This information supports a preliminary finding that there is an absence of *de facto* government control of the export functions of SVW. Consequently, we preliminarily determine that SVW has met the *de facto* criteria for the application of a separate rate.

The evidence placed on the record of this administrative review by SVW demonstrates an absence of government control, both in law and in fact, with respect to its exports of the merchandise under review. As a result, for the purposes of these preliminary results, the Department is granting a separate, company-specific rate to SVW, the exporter which shipped the subject merchandise to the United States during the POR.

Normal Value Comparisons

To determine whether sales of PVA to the United States by SVW were made at less than NV, we compared export price (EP) to NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated market-economy purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EP for all of SVW's U.S. sales because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and because constructed export price was not otherwise indicated for those transactions.

We calculated EP for SVW based on FOB port prices to unaffiliated purchaser(s) in the United States. We made deductions from the U.S. sale price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight from the plant to the port of exportation and domestic brokerage and handling charges. For valuation of these services provided by NME suppliers, see the June 30, 2006, memorandum to the file from Jill Pollack entitled, "U.S. Price and Factors of Production Adjustments for the Preliminary Results" (Preliminary Calculation Memorandum). *See also* the Factor Valuation Memorandum.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Factors of production include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. Our general policy, consistent with section 773(c)(1)(B) of the Act, is to value the factors of production that a respondent uses to produce the subject merchandise, based on the best available information regarding the values of such factors in a market economy country. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986 (Jan. 31, 2003); *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003) (unchanged in the final determination).

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production reported by SVW for the POR for materials, energy, labor, by-products, and packing. As the basis for NV, SVW reported factors-of-production information for each separate stage of production, including the factors used in the production of all self-produced material and energy inputs, and by-products. We have valued the factors reported for each self-produced input for purposes of the preliminary results, in accordance with our practice. *See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China*, 68 FR 47538 (Aug. 11, 2003) (*Polyvinyl Alcohol from the PRC Investigation*); *Polyvinyl Alcohol From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 27991 (May 15, 2006) (*Polyvinyl Alcohol 2003–2004 Review*).

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information in the surrogate country to

value factors of production, but when a producer sources an input from a market economy and pays for it in market-economy currency, the Department will normally value the factor using the actual price paid for the input. *See* 19 CFR 351.408(c)(1); *see also Lasko Metal Products* v. *United States*, 43 F.3d 1442, 1445–1446 (Fed. Cir. 1994). However, when the surrogate values come from an NME country or where the Department has reason to believe or suspect that such prices may be distorted by subsidies, the Department will disregard the market-economy purchase prices and use surrogate values to determine the NV. *See Tapered Bearings 2003–2004 Administrative Review.*

SVW reported that all of its inputs were sourced from NMEs and paid for in an NME currency. *See* the Factor Valuation Memorandum for a list of these inputs. Therefore, we did not use respondents' actual prices for any NME purchases.

Factor Valuations

To calculate NV, we multiplied the reported per-unit factor quantities by publicly available Indian surrogate values, except as noted below. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to the Indian import surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest port of export to the factory. This adjustment is in accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States*, 117 F. 3d 1401 (Fed. Cir. 1997). For a detailed description of all surrogate values used for the respondent, see the Factor Valuation Memorandum.

It is the Department's practice to date that, where the facts developed in U.S. or third-country countervailing duty findings include the existence of subsidies that appear to be used generally (in particular, broadly available, non-industry-specific export subsidies), it is reasonable for the Department to consider that it has particular and objective evidence to support a reason to believe or suspect that prices of the inputs from the country granting the subsidies may be subsidized. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of the 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 1953 (Jan. 10, 2001) and accompanying Issues and Decision Memorandum at Comment 1; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 57420 (Nov. 15, 2001) and accompanying Issues and Decision Memorandum at Comment 1; and *China National Machinery Imp & Exp. Corp.* v. *United States*, 293 F. Supp. 2d 1334, 1339 (CIT 2003). Therefore, in instances where we relied on Indian import data to value inputs, in accordance with the Department's practice, we excluded imports from both NME countries and Indonesia, Thailand and the Republic of Korea to value the factors of production.

In its section D questionnaire response, SVW allocated the raw material inputs for producing acetylene and acetylene tail gas using a heat of combustion methodology. For the preliminary results of this review, we have reallocated the raw material inputs for producing acetylene and acetylene tail gas based on the market value of these products rather than the heat of combustion. We note that the Department used a market value-based reallocation of raw material inputs for the production of acetylene and acetylene tail gas in the prior segments of this proceeding. *See Polyvinyl Alcohol from the PRC Investigation* at Comment 3; *Polyvinyl Alcohol 2003–2004 Review* at Comment 1. Further, the use of this methodology in this proceeding has been affirmed by the Court. *See Sinopec Sichuan Vinylon Works* v. *United States*, 366 F. Supp. 2d 1339, 1347–1348 (CIT 2005) (*Sinopec* v. *United States*). For additional information, *see* the Preliminary Calculation Memorandum.

We valued D-tartaric acid, sodium hexametaphosphate, sodium nitrite, sulfuric acid, sodium carbonate, caustic soda, liquid caustic soda, hydroquinone, N-butyl acetate, hydrochloric acid, zinc sulfate, phosphoric acid (anti-precipitate), freon, and zinc oxide using Indian domestic market prices reported in *Chemical Weekly*, contemporaneous with the POR. We valued azodisisobutyronitrile, bacteria killer, de-sulfur agent, solid activated carbon, quinone, liquid chlorine, poly ferrosulfate, liquid ammonia, and acetic acid using India import statistics as published by the *World Trade Atlas*, contemporaneous with the POR. *See id.*

We valued natural gas using a price obtained from the Web site of the Gas Authority of India Ltd., a supplier of natural gas in India, contemporaneous with the POR. For further discussion, *see id.*

We valued steam coal using the 2003/2004 Tata Energy Research Institute's Energy Data Directory & Yearbook (TERI Data). *See id.*

To value paper bags and polyethylene plastic bags (*i.e.*, the packing materials reported by the respondent), we used import values from the *World Trade Atlas*, contemporaneous with the POR. *See id.*

Regarding N-methyl-2pydrolidone, industrial grade salt, chlorine dioxide, and anti-erosion agent, reported by SVW, we did not value these factors because: (1) Surrogate value information was not available; and (2) the materials were reported as being used in minimal amounts. In previous cases, where certain materials were reportedly consumed in very small amounts and the surrogate values for these materials were not available, the Department did not include surrogate values for these materials in its calculation of NV. *See Polyvinyl Alcohol from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 67434, 67439 (Nov. 7, 2005) (unchanged in the final results); *Synthetic Indigo from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000) and the accompanying Issues and Decision Memorandum at Comment 8; *Ferrovanadium and Nitrided Vanadium from the Russian Federation: Notice of Final Results of Antidumping Duty Administrative Review*, 62 FE 65656 (Dec. 15, 1997) and the accompanying Issues and Decision Memorandum at Comment 11; and *Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China*, 56 FR 55273 (Oct. 25, 1991).

For direct labor, indirect labor, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration's website, Expected Wages of Selected NME Countries, revised in November 2005, *http://ia.ita.doc.gov/wages/03wages/110805–2003-Tables/03wages-110805.html#table1*. The source of these wage rate data on the Import Administration's Web site is the Yearbook of Labour Statistics 2002, ILO (Geneva: 2002), Chapter 5B: Wages in Manufacturing. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of

labor reported by the respondent. *See* the Preliminary Calculation Memorandum.

To determine factory overhead, depreciation, selling, general, and administrative expenses, interest expenses, and profit for the finished product, we relied on rates derived from the financial statements of Jubilant Organosys Ltd. (Jubilant), an Indian producer of comparable merchandise. We applied these ratios to SVW's costs (determined as noted above) for materials, labor, and energy. *See id.*

Finally, SVW reported that it generated certain other by-products as a result of the production of PVA or the inputs used to produce PVA. We valued methyl acetate, PVA scrap, and recovered methanol, using Indian domestic market prices reported in *Chemical Weekly*. We valued acetic acid using import values from the *World Trade Atlas*. Because SVW did not provide sufficient information to permit the accurate valuation of certain other reported by-products and we were unable to obtain appropriate surrogate value data for them, we did not value these by-products for these preliminary results.[1]

Regarding acetic acid, SVW recovers a significant portion of this input in the last stage of production of PVA (*i.e.*, the hydrolysis process). Because Jubilant is a producer of polyvinyl acetate (PVAc), a precursor polymer of PVA, it does not perform the hydrolysis process necessary to recover acetic acid. *See Polyvinyl Alcohol from the PRC Investigation* at Comment 3. Therefore, given the difference in the production process between the surrogate company and the respondent, we find that deducting this by-product from the cost of manufacturing would result in an understated overhead expense derived from Jubilant's financial statements. As a result, we have made a by-product offset to SVW's NV. This methodology has been upheld by the CIT. *See Sinopec* v. *United States*, 366 F. Supp. 2d at 1351 remanded on other grounds by, 2006 Ct. Intl. Trade LEXIS; Slip Op. 2006–78 (May 25, 2006). Consequently, consistent with the CIT's previous determination in this matter, the Department has continued to make an adjustment for the recovered acetic acid after the application of the surrogate financial ratios for purposes of these preliminary results. *See* the Preliminary Calculation Memorandum.

[1] These by-products included alkynes gas, bottled oxygen and nitrogen, liquid oxygen and nitrogen, argon, and recovered low pressure nitrogen.

Weighted-Average Dumping Margin

The weighted-average dumping margin is as follows:

Manufacturer/producer/exporter	Margin percentage
Sinopec Sichuan Vinylon Works	0.00

Disclosure

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will generally be held two days after the scheduled date for submission of rebuttal briefs. *See* 19 CFR 351.310(d). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. *See* 19 CFR 351.309(d). Further, parties submitting written comments should provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any comments, and at a hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. Within 15 days of the completion of this review, the Department will instruct CBP to assess antidumping duties on all appropriate entries of subject merchandise. The Department will issue appropriate assessment instructions directly to CBP upon completion of this review.

We note that SVW did not report the entered value for its U.S. sales. Accordingly, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* ratios based on the estimated entered value.

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) For SVW, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 97.86 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b).

Dated: June 30, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–10661 Filed 7–6–06; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of the Antidumping Duty New Shipper Review

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

SUMMARY: The Department of Commerce ("the Department") is currently conducting a new shipper review ("NSR") of the antidumping duty order on certain preserved mushrooms from the People's Republic of China ("PRC") covering the period February 1, 2005, through August 15, 2005. We preliminarily determine that sales have been made below normal value ("NV") with respect to Guangxi Eastwing Trading Co., Ltd. ("Eastwing"), which participated fully and is entitled to a separate rate in this review. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the period of review ("POR") for which the importer–specific assessment rates are above *de minimis*.

EFFECTIVE DATE: July 7, 2006.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, 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) 482–2312.

SUPPLEMENTARY INFORMATION:

Case History

General

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). On August 23, 2005, we received a timely new shipper review request in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and section 351.214(c) of the Department's regulations, from an exporter, Eastwing, and its producer, Raoping CXF Foods, Inc. ("CXF"). On October 7, 2005, the Department published a notice in the **Federal Register** initiating a NSR for Eastwing. *See Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Review*, 70 FR 58686 (October 7, 2005) ("Initiation Notice").

On January 19, 2006, we issued a memorandum that extended the end of the POR from July 31, 2005, to August 15, 2005, in order to capture the entry of Eastwing's merchandise into the United States market. *See Memorandum to the File from Matthew Renkey, Senior Analyst, through Alex Villanueva, Program Manager, Office 9: Expansion of the Period of Review in the New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China*, dated January 19, 2006. On February 16, 2006, we placed the entry package we received from CBP for Eastwing's new shipper sale on the record of this review. *See Memorandum to the File from Matthew Renkey, Senior Analyst, through Alex Villanueva, Program Manager, Office 9: Certain Preserved Mushrooms from the People's Republic of China: Entry Packages from U.S. Customs and Border Protection ("CBP")*, dated February 16, 2006.

Questionnaires and Responses

On October 21, 2005, we issued sections A, C, and D of the general antidumping duty questionnaire to Eastwing, along with the standard importer questionnaire for new shipper reviews. Eastwing submitted its response to section A of the questionnaire on November 21, 2005, and subsequently submitted its response to sections C, D, and the importer questionnaire on November 25, 2005. On December 6, 2005, we issued our first supplemental questionnaire for sections A, C and D; Eastwing filed its response to this supplemental questionnaire on December 20, 2005. On December 14, 2005, we sent a supplemental questionnaire to Eastwing's importer; Eastwing's importer filed its response on December 22, 2005.

On January 12, 2006, we sent Eastwing a second supplemental questionnaire for sections A, C, and D, and Eastwing submitted its response on January 26, 2006. We issued a third supplemental questionnaire to Eastwing, covering sections A, C, and D, as well as a question for Eastwing's importer, on March 23, 2006. Eastwing filed its response to this supplemental questionnaire (including a response to the question for the importer) on April 3, 2006.

Surrogate Country and Values

On November 30, 2005, we requested from the Office of Policy a memorandum listing surrogate countries. We received a list of surrogate countries on December 16, 2005, and in a letter dated December 19, 2005, notified parties of the opportunity to submit comments on surrogate country selection. Additionally, in the same letter, we also provided interested parties an opportunity to submit surrogate value comments. No party submitted surrogate country selection comments. On January 20, 2006, we issued our surrogate country selection memorandum. *See Memorandum to the File from Matthew Renkey, Senior Analyst, through Alex Villanueva, Program Manager, Office 9, and Jim Doyle, Director, Office 9: Antidumping Duty New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China: Selection of a Surrogate Country*, dated January 20, 2006 ("*Surrogate Country Memo*"). To date, no party has submitted comments on surrogate values.

Period of Review

The POR covers February 1, 2005, through August 15, 2005.

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Certain Preserved Mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified," or "pickled" mushrooms, which are prepared or preserved by means of

vinegar or acetic acid, but may contain oil or other additives.[1]

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Verification

On April 4, 2006, we issued the verification outline to Eastwing. The Department conducted verification of the questionnaire responses submitted by Eastwing at its office in Nanning, PRC from April 17–18, 2006, and at its producer's factory in Raoping, PRC from April 20–21, 2006. We used standard verification procedures, including on–site inspection of the manufacturer's and exporter's facilities, and examination of relevant sales and financial records. Our verification results are outlined in the verification report, which is being issued concurrently with this notice. For further discussion, *see Memorandum to the File from Matthew Renkey, Senior Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9: Verification of the Sales Response of Guangxi Eastwing Trading Co., Ltd. and the Factors of Production Response of Raoping CXF Foods, Inc. in the Antidumping Duty New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China*, dated June 27, 2006, ("*Eastwing Verification Report*").

Consistent with the Department's practice, we investigated the *bona fide* nature of the sale made by Eastwing for this new shipper review. We found that Eastwing's new shipper sale was made on a bona fide basis. Based on our investigation into the *bona fide* nature of the sales, the questionnaire responses submitted by each company, and our verification thereof, as well as Eastwing's eligibility for a separate rate (see below) and the Department's preliminary determination that Eastwing was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that the respondent has met the requirements to qualify as a new shipper during the POR. Therefore, for purposes of these preliminary results of the review, we are treating Eastwing's sale of subject merchandise to the United States as an appropriate transaction for this new shipper review. *See Memorandum from Matthew Renkey, Senior Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, to James C. Doyle, Office Director, Office 9: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Certain Preserved Mushrooms: Guangxi Eastwing Trading Co., Ltd.*, dated June 27, 2006 ("*Eastwing Prelim Bona Fide Memo*"). As stated in the *Eastwing Prelim Bona Fide Memo*, we will continue to examine certain aspects of Eastwing's entry of subject merchandise.

Separate Rates

The Department has treated the PRC as a non–market economy ("NME") country in all previous antidumping cases. *See, e.g., Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006).In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. There is no evidence on the record suggesting that this determination should be changed. Therefore, we treated the PRC as an NME country for purposes of this review and calculated NV by valuing the factors of production ("FOP") in a surrogate country. It is the Department's policy to assign all exporters of the merchandise subject to review, located in NME countries, a single antidumping duty rate unless an exporter can demonstrate an absence of governmental control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. To establish whether an exporter is sufficiently independent of governmental control to be entitled to a separate rate, the Department analyzes the exporter using the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as adopted and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–87 (May 2, 1994) ("*Silicon Carbide*"). Under the separate rates criteria established in these cases, the Department assigns separate rates to NME exporters only if they can demonstrate the absence of both *de jure* and *de facto* governmental control over their export activities.

Absence of De Jure Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers* at 20589.

In the instant review, Eastwing submitted a complete response to the separate rates section of the Department's questionnaire. The evidence submitted in the instant review by Eastwing includes government laws and regulations on corporate ownership and control, business licenses, and narrative information regarding the company's operations and selection of management. *See Eastwing Verification Report* at Exhibits 2, 3, and 6. The evidence provided by Eastwing supports a finding of a *de jure* absence of governmental control over their export activities because: (1) there are no controls on exports of subject merchandise, such as quotas applied to, or licenses required for, exports of the subject merchandise to the United States; and (2) the subject merchandise does not appear on any government list regarding export provisions or export licensing.

Absence of De Facto Control

The absence of *de facto* governmental control over exports is based on whether the respondent: (1) sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide* at 22587; *Sparklers* at 20589; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of*

[1] On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* "Recommendation Memorandum-Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China," dated June 19, 2000. On February 9, 2005, this decision was upheld by the United States Court of Appeals for the Federal Circuit. *See Tak Fat v. United States*, 39C F.3d 1378 (Fed. Cir. 2005).

China, 60 FR 22544, 22545 (May 8, 1995).

In its questionnaire responses, Eastwing submitted evidence demonstrating an absence of *de facto* governmental control over its export activities. Specifically, this evidence indicates that: (1) the company sets its own export prices independent of the government and without the approval of a government authority; (2) the company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) the company has a general manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on the company's use of export revenues. Therefore, we have preliminarily found that Eastwing has established *prima facie* that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value ("NV"), in most circumstances, on the NME producer's factors of production, valued in a surrogate market–economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market–economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the "Normal Value" section below.

The Department determined that India, Sri Lanka, Indonesia, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See Memorandum from Ron Lorentzen, Director, Office of Policy, to Alex Villanueva, Program Manager, Office 9; New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China (PRC): Request for a List of Surrogate Countries*, dated December 16, 2005. Because of India's and Indonesia's relative levels of production, and consistent with worldwide characteristics of frozen shrimp production, these countries were selected as significant producers of comparable merchandise. *See Surrogate Country Memo* at 4. The Department selects an appropriate surrogate country based on the availability and reliability of data from the countries. *See Department Policy Bulletin No. 04.1: Non–Market Economy Surrogate Country Selection Process ("Policy Bulletin")*, dated March 1, 2004. In this case, we have found that India is a significant producer of comparable merchandise, is at a similar level of economic development pursuant to section 773(c)(4) of the Act, and has publicly available and reliable data. *See Surrogate Country Memo*.

U.S. Price

In accordance with section 772(a) of the Act, we calculated the export price ("EP") for sales to the United States for Eastwing because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP ("CEP") was not otherwise warranted. We calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight and brokerage and handling. For Eastwing, each of these services was either provided by an NME vendor or paid for using an NME currency. Thus, we based the deduction of these movement charges on surrogate values. *See Memorandum from Matthew Renkey, Senior Analyst, through Alex Villanueva, Program Manager, Office 9, to the File; New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China: Surrogate Values for the Preliminary Results*, dated June 27, 2006 ("*Surrogate Values Memo*") for details regarding the surrogate values for movement expenses.

Normal Value

In accordance with section 773(c) of the Act, we calculated NV based on factors of production ("FOP") reported by the Respondents for the POR. To calculate NV, we valued the reported FOP by multiplying the per–unit factor quantities by publicly available Indian surrogate values. In selecting surrogate values, we considered the quality, specificity, and contemporaneity of the available values. As appropriate, we adjusted the value of material inputs to account for delivery costs. Where appropriate, we increased Indian surrogate values by surrogate inland freight costs. We calculated these inland freight costs using the shorter of the reported distances from the PRC port to the PRC factory, or from the domestic supplier to the factory. This adjustment is in accordance with the United States Court of Appeals for the Federal Circuit's ("CAFC") decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed.Cir. 1997). For those values not contemporaneous with the POR, we adjusted for inflation or deflation using data published in the International Monetary Fund's *International Financial Statistics*. Imports from Korea, Thailand, and Indonesia were excluded from the surrogate country import data due to generally available export subsidies. *See China Nat'l Mach. Import & Export Corp. v. United States*, CIT 01–1114, 293 F. Supp. 2d 1334 (CIT 2003), *aff'd* 104 Fed. Appx. 183 (Fed. Cir. 2004) and *Certain Cut–to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005) and accompanying Issues and Decision Memorandum at Comment 4. Furthermore, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. Finally, we converted the surrogate values to U.S. dollars as appropriate, using the official exchange rate recorded on the dates of sale of subject merchandise in this case, obtained from the Import Administration's website at http://www.ia.ita.doc.gov/exchange/index.html. For further detail, *see* the *Surrogate Values Memo*.

Preliminary Results of Review

We preliminarily determine that the following margin exists during the period February 1, 2005, through August 15, 2005:

CERTAIN PRESERVED MUSHROOMS FROM THE PRC

Exporter/Manufacturer	Weighted–Average Margin (Percent)
Guangxi Eastwing Trading Co., Ltd./Raoping CXF Foods, Inc.	104.32

Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within ten days of the date of announcement of these

preliminary results. An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. *See* 19 CFR 351.309(c)(1)(ii) and 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this new shipper review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of these preliminary results. The assessment of antidumping duties on entries of merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

Assessment Rates

Upon issuing the final results of the review, the Department shall determine, and CBP shall assess and liquidate, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP within 15 days of publication of the final results of this review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer–specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this review is above *de minimis*.

Cash Deposit Requirements

Upon completion of this review, we will require cash deposits at the rate established in the final results as further described below.

Bonding will no longer be permitted to fulfill security requirements for shipments of certain preserved mushrooms from the PRC produced by CXF and exported by Eastwing that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper review. *See* 19 CFR 351.214(e). The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise from Eastwing entered, or withdrawn from warehouse, for consumption on or after the publication date: (1) for subject merchandise manufactured by CXF and exported by Eastwing, the cash deposit rate will be the rate established in the final results of this review, except that no cash deposit will be required if the cash deposit rate calculated in the final results is zero or *de minimis*; and (2) for subject merchandise exported by Eastwing but not manufactured by CXF, the cash deposit rate will continue to be the PRC–wide rate (*i.e.*, 198.63 percent); and (3) for subject merchandise produced by CXF but not exported by Eastwing, the cash deposit rate will be the rate applicable to the exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and notice are in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.214(h)(i).

Dated: June 27, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–10667 Filed 7–6–06; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–565–801]

Stainless Steel Butt–Weld Pipe Fittings from the Philippines: Notice of Rescission of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: July 7, 2006.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482 2924 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2006, the Department published in the **Federal Register** (71 FR 5239) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on stainless steel butt–weld pipe fittings from the Philippines for the period February 1, 2005, through January 31, 2006. On February 28, 2006, petitioners (Flowline Division of Markovitz Enterprises, Inc., Gerlin, Inc., Shaw Alloy Piping Products, Inc., and Taylor Forge Stainless, Inc.) requested an administrative review of Tung Fong Industrial Co., Inc. (Tung Fong) and Enlin Steel Corporation (Enlin) for this period. On April 5, 2006, the Department published a notice of initiation of an administrative review of the antidumping duty order on stainless steel butt–weld pipe fittings from the Philippines with respect to these two companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews*, 71 FR 17077 (April 5, 2006).

Rescission of Review

On June 19, 2006, petitioners withdrew their request for an administrative review of Tung Fong's and Enlin's sales during the above–referenced period. Section 351.213(d)(1) of the Department's regulations stipulates that the Secretary will rescind an administrative review if the party that requests a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. In this case, petitioners have withdrawn their

request for review within the 90–day period. Petitioners were the sole party to request this review. Therefore, we are rescinding this review of the antidumping duty order on stainless steel butt–weld pipe fittings from the Philippines.

This notice is published in accordance with sections 751(a)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: June 30, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–10665 Filed 7–6–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review, and Determination To Revoke Order in Part

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

DATES: *Effective Date:* July 7, 2006.

SUMMARY: On May 9, 2006, the Department of Commerce ("the Department") published a notice of initiation and preliminary results of a changed circumstances antidumping duty review with intent to revoke, in part, the antidumping duty ("AD") order on wooden bedroom furniture from the People's Republic of China ("PRC"). *See Wooden Bedroom Furniture from the People's Republic of China: Notice of Initiation and Preliminary Results of Changed Circumstances Review, and Intent to Revoke Order in Part*, 71 FR 26928 (May 9, 2006) ("*Initiation and Preliminary Results*"). We are now revoking this order in part, with regard to the following product: Jewelry armoires that have at least one side door, whether or not the door is lined with felt or felt-like material, as described in the "Scope" section of this notice, based on the fact that domestic parties have expressed no further interest in the relief provided by the order with respect to the imports of these jewelry armoires, as so described.

FOR FURTHER INFORMATION CONTACT: Will Dickerson or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–1778 and (202) 482–3434, respectively.

Background

On February 2, 2006, and in an amendment on March 16, 2006, the Department of Commerce (the "Department") received a request on behalf of the petitioners, the American Furniture Manufacturers Committee for Legal Trade and its individual members (the "AFMC") for revocation in part of the AD order on wooden bedroom furniture from the PRC pursuant to sections 751(b)(1) and 782(h) of the Tariff Act of 1930, as amended ("the Act"), with respect to jewelry armoires that have at least one side door, whether or not lined with felt or felt-like material. In its February 2, 2006, submission, AFMC stated that it no longer has any interest in antidumping relief from imports of such jewelry armoires.

On May 17, 2006, L. Powell Company ("Powell") submitted comments on our preliminary results of the changed circumstances review. Powell stated that it supports the Department's preliminary ruling that jewelry armoires that have at least one side door, whether or not the door is lined with felt or felt-like material are excluded from the wooden bedroom furniture order. Also, Powell requested that the Department rule on an expedited basis that the above-mentioned merchandise is excluded from the order.

Scope of Changed Circumstances Review

The merchandise covered by this changed circumstances review is jewelry armoires that have at least one side door, whether or not lined with felt or felt-like material from the PRC. This changed circumstances administrative review covers jewelry armoires from the PRC meeting the specifications as described above. Effective upon publication of this final results of changed circumstances review in the **Federal Register**, the amended scope of the order will read as follows.

Scope of the Order

The product covered is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, oriented strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) Wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests,[1] highboys,[2] lowboys,[3] chests of drawers,[4] chests,[5] door chests,[6] chiffoniers,[7] hutches,[8] and armoires;[9] (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) Seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including

[1] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[2] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[3] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[4] A chest of drawers is typically a case containing drawers for storing clothing.

[5] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[6] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[7] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[8] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[9] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate;[10] (9) jewelry armoires;[11] (10) cheval mirrors[12] (11) certain metal parts[13] (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set.

Imports of subject merchandise are classified under subheading 9403.50.9040 of the Harmonized Tariff Schedule of the United States ("HTSUS") as "wooden * * * beds" and under subheading 9403.50.9080 of the HTSUS as "other * * * wooden furniture of a kind used in the bedroom." In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9040 of the HTSUS as "parts of wood" and framed glass mirrors may also be entered under subheading 7009.92.5000 of the HTSUS as "glass mirrors * * * framed." This order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Final Results of Review; Partial Revocation of Antidumping Duty Order

The affirmative statement of no interest by petitioners concerning jewelry armoires, as described herein, constitutes changed circumstances sufficient to warrant revocation of this order in part. One party commented on the *Initiation and Preliminary Results* stating that the Department should revoke the order for these jewelry armoires. No party contests that petitioners' statement of no interest represents the views of substantially all of the domestic industry. Therefore, the Department is partially revoking the order with respect to jewelry armoires that have at least one side door, whether or not the door is lined with felt or felt-like material from the PRC with regard to products which meet the specifications detailed above, in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 351.216(d) and 351.222(g). We will instruct the U.S. Customs and Border Protection to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of jewelry armoires that have at least one side door, whether or not the door is lined with felt or felt-like material meeting the specifications indicated above, and not subject to final results of an administrative review as of the date of publication in the **Federal Register** of the final results of this changed circumstances review in accordance with 19 CFR 351.222.

This notice serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. 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 sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping duty order and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 351.216(e) and 351.222(g).

Dated: June 30, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–10655 Filed 7–6–06; 8:45 am]

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[10] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. See Customs' Headquarters' Ruling Letter 043859, dated May 17, 1976.

[11] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24″ in width, 18″ in depth, and 49″ in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. See Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, Issues and Decision Memorandum Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China dated August 31, 2004. See Wooden Bedroom Furniture from the People's Republic of China: Notice of Final Results of Changed Circumstances Review and Revocation in Part, (FR citation and date to be added).

[12] Cheval mirrors, *i.e.*, any framed, tiltable mirror with a height in excess of 50″ that is mounted on a floor-standing, hinged base.

[13] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.*, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under HTSUS subheading 9403.90.7000.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–507–601]

Certain In–shell Roasted Pistachios from the Islamic Republic of Iran: Preliminary Results of Countervailing Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on certain in–shell roasted pistachios from the Islamic Republic of Iran (Iran) for the period January 1, 2004, through December 31, 2004. For information on the net subsidy rate for the reviewed company, please see the "Preliminary Results of Review" section of this notice. Interested parties are invited to comment on these preliminary results. (*See* the "Public Comment" section of this notice.)

EFFECTIVE DATE: July 7, 2006.

FOR FURTHER INFORMATION CONTACT: Darla Brown, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue NW, Washington DC 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 1986, the Department published in the **Federal Register** the CVD order on certain in–shell roasted pistachios from Iran. *See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Roasted In–Shell Pistachios from Iran*, 51 FR 35679 (October 7, 1986) (*Roasted Pistachios*). On October 3, 2005, the Department published a notice of opportunity to request an administrative review of this CVD order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 70 FR 57558

(October 3, 2005). On October 31, 2005, we received timely requests for administrative review from the California Pistachio Commission (CPC) and Cal Pure Pistachios, Inc. (Cal Pure). The CPC and Cal Pure requested that the Department conduct a review with respect to Tehran Negah Nima Trading Company, Inc., trading as Nima Trading Company (Nima), the respondent company in this proceeding. On December 1, 2005, we initiated an administrative review of the CVD order on in–shell roasted pistachios from Iran covering the period of review (POR) January 1, 2004, through December 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews*, 70 FR 72107 (December 1, 2005).

On January 5, 2006, we issued our initial questionnaire to the Government of Iran (GOI) and Nima. Neither the GOI nor Nima submitted questionnaire responses. On February 13, 2006, Nima submitted a letter stating that it did not make any shipments of subject merchandise to the United States during the POR. On March 21, 2006, the team placed on the record the results of a customs data run, which indicated that Nima did in fact make shipments of subject merchandise to the United States during the POR. *See* March 21, 2006, memorandum to the file from Darla Brown, case analyst, re: customs data. Also on March 21, 2006, we sent a letter to Nima, asking the company to explain in writing the apparent discrepancy between its February 13, 2006, letter and the information obtained from the U.S. Customs and Border Protection (CBP). Nima did not respond to our March 21, 2006, letter.

Therefore, as discussed below in the "Use of Facts Available" section of this notice, we have resorted to the facts otherwise available, employing an adverse inference. See Section 776 of the Tariff Act of 1930, as amended (the Act).

In accordance with 19 CFR 351.213(b), this administrative review covers only those producers or exporters for which a review was specifically requested. Accordingly, this administrative review covers Nima and ten programs used by Nima and/or its grower(s) and producer(s).

Scope of Order

The product covered by this order is all roasted in–shell pistachio nuts, whether roasted in Iran or elsewhere, from which the hull has been removed, leaving the inner hard shells and the edible meat, as currently classifiable in the Harmonized Tariff Schedules of the United States (HTSUS) under item number 0802.50.20.00. The HTSUS subheading is provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Use of Facts Available

During the course of this proceeding, we have sought information from the company subject to this review, Nima, and from the GOI pertaining to countervailable subsidy programs in Iran and their use by Nima and Nima's grower(s) and producer(s). Specifically, we have asked for information concerning Nima's and its growers' usage of the following programs: Provision of Credit, Provision of Fertilizer and Machinery, Tax Exemptions, Provision of Water and Irrigation Equipment, Technical Support, Duty Refunds on Imported Raw or Intermediate Materials Used in the Production of Export Goods, Program to Improve Quality of Exports of Dried Fruit, Iranian Export Guarantee Fund, GOI Grants and Loans to Pistachio Farmers, and Crop Insurance for Pistachios. In addition, we have requested information concerning Nima's total sales and the sales of subject merchandise made by Nima during the POR. *See* pages II–1–10 and pages III–3–12 of the Department's January 5, 2006, initial questionnaire. Moreover, the Department has sought further clarification from Nima regarding the discrepancy between its February 13, 2006, statement that Nima did not make any shipments of the subject merchandise to the United States during the POR and proprietary customs information on the record contradicting that statement.

Section 776(a) of the Act requires the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. Specifically, neither the GOI nor Nima submitted questionnaire responses to the Department. By not responding to our questionnaire, Nima and the GOI failed to provide information regarding subsidy programs in Iran, as well as Nima's sales, explicitly requested by the Department. Therefore, we must resort to the facts otherwise available pursuant to section 776(a) of the Act.

Furthermore, section 776(b) of the Act provides that in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a party if it determines that a party has failed to cooperate to the best of its ability. The Department finds that, by not providing necessary information specifically requested by the Department in a timely fashion, the GOI and Nima have failed to cooperate to the best of their abilities. Therefore, in selecting from among the facts available, the Department determines that an adverse inference is warranted.

When employing an adverse inference in an administrative review, the statute indicates that the Department may rely upon information derived from (1) the petition, a final determination in a countervailing duty or an antidumping investigation, any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (2) any other information placed on the record. *See* Section 776(b) of the Act and 19 CFR 351.308(c). Thus, in applying adverse facts available, the Department is relying on information from *Roasted Pistachios; Certain In–Shell Pistachios and Certain Roasted In–Shell Pistachios from the Islamic Republic of Iran: Final Results of New Shipper Countervailing Duty Reviews*, 68 FR 4997 (January 31, 2003) (*Pistachios New Shipper Reviews*); *Certain In–shell Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review*, 70 FR 54027 (September 13, 2005) (*2003 In–shell Pistachios*); and *Certain In–shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review*, 71 FR 27682 (May 12, 2006) (*2003 Roasted Pistachios*).

If the Department relies on secondary information (*e.g.*, data from a petition) as facts available, section 776(c) of the Act provides that the Department shall, "to the extent practicable," corroborate such information using independent sources reasonably at its disposal.[1] The SAA further provides that to corroborate secondary information means that the Department will satisfy itself that the secondary information to be used has probative value. *See* also 19 CFR 351.308(d) (describing the corroboration of secondary information).

Thus, in those instances in which it determines to apply adverse facts available, the Department, in order to satisfy itself that such information has probative value, will examine, to the extent practicable, the reliability and relevance of the information used. However, unlike other types of information, such as publicly available

[1] The Statement of Administrative Action accompanying the URAA clarifies that information from the petition is "secondary information." *See* Statement of Administrative Action, URAA, H. Doc. No. 316, Vol. 1, 103d Cong. (1994) (SAA) at 870.

data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company–specific benefits resulting from countervailable subsidy programs. The only source for such information normally is administrative determinations, which are reliable. In the instant case, no evidence has been presented or obtained which contradicts the reliability of the evidence relied upon in previous segments of this proceeding.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render benefit data not relevant. Where circumstances indicate that the information is not appropriate as adverse facts available, the Department will not use it. *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996). In the instant case, no evidence has been presented or obtained which contradicts the relevance of the benefit data relied upon in previous segments of this proceeding. Thus, in the instant case, the Department finds that the information used has been corroborated to the extent practicable.

Analysis of Programs

Programs Preliminarily Determined to Be Countervailable

Because the GOI and Nima did not provide the information necessary to conduct an analysis of these programs, we are making an adverse inference that each of these programs continues to exist, is countervailable, and that a benefit was conferred upon Nima and/or its grower(s) and supplier(s) during the POR.

A. *Provision of Fertilizer and Machinery*

In *Roasted Pistachios*, 51 FR at 35680, the Department found that growers, processors or exporters of pistachios in Iran can obtain fertilizer and machinery from the GOI at preferential prices.

As further discussed above in the "Use of Facts Available" section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

To calculate the net subsidy rate under this program, we used the highest rate listed in *Roasted Pistachios* for this program. Accordingly, we preliminarily determine that the net subsidy rate for this program is 6.65 percent *ad valorem*.

B. *Provision of Credit*

In *Roasted Pistachios*, 51 FR at 35680–81, the Department found that bounties or grants were provided to Iranian growers, processors, or exporters of pistachios under this program. Specifically, the Department found that agricultural cooperatives in Iran make credit available on terms inconsistent with commercial considerations from funds provided by the GOI to their members.

As further discussed above in the "Use of Facts Available" section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

To calculate the net subsidy rate under this program, we used the highest rate listed in *Roasted Pistachios* for this program. Accordingly, we preliminarily determine that the net subsidy rate for this program is 6.65 percent *ad valorem*.

C. *Tax Exemptions*

In *Roasted Pistachios*, 51 FR at 35681, the Department found that bounties or grants were provided to Iranian growers, processors, or exporters of pistachios under this program. Specifically, the Department determined that farmers benefit from legislation that exempts farmers and livestock breeders from paying taxes, provided they follow government agricultural guidelines.

As further discussed above in the "Use of Facts Available" section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

To calculate the net subsidy rate under this program, we used the highest rate listed in *Roasted Pistachios* for this program. Accordingly, we preliminarily determine that the net subsidy rate for this program is 6.65 percent *ad valorem*.

D. *Provision of Water and Irrigation Equipment*

In *Roasted Pistachios*, 51 FR at 35681, the Department found that bounties or grants were provided to Iranian growers, processors, or exporters of pistachios under this program. Specifically, the Department determined that pistachio growers in Iran may benefit from the construction of soil dams, flood barriers, canals, and other irrigation projects undertaken by the government to increase agricultural production.

As further discussed above in the "Use of Facts Available" section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

To calculate the net subsidy rate under this program, we used the highest rate listed in *Roasted Pistachios* for this program. Accordingly, we preliminarily determine that the net subsidy rate for this program is 6.65 percent *ad valorem*.

E. *Technical Support*

In *Roasted Pistachios*, 51 FR at 35681, the Department found that bounties or grants were provided to Iranian growers, processors, or exporters of pistachios under this program. Specifically, the Department determined that pistachio growers in Iran receive technical support as part of the GOI's program to support agricultural development, and that this technical support included research projects to improve cultivation techniques, as well as assistance in harvesting, marketing, and the use of fertilizer.

As further discussed above in the "Use of Facts Available" section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

To calculate the net subsidy rate under this program, we used the highest rate listed in *Roasted Pistachios* for this program. Accordingly, we preliminarily determine that the net subsidy rate for this program is 6.65 percent *ad valorem*.

F. *Duty Refunds on Imported Raw or Intermediate Materials Used in the Production of Export Goods*

In the *Pistachios New Shipper Reviews*, we found that there was sufficient information on the record to suggest that duties and levies paid in connection with the importation of intermediate materials used in the production of the exported commodities and goods are refunded to exporters, pursuant to the Third Five Year Development Plan (TFYDP) enacted by the GOI. *See* the May 8, 2002, Memorandum to Melissa G. Skinner

from the Team, re: New Subsidy Allegations, contained in the February 2, 2006, Memorandum to the File from the Team, re: Placing Memos on the Record.

As further discussed above in the "Use of Facts Available" section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

This program was alleged for the first time in *Pistachios New Shipper Reviews*, and thus was not among the programs addressed in *Roasted Pistachios*. However, lacking any information from Nima and the GOI on the record of the instant review, we find that the net subsidy rate of 6.65 percent, the highest rate established for an industry–wide program in *Roasted Pistachios*, is the only available information on the record and is therefore, as adverse facts available, the appropriate rate to apply to this program in these preliminary results. Accordingly, we preliminarily find that the net subsidy rate for this program is 6.65 percent *ad valorem*.

G. *Program to Improve Quality of Exports of Dried Fruit*

In the *Pistachios New Shipper Reviews*, we found that there was sufficient information on the record to suggest that pursuant to the Budget Act of 2001 – 2002, the GOI provides financial assistance to exporters of dried fruit and pistachios to assist them in the production of export quality goods. *See* the May 8, 2002, Memorandum to Melissa G. Skinner from the Team, re: New Subsidy Allegations, contained in the February 2, 2006, Memorandum to the File from the Team, re: Placing Memos on the Record.

As further discussed above in the "Use of Facts Available" section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

This program was alleged for the first time in the *Pistachios New Shipper Reviews*; and thus was not among the programs addressed in *Roasted Pistachios*. However, lacking any information from Nima and the GOI on the record of the instant review, we find that the net subsidy rate of 6.65 percent, the highest rate established for an industry–wide program in *Roasted Pistachios*, is the only available information on the record and is therefore, as adverse facts available, the appropriate rate to apply to this program in these preliminary results. Accordingly, we preliminarily find that the net subsidy rate for this program is 6.65 percent *ad valorem*.

H. *Iranian Export Guarantee Fund*

In *2003 In–shell Pistachios*, we found that petitioners had provided sufficient evidence to support their allegation that the GOI pays a "prize" in the form of an export subsidy to exporters; these prizes are payable commensurate with the added value of export goods and services. *See* the October 27, 2004, Memorandum to Melissa G. Skinner from the Team, re: New Subsidy Allegations, contained in the February 2, 2006, Memorandum to the File from the Team, re: Placing Memos on the Record. This program was also examined in the context of *2003 Roasted Pistachios*.

As further discussed above in the "Use of Facts Available" section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

This program was alleged for the first time in *2003 In–shell Pistachios*, and thus was not among the programs addressed in *Roasted Pistachios*. However, lacking any information from Nima and the GOI on the record of the instant review, we find that the net subsidy rate of 6.65 percent, the highest rate established for an industry–wide program in *Roasted Pistachios*, is the only available information on the record and is therefore, as adverse facts available, the appropriate rate to apply to this program in these preliminary results. Accordingly, we preliminarily find that the net subsidy rate for this program is 6.65 percent *ad valorem*.

I. *GOI Grants and Loans to Pistachio Farmers*

In *2003 In–shell Pistachios*, we found that petitioners had provided sufficient evidence to support their allegation that the GOI's Foreign Exchange Reserve Account Board of Trustees agreed to provide both a grant of $100,000,000 and a $50,000,000 buyer's credit to Iranian pistachio cooperatives and pistachio farmers. *See* the May 8, 2002, Memorandum to Melissa G. Skinner from the Team, re: New Subsidy Allegations, contained in the February 2, 2006, Memorandum to the File from the Team, re: Placing Memos on the Record. This program was also examined in the context of *2003 Roasted Pistachios*.

As further discussed above in the "Use of Facts Available" section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

This program was alleged for the first time in *2003 In–shell Pistachios*, and thus was not among the programs addressed in *Roasted Pistachios*. However, lacking any information from Nima and the GOI on the record of the instant review, we find that the net subsidy rate of 6.65 percent, the highest rate established for an industry–wide program in *Roasted Pistachios*, is the only available information on the record and is therefore, as adverse facts available, the appropriate rate to apply to this program in these preliminary results. Accordingly, we preliminarily find that the net subsidy rate for this program is 6.65 percent *ad valorem*.

J. *Crop Insurance for Pistachios*

In *2003 In–shell Pistachios*, we found that petitioners had provided sufficient evidence to support their allegation that the GOI established the Iranian Agricultural Product Insurance Act (IAPIA), whereby the Agricultural Bank will insure agricultural produce as a means of achieving the goals and policies of the agricultural sector and that the GOI aids farmers in securing insurance premiums at less than market value. *See* the May 8, 2002, Memorandum to Melissa G. Skinner from the Team, re: New Subsidy Allegations, contained in the February 2, 2006, Memorandum to the File from the Team, re: Placing Memos on the Record. This program was also examined in the context of *2003 Roasted Pistachios*.

As further discussed above in the "Use of Facts Available" section of this notice, we have determined that the application of adverse facts available is warranted on the grounds that Nima and the GOI did not respond to our request for information. Therefore, we have determined as adverse facts available that this program continues to exist and that Nima received a countervailable benefit during the POR.

This program was alleged for the first time in *2003 In–shell Pistachios*, and thus was not among the programs addressed in *Roasted Pistachios*.

However, lacking any information from Nima and the GOI on the record of the instant review, we find that the net subsidy rate of 6.65 percent, the highest rate established for an industry–wide program in *Roasted Pistachios*, is the only available information on the record and is therefore, as adverse facts available, the appropriate rate to apply to this program in these preliminary results. Accordingly, we preliminarily find that the net subsidy rate for this program is 6.65 percent *ad valorem*.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we have calculated an individual subsidy rate for Nima, the only producer/exporter subject to this administrative review, for the POR, *i.e.*, calendar year 2004. We preliminarily determine that the total estimated net countervailable subsidy rate is 66.50 percent *ad valorem*.

As Nima is the exporter but not the producer of subject merchandise, should the final results of this review remain the same as these preliminary results, the Department's final results of review will apply to all subject merchandise exported by Nima. *See* 19 CFR 351.107(b).

The Department intends to instruct CBP, within 15 days of publication of the final results of this review, to liquidate all shipments of subject merchandise exported by Nima, entered, or withdrawn from warehouse, for consumption during the POR at the rate established in this administrative review.

We will instruct CBP to continue to collect cash deposits for non–reviewed companies at the most recent company–specific or country–wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non–reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding. *See 2003 Roasted Pistachios*. These cash deposit rates shall apply to all non–reviewed companies until a review of a company assigned these rates is requested.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the publication of these preliminary results. Rebuttal briefs, which are limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 30, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–10664 Filed 7–6–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–829; C–421–809; C–412–821]

Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom: Final Results of Countervailing Duty Administrative Reviews and Revocation of Countervailing Duty Orders

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

SUMMARY: On February 28, 2006, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative reviews of the countervailing duty (CVD) orders on low enriched uranium (LEU) from Germany, the Netherlands, and the United Kingdom (UK) for the period January 1, 2004, through December 31, 2004 (*see Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom: Preliminary Results of Countervailing Duty Administrative Reviews and Intent to Revoke the Countervailing Duty Orders*, 71 FR 10062 (February 28, 2006) (*Preliminary Results*)). The Department has now completed these administrative reviews in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Based on information received since the *Preliminary Results* and our analysis of the comments received, the Department has not revised the net subsidy rate for Urenco Deutschland GmbH of Germany (UD), Urenco Nederland B.V. of the Netherlands (UNL), Urenco (Capenhurst) Limited (UCL) of the UK, Urenco Ltd., Urenco Inc., and Urenco Enrichment Company Ltd. (UEC) (collectively, the Urenco Group or respondents), the producers/exporters of subject merchandise covered by these reviews. For further discussion of our positions, *see* the "Issues and Decision Memorandum" from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, concerning "Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom: Final Results of Countervailing Duty Administrative Reviews and Revocation of Countervailing Duty Orders" (Decision Memorandum), dated June 28, 2006. The final net subsidy rate for the reviewed companies is listed below in the section entitled "Final Results of Reviews."

EFFECTIVE DATE: January 1, 2005.

FOR FURTHER INFORMATION CONTACT: Darla Brown, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2849.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 2006, the Department published in the **Federal Register** its *Preliminary Results*. We invited interested parties to comment on the

results. Since the *Preliminary Results*, the following events have occurred.

On March 30, 2006, we received case briefs from petitioners[1] and respondents. In their case briefs, both petitioners and respondents requested a public hearing, although respondents stated that it was their intention to withdraw their hearing request if no other interested party requested a hearing. On April 4, 2006, we received rebuttal briefs from petitioners, respondents, and the Governments of the Netherlands and the UK (GON and UKG, respectively). On April 25, 2006, petitioners withdrew their request for a hearing. On April 26, 2006, respondents withdrew their request for a hearing.

Pursuant to 19 CFR 351.213(b), these reviews cover only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, these reviews cover the Urenco Group. These reviews cover the period January 1, 2004, through December 31, 2004, and four programs.

Scope of the Orders

For purposes of these orders, the product covered is LEU. LEU is enriched uranium hexafluoride (UF_6) with a U^{235} product assay of less than 20 percent that has not been converted into another chemical form, such as UO_2, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down–blending of highly enriched uranium).

Certain merchandise is outside the scope of these orders. Specifically, these orders do not cover enriched uranium hexafluoride with a U^{235} assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of these orders. For purposes of these orders, fabricated uranium is defined as enriched uranium dioxide (UO_2), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U_3O_8) with a U^{235} concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U^{235} concentration of no greater than 0.711 percent are not covered by the scope of these orders.

Also excluded from these orders is LEU owned by a foreign utility end–user and imported into the United States by or for such end–user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO_2) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end–user, or their designated transporter(s) while in U.S. customs territory, and (ii) are re–exported within eighteen months of entry of the LEU for consumption by the end–user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end user.

The merchandise subject to these orders is currently classifiable in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under HTSUS subheadings 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Revocation of the Orders

On February 25, 2005, we received requests for revocation of the CVD orders on LEU from the Government of Germany (GOG), the GON, and the UKG. Their requests were filed in accordance with 19 CFR 351.222(c). The Department may revoke, in whole or in part, a CVD order upon completion of one or more reviews under section 751 of the Act. Although Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222, which was amended on September 22, 1999. *See Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders*, 64 FR 51236 (September 22, 1999).

Pursuant to 19 CFR 351.222(e)(2)(i), during the third and subsequent annual anniversary months of the publication of the CVD order, the government of the affected country may request in writing that the Department revoke an order under 351.222(c)(1) if the government submits with the request its certification that it has satisfied, during the period of review, the requirements set out in 351.222(c)(1)(i) and that it will not reinstate for the subject merchandise those programs or substitute other countervailable subsidy programs. The GOG, the GON, and the UKG provided the certifications required by 19 CFR 351.222(e)(2)(i).

Upon receipt of such a request, the Department, pursuant to 19 CFR 351.222(c), will consider the following in determining whether to revoke the order: (1) whether the government of the affected country has eliminated all countervailable subsidies on the subject merchandise by abolishing for the subject merchandise, for a period of at least three consecutive years, all programs previously found countervailable; (2) whether exporters and producers of the subject merchandise are continuing to receive any net countervailable subsidy from an abolished program; and (3) whether the continued application of the CVD order is otherwise necessary to offset subsidization.

In our *Preliminary Results*, we preliminarily determined, in accordance with 19 CFR 351.222(c)(1)(i)(A), that all programs found by the Department to have provided countervailable subsidies on LEU from Germany, the Netherlands, and the UK have been abolished for at least three consecutive years. Moreover, we preliminarily determined that the net countervailable subsidy rate during the POR of the instant reviews is zero, and, therefore, that the exporters and producers are no longer receiving any net countervailable subsidy from the abolished programs within the meaning of 19 CFR 351.222(c)(1)(i)(B). Because we have allocated all non–recurring subsidies over a 10-year AUL, the benefit streams from these agreements were fully allocated at the end of 2002, *i.e.*, prior to the POR of these reviews. Finally, in accordance with 19 CFR 351.222(c)(1)(i)(C), we preliminarily determined that there is no evidence currently on the record of the instant reviews indicating that continuing these CVD orders is necessary to offset subsidization.

Parties have commented on our preliminary intent to revoke these CVD orders. *See* the Decision Memorandum at Comment 2. However, we have not been persuaded by parties' arguments to deviate from our finding in the *Preliminary Results*. Therefore, we find, in accordance with 19 CFR 351.222(c)(1)(ii), that the continued application of these CVD orders is no longer warranted, and we are revoking these CVD orders.

Verification

The Department previously verified all of the relevant factual information relied upon in these administrative reviews, consistent with the requirements of the statute and the Department's regulations.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these reviews are addressed in the Decision Memorandum, which is hereby adopted by this notice. A list of the issues

[1] Petitioners are the United States Enrichment Corporation (USEC) and USEC Inc.

contained in the Decision Memorandum is attached to this notice as Appendix I. 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 Central Records Unit (CRU), room B–099 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Reviews

In accordance with section 777A(e)(1) of the Act and 19 CFR 351.221(b)(5), we calculated an *ad valorem* subsidy rate for the Urenco Group for calendar year 2004. The total net subsidy rate for the Urenco Group in these reviews is 0.00 percent *ad valorem* for the POR.

We will instruct U.S. Customs and Border Protection (CBP), within 15 days of publication of the final results of these reviews, to liquidate shipments of low enriched uranium by Urenco from Germany, the Netherlands, and the United Kingdom entered, or withdrawn from warehouse, for consumption from January 1, 2004, through December 31, 2004, without regard to countervailing duties. Moreover, the Department also will instruct CBP to discontinue the suspension of liquidation on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 2005. In addition, for the period January 1, 2004, through December 31, 2004, the assessment rates applicable to all non–reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

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.

These administrative reviews and this notice are issued and published in accordance with sections 751(a)(1), 751(a)(3) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: June 28, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I - Issues and Decision Memorandum

[FR Doc. E6–10574 Filed 7–6–06; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 063006A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States and Reef Fish Fishery in the Gulf of Mexico

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

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Neil Allen on behalf of The Georgia Aquarium. If granted, the EFP would authorize the applicant, with certain conditions, to collect limited numbers of groupers, snappers, tilefish, sea basses, jacks, spadefish, grunts, porgies, mackerel, cero, cobia, dolphin fish, spiny lobster, little tunny, and triggerfish. Specimens would be collected primarily from Federal waters off the coast of Georgia but may also be collected from Federal waters off the coasts of South Carolina, Florida, Alabama, Louisiana, Mississippi, and Texas during 2006, 2007, and 2008, and displayed at The Georgia Aquarium, located in Atlanta, Georgia.

DATES: Comments must be received no later than 5 p.m., Eastern standard time, on July 24, 2006.

ADDRESSES: Comments on the application may be sent via fax to 727–824–5308 or mailed to: Mark Sramek, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701. Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *Georgia.Aquarium@noaa.gov*. Include in the subject line of the e-mail document the following text: Comment on Georgia Aquarium EFP Application. The application and related documents are available for review upon written request to the address above or the e-mail address below.

FOR FURTHER INFORMATION CONTACT: Mark Sramek, 727–824–5311; fax 727–824–5308; e-mail: *Mark.Sramek@noaa.gov*.

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

According to the applicant, The Georgia Aquarium is a public, non-profit institution located in Atlanta, Georgia. Its mission is to provide entertainment and education and to support conservation through aquatic exhibits displaying animals from around the world.

The proposed collection for public display involves activities otherwise prohibited by regulations implementing the Fishery Management Plans (FMP) for the Snapper-Grouper Fisheries of the South Atlantic Region, Spiny Lobster Fishery of the South Atlantic Region, Dolphin and Wahoo Fishery of the Atlantic, Reef Fishes of the Gulf of

Mexico, or Coastal Migratory Pelagics Fisheries of the South Atlantic Region and the Gulf of Mexico Region.

The applicant requires authorization to harvest and possess the following numbers of fishes during each 12-month period from July 15, 2006, to July 14, 2008: 50 almaco jack, 100 Atlantic spadefish, 10 bank sea bass, 10 black grouper, 20 black margate, 50 black sea bass, 50 black snapper, 100 bluestriped grunt, 10 cero, 20 cobia, 10 coney, 30 cubera snapper, 20 dog snapper, 20 dolphin fish, 100 French grunt, 10 gag, 5 golden tilefish, 1 goliath grouper, 20 gray snapper, 5 gray triggerfish, 10 graysby, 20 greater amberjack, 5 hogfish, 20 jolthead porgy, 20 knobbed porgy, 20 lane snapper, 10 lesser amberjack, 10 little tunny, 10 mahogany snapper, 10 margate, 20 mutton snapper, 1 Nassau grouper, 3 ocean triggerfish, 3 queen triggerfish, 10 red grouper, 10 red hind, 10 red porgy, 50 red snapper, 10 rock hind, 20 rock sea bass, 10 saucereye porgy, 10 scamp, 50 schoolmaster, 5 sheepshead, 1 snowy grouper, 10 Spanish mackerel, 5 speckled hind, 10 spiny lobster, 50 tomtate, 50 vermilion snapper, 2 wahoo, 1 warsaw grouper, 5 wreckfish, 1 yellowfin grouper, 1 yellowmouth grouper, and 30 yellowtail snapper. Specimens would be collected primarily from Federal waters off the coast of Georgia but may also be collected from Federal waters off the coasts of South Carolina, Florida, Alabama, Louisiana, Mississippi, and Texas during 2006, 2007, and 2008.

Fishes would be captured in some areas using barrier and hand nets in conjunction with SCUBA, hook and line, and traps. The barrier net would be set up underwater to provide a barrier to a school of fish. The fish would be herded into the barrier net and then hand netted. The net would be set for approximately 1 hour at a time and monitored by divers using SCUBA at all times. The net is 50 ft (15.2 m) long and 5 ft (1.5 m) deep with 1–inch (2.5–cm) monofilament mesh. Hook and line would be employed at depths less than 100 ft (30.4 m) to capture bottom-dwelling fish, and in the water column for other species. Methods would be identical to that used by charter fishing boats. Fish traps will be used in some areas and are constructed from 1.5–inch (3.8–cm) wire mesh and are approximately 3 ft (1 m) long, 3 ft (1 m) wide and 4 ft (1.2 m) high. The entrance to the traps is a vertical slit 2 inches (5 cm) wide and 12 inches (0.30 m) long. Ten traps would be deployed for up to 10 fishing periods of 12 hours each.

NMFS finds this application warrants further consideration. Based on a preliminary review, NMFS intends to issue an EFP. Possible conditions the agency may impose on this permit, if it is indeed granted, include but are not limited to: Reduction in the number or species of fish to be collected; restrictions on the placement of traps; restrictions on the size of fish to be collected; prohibition of the harvest of any fish with visible external tags; and specification of locations, dates, and/or seasons allowed for collection of particular fish species. A final decision on issuance of the EFP will depend on a NMFS review of public comments received on the application, consultations with the affected states, the Gulf of Mexico Fishery Management Council, the South Atlantic Fishery Management Council, and the U.S. Coast Guard, and a determination that it is consistent with all applicable laws. The applicant requests a 24-month effective period for the EFP.

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

Dated: June 30, 2006.

James P. Burgess,

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

[FR Doc. E6–10605 Filed 7–6–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Inland Waterways Users Board; Request for Nominations

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: Section 302 of Public Law 99–662 established the Inland Waterways Users Board. The Board is an independent Federal advisory committee. The Secretary of the Army appoints its 11 members. This notice is to solicit nominations for five (5) appointments or reappointments to two-year terms that will begin after November 1, 2006.

ADDRESSES: Office of the Assistant Secretary of the Army (Civil Works), Attetion: Inland Waterways Users Board Nominations Committee, 108 Army Pentagon, Washington, DC 20310–0108.

FOR FURTHER INFORMATION CONTACT: Office of the Assistant Secretary of the Army (Civil Works), (703) 697–8986.

SUPPLEMENTARY INFORMATION: The selection, service, and appointment of Board members are covered by provisions of Section 302 of Public Law 99–662. The substance of those provisions is as follows:

a. *Selection.* Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracostal waterways, to represent geographical regions, and to be representative of waterborne commerce as determined by commodity ton-miles statistics.

b. *Service.* The Board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterways construction and rehabilitation priorities and spending levels for commercial navigation improvements, and report its recommendations annually to the Secretary and Congress.

c. *Appointment.* The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (Pub. L. 92–463, as amended) and departmental implementing regulations. Members serve without compensation but their expenses due to Board activities are reimbursable. The considerations specified in Section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows:

(1) *Carriers and Shippers.* The law uses the terms "primary users and shipper." Primary users have been intepreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers have been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper or primary user.

(2) *Geographical Representation.* The law specifies "various" regions. For the purpose of selecting Board members, the waterways subjected to fuel taxes and described in Public Law 95–502, as amended, have been aggregated into six regions. They are (1) the Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lower Mississippi River and its tributaries below the mouth of the Ohio and above Baton Rouge; (3) the Ohio River and its tributaries; (4) the Gulf Intracoastal Waterway in Louisiana and Texas; (5) the Gulf Intracoastal Waterway east of New Orleans and associated fuel-taxed waterways including the Tennessee-Tombigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake Rivers System and Upper Willamette. The intent is that each region shall be represented by at least one Board member, with that

representation determined by the regional concentration of the individual's traffic on the waterways.

(3) *Commodity Representation.* Waterway commerce has been aggregated into six commodity categories based on "inland" ton-miles shown in Waterborne Commerce of the United States. These categories are (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum, Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemical and Allied Products; and (6) All other. A consideration in the selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

d. *Nomination.* Reflecting preceding selection criteria, the current representation by the five (5) Board members whose terms will expire is one member each representing regions 2, 3 and 6, and two members representing region 1. Also, one of these Board members represents a shipper, two represent carriers and two represent a carrier/shipper.

Two of the five members whose terms will expire are eligible for reappointment. Nominations to replace Board members whose terms expire may be made by individuals, firms or associations. Nominations will:

(1) State the region to be represented.

(2) State whether the nominee is representing carriers, shippers or both.

(3) Provide information on the nominee's personal qualifications.

(4) Include the commercial operations of the carrier and/or shipper with whom the nominee is affiliated. This commercial operations information will show the actual or estimated ton-miles of each commodity carried or shipped on the inland waterways system in a recent year (or years) using the waterway regions and commodity categories previously listed.

Nominations received in response to **Federal Register** notices published on March 17, 2005 (70 FR 13016) and February 17, 2006 (71 FR 8568) have been retained for consideration. Renomination is not required but may be desirable.

e. *Deadline for Nominations.* All nominations must be received at the address shown above no later than August 11, 2006.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–6037 Filed 7–6–06; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of open meeting and partially closed meetings.

SUMMARY: The notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify members of the general public of their opportunity to attend. Individuals who will need special accommodations in order to attend the meeting (*i.e.*, interpreting services, assistive living devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than July 24, 2006. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: August 3–5, 2006.

Times

August 3

Committee Meetings

Assessment Development Committee: Closed Session—9 p.m. to 1 p.m.

Ad Hoc Committee on Planning for NAEP 12th Grade Assessments in 2009: Open Session—1 p.m. to 3 p.m.

Reporting and Dissemination Committee: Open Session—3 p.m. to 4:30 p.m.

Executive Committee: Open Session—4:45 p.m. to 5:15 p.m.; Closed Session 5:15 p.m. to 6:15 p.m.

August 4

Full Board: Open Session—8:30 a.m. to 12:15 p.m.; Closed Session—12:15 p.m. to 1:30 p.m.; Open Session—1:30 p.m.–4:15 p.m.

Committee Meetings

Assessment Development Committee: Open Session—9:45 a.m. to 12:15 p.m.

Committee on Standards, Design and Methodology: Open Session—9:45 a.m. to 12:15 p.m.

Reporting and Dissemination Committee: Open Session—9:45 a.m. to 12:15 p.m.

August 5

Nominations Committee: Open Session—8:15 a.m. to 8:45 a.m.

Full Board: Open Session—9 a.m. to 12 p.m.

Location: The Ritz-Carlton Tysons Corner, 1700 Tysons Boulevard, McLean, VA 22102.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended.

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment objectives, developing appropriate student achievement levels for each grade and subject tested, developing guidelines for reporting and disseminating results, and developing standards and procedures for interstate and national comparisons.

The Assessment Development Committee will meet in closed session on August 3 from 9 a.m. to 1 p.m. (four hours) to review secure reading passages and items for grade 8 (approximately 200 reading items) for the 2007 National Assessment of Education Progress (NAEP) Reading pilot test. The meeting must be conducted in closed session as disclosure of proposed test items for the Reading pilot test would significantly impede implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The Ad Hoc Committee on Planning for NAEP 12th Grade Assessments in 2009 will meet in open session on August 3 from 1 p.m. to 3 p.m. and Reporting and Dissemination Committee will meet in open session on August 3 p.m. to 4:30 p.m. Thereafter, the Executive Committee will meet in open session from 4:45 p.m. to 5:15 p.m.

The Executive Committee will meet in closed session on August 3, 2006 from 5:15 p.m. to 6:15 p.m. For the first agenda item during this closed session, the Executive Committee will receive independent government cost estimates from the Associate Commissioner, National Center for Education Statistics (NCES) for proposed contracts for item development, data collection, scoring and analysis, and reporting of National Assessment of Educational Progress

(NAEP) results for 2007–2012, and their implications on future NAEP activities. The discussion of independent government cost estimates prior to the development of the Request for Proposals for the NAEP 2007–2012 contracts is necessary for ensuring that NAEP contracts meet congressionally mandated goals and adhere to Board policies on NAEP assessments. This part of the meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program and would provide an advantage to potential bidders attending the meeting. Discussion of this information would be likely to significantly impede implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The second agenda item for the closed session of the Executive Committee on August 3 is the discussion and nomination of the Board Vice-Chair. This discussion pertains solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 U.S.C.

On August 4, the full Board will meet in open session from 8:30 a.m. to 4:15 p.m. From 8:30 a.m. to 9 a.m. the Board will approve the agenda, followed by an Oath of Office ceremony for a new Board member. The Board will then receive the Executive Director's report and hear an update on the work of the National Center for Education Statistics (NCES).

From 9:45 a.m. to 12:15 p.m. on August 4, the Board's standing committees—the Assessment Development Committee; the Committee on Standards, Design and Methodology, and the Reporting and Dissemination Committee—will meet in open session.

On August 4, the full Board will meet in closed session from 12:15 p.m. to 1:30 p.m. The Board will receive a briefing provided by the Associate Commissioner, NCES, on policy issues relating to upcoming Report Cards and secure student achievement data related to three upcoming NAEP reports. The Board will discuss its proposed Policy Statement and Guidelines on Reporting, Release, and Dissemination of NAEP Results in relation to embargoed data from: (1) The 2005 Trial Urban District Assessment in Science; (2) the 2005 12th Grade Reading and Mathematics Report Card: and (3) the Puerto Rico NAEP Mathematics Assessment. These data constitute a major basis for the national release of the NAEP results, and cannot be released in an open meeting prior to the official release of the reports. The meeting must therefore be conducted in closed session as disclosure of data would significantly impede implementation of the NAEP release activities, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On August 4 from 1:30 p.m. to 2:30 p.m. the Board will receive a report from the Ad Hoc Committee on Planning for NAEP 12th Grade Assessments in 2009. This session will be followed by Board action on the NAEP 12th Grade Mathematics Objectives and Specifications from 2:45 p.m. to 3:30 p.m. From 3:30 p.m. to 4:15 p.m., the Board will take action on the NAGB Policy Statement and Guidelines on Reporting, Release, and Dissemination of NAEP Results, upon which the August 4 session of the Board meeting will conclude.

On August 5, 2006 from 8:15 a.m. to 8:45 a.m., the Nominations Committee will meet in open session. From 9 a.m. to 9:30 a.m. the full Board will meet in open session to receive a briefing on NAEP Assessment and Booklet Design, followed by Board action from 9:30 a.m. to 10 a.m. on NAEP/NAGB Public Identity Marks. From 10 a.m. to 10:30 a.m., the Board will receive an update on the NAEP 2011 Writing Framework project.

Board actions on policies and Committee reports are scheduled to take place between 10:45 a.m. and 12 p.m., upon which the August 5, 2006 session of the Board meeting will adjourn.

Detailed minutes of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 9 a.m. to 5 p.m. eastern standard time.

Dated: July 3, 2006.

Munira Mwalimu,

Operations Officer, National Assessment Governing Board.

[FR Doc. 06–6036 Filed 7–6–06; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–350–000]

BGS Kimball Gas Storage, LLC; Notice of Application for Abandonment

June 29, 2006.

Take notice that on May 26, 2006, BGS Kimball Gas Storage, LLC, (BGS Kimball) filed with the Federal Energy Regulatory Commission an application under section 7 of the Natural Gas Act to abandon the blanket certificate to provide storage services in interstate service issued to its predecessor, WPS–ESI Gas Storage, LLC. BGS Kimball is the owner of the Kimball 27 storage facility in St. Clair County, Michigan. BGS Kimball has entered into a long-term lease agreement with its affiliate, Bluewater Gas Storage, LLC (Bluewater), whereby Bluewater acquired control of the Kimball 27 storage facility. Bluewater intends to operate the Kimball 27 storage facility on an integrated basis with its Bluewater storage facilities, located nearby in St. Clair and Macomb Counties, Michigan. Separately, Bluewater is applying to the Commission for certificates of public convenience and necessity that would allow it to operate the integrated storage facilities in Michigan as a FERC-jurisdictional "natural gas company" authorized to provide storage services in interstate commerce.

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 indicate below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time July 26, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10615 Filed 7–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–404–000]

Eastern Shore Natural Gas Company; Notice of Petition for Approval of Settlement Agreement

June 29, 2006.

Take notice that on June 27, 2006, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing a Petition for Approval of Settlement Agreement, including a proposed settlement agreement and associated *pro forma* tariff sheets.

Eastern Shore states that copies of its filing have been served upon all affected customers of Eastern Shore and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on July 5, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10609 Filed 7–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP06–398–000; CP06–399–000; CP06–400–000]

MoBay Storage Hub, Inc.; Notice of Application

June 29, 2006.

Take notice that on June 22, 2006, MoBay Storage Hub, Inc. (MoBay), 5847 San Felipe, Houston, Texas 77057, filed in dockets CP06–398–000, CP06–399–000, and CP06–400–000 an application pursuant to section 7 of the Natural Gas Act (NGA), as amended, for a certificate of public convenience and necessity authorizing MoBay to construct, install, and operate a natural gas storage facility and other appurtenant facilities located in Mobile Bay, Alabama; a blanket certificate authorizing MoBay to provide storage and hub services on behalf of others; authorization to provide storage at market based rates; a blanket construction certificate to permit MoBay to construct, install, acquire, and operate additional facilities; and approval of the *pro forma* FERC gas tariff, all as more fully set forth in the application which is on file with the Commission and open to public inspection. 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 to access the document. For assistance, call (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application should be directed to Edmund A. Knolle., Mobay Storage Hub, Inc., San Felipe Plaza, 5847 San Felipe, Suite 3050, Houston, Texas 77057, or call (713) 961–3204.

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 with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors 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 commentors will not be

required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments protests and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web (*http://www.ferc.gov*) site under the "e-Filing" link.

Comment Date: July 20, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10610 Filed 7–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–289–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

June 29, 2006.

Take notice that on May 30, 2006, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute Third Revised Sheet No. 368, with an effective date of May 1, 2006.

Tennessee states that the filing is being made in compliance with the Commission's order issued April 27, 2006, in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10613 Filed 7–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF06–5191–000]

Western Area Power Administration; Notice of Filing

June 29, 2006.

Take notice that on June 16, 2006, the Deputy Secretary, U.S. Department of Energy, pursuant to the authority vested on the Deputy Secretary by Delegation Order No. 00–37.00, effective December 6, 2001, submitted for confirmation and approval on a final basis, Rate Order No. WAPA–127 along with the following: Rate Schedules PD–NTS for network integration transmission service on the Parker Davis Project transmission system; INT–NITS2 for network integration transmission service on the Pacific Northwest-Pacific Southwest Intertie Project transmission system; and DSW–SD2, DSW–RS2, DSW–FR2, DSW–EI2, DSWSPR2, and DSW–SUR2 for ancillary services, effective July 1, 2006, and ending June 30, 2011.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on July 17, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10611 Filed 7–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 29, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC06–135–000; ER01–2398–013.

Applicants: SVMF4, LLC; Liberty Electric Power, LLC; Merrill Lynch Credit Products, LLC.

Description: Liberty Electric Power LLC, et al. submits an application for authorization for disposition of jurisdictional facilities, notice of change in status, and request for expedited action.

Filed Date: 6/22/2006.

Accession Number: 20060626–0168.

Comment Date: 5 p.m. eastern time on Thursday, July 13, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–870–015.

Applicants: Sunoco Power Marketing LLC.

Description: Sunoco Power Marketing, LLC submits amendments to

its market-based rate wholesale power sales tariff.

Filed Date: 6/26/2006.

Accession Number: 20060627–0229.

Comment Date: 5 p.m. eastern time on Monday, July 17, 2006.

Docket Numbers: ER01–666–008; ER91–569–001; ER01–1675–006; ER01–1804–007; ER02–862–008.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc on behalf of Entergy Operating Companies, et al., submits revised tariffs, Second Revised Sheet 2 et al. to FERC Electric Tariff, Original Volume 1.

Filed Date: 6/26/2006.

Accession Number: 20060628–0063.

Comment Date: 5 p.m. eastern time on Monday, July 17, 2006.

Docket Numbers: ER01–2543–003; ER01–2544–003; ER01–2545–003; ER01–2546–003; ER01–2547–003; ER03–1182–003; ER04–698–003; ER99–2984–007; ER05–524–002.

Applicants: CalPeak Power—Panoche LLC; CalPeak Power-Vaca Dixon LLC; CalPeak Power—El Cajon LLC; CalPeak Power—Enterprise LLC; Tyr Energy, LLC; Tor Power, LLC; Green Country, LLC; Lincoln Generating Facility, LLC.

Description: The Calpeak Entities et al. submits notice of non-material change in status in compliance with the reporting requirements adopted by FERC in Order 652.

Filed Date: 6/26/2006.

Accession Number: 20060627–0226.

Comment Date: 5 p.m. eastern time on Monday, July 17, 2006.

Docket Numbers: ER04–445–016; ER04–435–002; ER04–441–012; ER04–443–013.

Applicants: California Independent System Operator Corporation: Pacific Gas and Electric Company; San Diego Gas & Electric Company; Southern California Edison Company.

Description: California Independent System Operator Corp, et al. submits revisions to its pro forma Standard Large Generator Interconnection Agreement pursuant to FERC's 5/24/06 Order.

Filed Date: 6/23/2006.

Accession Number: 20060627–0054.

Comment Date: 5 p.m. eastern time on Friday, July 14, 2006.

Docket Numbers: ER04–445–017.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp submits conforming long-term Standard Large Generator Interconnection Procedures pro forma Agreement for Allocation of Responsibilities in compliance w/ FERC's 5/24/06 Order.

Filed Date: 6/23/2006.

Accession Number: 20060627–0053.

Comment Date: 5 p.m. eastern time on Friday, July 14, 2006.

Docket Numbers: ER05–1181–004.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits corrected Third Revised Sheet 250 & First Revised Third Revised Sheet 250, pursuant to Commission's 5/26/06 Order.

Filed Date: 6/26/2006.

Accession Number: 20060627–0228.

Comment Date: 5 p.m. eastern time on Monday, July 17, 2006.

Docket Numbers: ER06–433–003.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits the Large Generator Interconnection Agreement with the Twin Creeks Wind LLC and American Transmission Company, LLC in compliance with FERC's 5/26/06 Order.

Filed Date: 6/26/2006.

Accession Number: 20060627–0224.

Comment Date: 5 p.m. eastern time on Monday, July 17, 2006.

Docket Numbers: ER06–787–001.

Applicants: Idaho Power Company.

Description: Idaho Power Co submits revisions to its Period I Statements and Open Access Transmission Tariff pursuant to FERC's order issued 5/31/06.

Filed Date: 6/23/2006.

Accession Number: 20060627–0056.

Comment Date: 5 p.m. eastern time on Friday, July 14, 2006.

Docket Numbers: ER06–819–001.

Applicants: Consolidated Edison Energy of Massachusetts, Inc.

Description: Consolidated Edison Energy Massachusetts, Inc. submits its response with supporting materials to the 5/26/06 deficiency letter re Cost-of-Service Reliability Agreement and on 6/28/06 submits an omitted page of this filing.

Filed Date: 6/26/2006 and 6/26/2006.

Accession Number: 20060627–0244.

Comment Date: 5 p.m. eastern time on Monday, July 17, 2006.

Docket Numbers: ER06–819–002.

Applicants: ISO New England, Inc.

Description: ISO New England, Inc submits its response to FERC's 5/26/06 letter which requested additional information.

Filed Date: 6/26/2006.

Accession Number: 20060627–0137.

Comment Date: 5 p.m. eastern time on Monday, July 17, 2006.

Docket Numbers: ER06–864–001; ER00–2885–009; ER01–2765–008; ER02–1582–007; ER02–1785–004; ER02–2102–008.

Applicants: Bear Energy LP; Cedar Brakes I, L.L.C.; Cedar Brakes II, L.L.C.; Mohawk River Funding IV, L.L.C.; Thermo Cogeneration Partnership L.P.; Utility Contract Funding, L.L.C.

Description: Bear Energy submits an errata to the June 1, 2006 Notice of Non-Material Change in Status to include its affiliates.

Filed Date: 6/23/2006.

Accession Number: 20060628–0018.

Comment Date: 5 p.m. eastern time on Friday, July 14, 2006.

Docket Numbers: ER06–935–001; ER06–936–001; ER06–937–001; ER06–938–001; ER06–940–001; ER06–953–001.

Applicants: The Cincinnati Gas and Electric Company.

Description: The Cincinnati Gas & Electric Co dba Duke Energy Ohio submits revised notices of cancellation of FERC Rate Schedule No. 1 to reflect effective dates to be 6/5/06.

Filed Date: 6/22/2006.

Accession Number: 20060627–0227.

Comment Date: 5 p.m. eastern time on Thursday, July 6, 2006.

Docket Numbers: ER06–994–002.

Applicants: Western Kentucky Energy Corp.

Description: Western Kentucky Energy Corp submits an amendment to its notice of succession filed on 5/15/06.

Filed Date: 6/26/2006.

Accession Number: 20060627–0276.

Comment Date: 5 p.m. eastern time on Friday, July 7, 2006.

Docket Numbers: ER06–1018–001.

Applicants: Power Hedging Dynamics, LLC.

Description: Petition for acceptance of initial rate schedule, waivers and blanket authority of Power Hedging Dynamics, LLC under ER06–1018.

Filed Date: 6/16/2006.

Accession Number: 20060620–0312.

Comment Date: 5 p.m. eastern time on Wednesday, July 5, 2006.

Docket Numbers: ER06–1119–001.

Applicants: San Diego Gas & Electric Company.

Description: San Diego Gas & Electric Co submits an errata to the First Revised Sheet 158 filed on 6/8/06 to revise Table D–0 of Schedule D.

Filed Date: 6/23/2006.

Accession Number: 20060627–0058.

Comment Date: 5 p.m. eastern time on Friday, July 14, 2006.

Docket Numbers: ER06–1121–001.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corp on behalf of Ohio Power Co submits a revised Notice of Termination of Interconnection and Operation Agreement with Lawrence Energy Center, LLC.

Filed Date: 6/23/2006.

Accession Number: 20060627–0057.

Comment Date: 5 p.m. eastern time on Friday, July 14, 2006.

Docket Numbers: ER06–1123–001.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corp on behalf of Ohio Power Co submits a revised Notice of Termination of Interconnection and Operating Agreement with Lawrence Energy Center, LLC.

Filed Date: 6/23/2006.

Accession Number: 20060627–0055.

Comment Date: 5 p.m. eastern time on Friday, July 14, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10608 Filed 7–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF06–29–000]

Gulfstream Natural Gas System, L.L.C.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Gulfstream Phase IV Expansion Project and Request for Comments on Environmental Issues

June 28, 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 Gulfstream Natural Gas System, L.L.C.'s (Gulfstream) planned Phase IV Expansion Project located in Florida and Alabama. This notice announces the opening of the scoping process we will use to gather input from the public and interested agencies on the projects. Your input will help the Commission staff determine which issues need to be evaluated in the EA. Please note that the scoping period will close on July 31, 2006.

This notice is being sent to affected landowners; Federal, State, and local government representatives and agencies; environmental and public interest groups; Native American tribes; other interested parties in this proceeding; 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.

At this time we request that comments be submitted in written form. Further details on how to submit written comments are provided in the public participation section of this notice. For further information and an opportunity to provide comments, you are invited to attend Gulfstream's public open house meetings that are scheduled as follows:

Tuesday, July 11, 2006, 6–8 p.m.:
Hillsborough County Commission Building, 601 East Kennedy Blvd., 18th Floor, Tampa, FL 33602.

Wednesday, July 12, 2006, 6–8 p.m.:
Weedon Island Preserve, Cultural and Natural History Center, 1800 Weedon Drive, St. Petersburg, FL 33702.

Thursday, July 13, 2006, 6–8 p.m.:
Manatee Civic Center, Palma Sola Room, One Haben Blvd., Palmetto, FL 34221.

The primary purpose for the open house sessions is to identify potential siting issues so that they could be appropriately addressed. At the open houses, Gulfstream representatives will be available to discuss the various aspects of the project (*e.g.*, land, construction, environmental, design/engineering, and operations) and will meet individually with attendees to outline how pipelines and related facilities are sited, approved, built, and operated. Aerial photography and offshore survey maps showing route alternatives will be made available to encourage comments on the proposed project. Information on the FERC process will also be available.

In addition to the open houses, Gulfstream has established a toll-free phone number (888–GAS–4–FLA), an e-mail address (*gulfstream@williams.com*), and has developed a project Web site (*http://www.gulfstreamgas.com/phase4.htm*). Information included on the project Web site includes: The route selection process; the regulatory overview, with links to the FERC Web site; construction procedures; pipeline safety; and contact information.

Summary of the Proposed Project

Progress Energy Florida, Inc. (Progress Energy) is scheduled to re-power its Bartow Power Plant. The 472-megawatt (MW) oil-fired plant is scheduled to be re-powered with three combined cycle gas turbines that will generate 1,100 MW of power. Progress Energy has requested, and Gulfstream has agreed to provide 0.155 billion cubic feet per day of firm natural gas transportation service to the Bartow Plant. In order to provide the requested transportation service, it is necessary for Gulfstream to expand its current system, as described below.

Gulfstream is proposing to construct approximately 17.74 miles of 20-inch-diameter offshore pipeline from a proposed underwater hot tap with the existing 36-inch-diameter Gulfstream Pipeline (Line 200) in Hillsborough County waters of Tampa Bay and connecting to the existing Progress Energy Bartow Power Plant (Bartow Plant) on the east shore of St. Petersburg in Pinellas County, Florida. The project would also require the installation of

45,000 horsepower (hp) of new compression. One 15,000 hp compressor unit would be added at Gulfstream's existing compressor station in Coden, Alabama and a new compressor station with two 15,000-hp units would be constructed at an existing pressure reduction station site in Manatee County, Florida.

The proposed offshore pipeline would head north-northeast from the proposed hot tap location and would cross Port Manatee channel, cross Cut "C" of Tampa Bay channel, turn in a north-northwest direction, cross Cut "G" of Tampa Bay channel and Cut "K" of Tampa Bay channel, enter Pinellas County waters, turn almost due west, cross the Bartow Channel and enter the south side of the Bartow Plant. The pipeline would be buried to maintain a minimum of 3 feet of cover between the top of the pipeline and the natural bay bottom, in accordance with U.S. Department of Transportation regulations. The four channel crossings would be installed by horizontal directional drills (HDD) under each channel and would be buried with a cover of 10 or more feet below the design bottom of each channel. The shore approach to the Bartow Plant would also be installed by HDD and would start at the Bartow Channel, thereby avoiding sensitive nearshore habitats.

In order to meet the in-service dates requested by Progress Energy, Gulfstream intends to place the proposed pipeline in service by September 1, 2008, and the compression in service by January 1, 2009.

Location maps depicting Gulfstream's proposed facilities are provided in Appendix 1.[1]

Currently Identified Environmental Issues

At this time no formal application has been filed with the FERC. For this project, the FERC staff has initiated its NEPA review prior to receiving the application. The purpose of our Pre-Filing Process is to involve interested stakeholders early in project planning and to identify and resolve issues before an application is filed with the FERC.

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities, environmental information provided by Gulfstream, and comments provided by other agencies. This preliminary list of issues may be changed based on your comments and our analysis.:

- Potential indirect impacts (*e.g.*, turbidity and sedimentation) to submerged aquatic vegetation;
- Safety and noise concerns for the new compressor station facilities;
- Potential conflicts with future ship channel improvements;
- Potential impacts to aquatic preserves;
- Net benefits to air quality;
- Potential impacts to manatees, sea turtles, and sawfish.

The EA Process

The FERC will use the EA to consider the environmental impact that could result if it issues Gulfstream a Certificate of Public Convenience and Necessity.

This notice formally announces our preparation of the EA and the beginning of the process referred to as "scoping." We[2] are soliciting input from the public and interested agencies to help us focus the analysis in the EA on the potentially significant environmental issues related to the proposed action.

Our independent analysis of the issues will be included in an EA that will be prepared for the project. Our evaluation will also include possible alternatives to the proposed project or portions of the project, and we will make recommendations on how to lessen or avoid impacts on the various resource areas of concern.

The EA will be mailed to Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; other interested parties; local libraries and newspapers; and the FERC's official service list for this proceeding. A 30-day comment period will be allotted for review of the EA. We will consider all comments submitted on the EA in any Commission Order that is issued for the project.

We are currently involved in discussions with other jurisdictional agencies to identify their issues and concerns. These agencies include the U.S. Army Corps of Engineers, National Oceanic and Atmospheric Administration, U.S. Fish and Wildlife Service, Florida Department of Environmental Protection, and the U.S. Department of Transportation. By this notice, we are asking these and other Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the proposals. Your comments should focus on the potential environmental effects, reasonable alternatives and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please mail your comments so that they will be received in Washington, DC on or before July 31, 2006 and carefully follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Branch 3, DG2E; and
- Reference Docket No. PF06–29–000 on the original and both copies.

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."

When Gulfstream submits its application for authorization to construct and operate the Phase IV Expansion 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 wish to remain on the environmental mailing list, please

[1] 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 "eLibrary" link or from the Commission's Public Reference Room or call (202) 502–8371. For instructions on connecting to eLibrary refer to the end of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[2] "We," "us," and "our" refer to the environmental staff of the Office of Energy Projects.

return the Mailing List Retention Form included in Appendix 2. If you do not return this form, you will be taken off our mailing list.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs at 1–866–208 FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*). Using the "eLibrary" link, select "General Search" from the eLibrary menu, enter the selected date range and "Docket Number" (*i.e.*, PF06–29–000), and follow the instructions. Searches may also be done using the phrase "Gulfstream Phase IV Expansion" in the "Text Search" field. For assistance with access to eLibrary, the helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *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 submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information. As indicated previously, Gulfstream has established an Internet Web site for its project at *http://www.gulfstreamgas.com/phase4.htm*. The Web site includes a project overview, contact information, regulatory overview, and construction procedures.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10618 Filed 7–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–365–000; Docket No. RP06–231–002]

Columbia Gas Transmission Corporation; Norstar Operating, LLC v. Columbia Gas Transmission Corporation; Notice of Technical Conference

June 29, 2006.

Take notice that the Commission will convene a technical conference in reference to the above-captioned proceeding on Tuesday, July 25, 2006, at 9 a.m. (EDT), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's June 21, 2006 order in this proceeding directed that a technical conference be held to address the technical, engineering and operational issues raised by Columbia Gas Transmission Corporation's (Columbia) proposed gas quality specifications filed in Docket No. RP06–365–000.[1] The order also found that Columbia's filing in Docket No. RP06–231–002 revising section 25.5(e) of its General Terms and Conditions should be addressed at the technical conference.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact David Faerberg at (202) 502–8275 or e-mail *david.faerberg@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10614 Filed 7–6–06; 8:45 am]

BILLING CODE 6717–01–P

[1] Columbia Gas Transmission Corporation, 115 FERC ¶ 61,351 (2006).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Comment Meeting

June 28, 2006.

Millennium Pipeline L.L.C. (Docket Nos. CP98–150–006, CP98–150–007, and CP98–150–008); Columbia Gas Transmission Corporation (Docket Nos. CP98–151–003, CP98–151–004, and CP05–19–000); Empire State Pipeline and Empire Pipeline, Inc. (Docket Nos. CP06–5–000, CP06–6–000, and CP06–7–000); Algonquin Gas Transmission System (Docket No. CP06–76–000); and Iroquois Gas Transmission System (Docket No. CP02–31–002)

On July 18, 2006, the Federal Energy Regulatory Commission staff will conduct comment meeting for the purpose of hearing comments on the draft supplemental environmental impact statement (DSEIS) for the Northeast (NE)–07 Project which was issued on June 15, 2006 and which you should have received. The NE–07 Project would involve the construction and operation of natural gas facilities as proposed and described in the above-referenced dockets in the states of New York, New Jersey, and Connecticut and would include:

- The Millennium Pipeline Project—Phase I proposed by Millennium Pipeline L.L.C. and Columbia Gas Transmission Corporation (Columbia);
- The Line A–5 Replacement Project proposed by Columbia;
- The Empire Connector Project proposed by Empire State Pipeline and Empire Pipeline, Inc.;
- The Ramapo Expansion Project proposed by Algonquin Gas Transmission System; and
- The MarketAccess Project proposed by Iroquois Gas Transmission System.

The SDEIS comment meeting will be on July 18, 2006, and will begin at 6 p.m. and will end no later than 9 p.m. (EST). The meeting will be held at: Brookfield High School Auditorium, 45 Longmeadow Hill Road, Brookfield, Connecticut.

Additional information about the project and the comment meeting is available from the Commission's Office of External Affairs, at 1–866–208–FERC.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10619 Filed 7–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–332–000]

Northern Natural Gas Company; Notice of Technical Conference

June 28, 2006.

The Federal Energy Regulatory Commission will convene a technical conference regarding Northern Natural Gas Company's proposal to adjust the boundary of its Operational Zones ABC and EF to the Iowa/Minnesota border in order to provide that delivery points in northern Iowa currently located in Operational Zone EF be moved to Operational Zone ABC, and delivery points in southwestern Minnesota currently located in Operational Zone ABC be moved to Operational Zone EF, pursuant to the Commission Order issued on May 26, 2006.[1] The conference will be held on Wednesday, July 19, 2006 at 10 a.m. eastern time at the Federal Energy Regulatory Commission, Commission Hearing Room #2, 888 First Street, NE., Washington, DC 20426.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY); or send a fax to 202–208–2106 with the required accommodations.

The conference is open for the public to attend, and registration is not required. For more information about the conference, please contact Alicia Cobb at (202) 502–6237 or at *alicia.cobb@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10616 Filed 7–6–06; 8:45 am]

BILLING CODE 6717–01–P

[1] Northern Natural Gas Company, 115 FERC ¶ 61,254 (2006).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–2268–003, ER00–2268–005, ER00–2268–006, ER00–2268–007, ER00–2268–008, ER00–2268–010, ER00–2268–012, ER00–2268–013, ER00–2268–015, EL05–10–002, EL05–10–004, EL05–10–006, ER99–4124–001, ER99–4124–003, ER99–4124–004, ER99–4124–005, ER99–4124–006, ER99–4124–008, ER99–4124–010, ER99–4124–011, ER99–4124–013, EL05–11–002, EL05–11–004, EL05–11–006, ER00–3312–002, ER00–3312–004, ER00–3312–005, ER00–3312–006, ER00–3312–007, ER00–3312–009, ER00–3312–011, ER00–3312–012, ER00–3312–014, EL05–12–002, EL05–12–004, EL05–12–006, ER99–4122–004, ER99–4122–006, ER99–4122–007, ER99–4122–008, ER99–4122–009, ER99–4122–011, ER99–4122–013, ER99–4122–014, ER99–4122–016, EL05–13–002, EL05–13–004, and EL05–13–006]

Pinnacle West Capital Corporation, Arizona Public Service Company, Pinnacle West Energy Corporation, APS Energy Services Company, Inc.; Notice of Technical Conference

June 28, 2006.

As announced in an order issued on June 2, 2006, the Commission staff will hold a technical conference to address mitigation issues in these proceedings.[1] This technical conference will be held on July 10, 2006, in the Commission Meeting room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, from approximately 8:30 a.m. until approximately 5 p.m. (e.s.t.).

Federal Energy Regulatory Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–208–1659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

All interested parties and staff are permitted to attend the technical conference. For additional information regarding the meeting, please contact Cynthia Henry at *Cynthia.Henry@ferc.gov* no later than noon (EST) Friday, July 7, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10617 Filed 7–6–06; 8:45 am]

BILLING CODE 6717–01–P

[1] Pinnacle West Capital Corp., 115 FERC ¶ 61,292 (2006).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF06–11–000]

Quoddy Bay, LLC; Notice of Site Visit for the Proposed Quoddy Bay LNG Project

June 29, 2006.

The staff of the Federal Energy Regulatory Commission (Commission) is issuing this notice to announce the date and location of a site visit on the proposed Quoddy Bay LNG Project. The Commission staff will be preparing an environmental impact statement (EIS) for the project in Washington County, Maine. The proposed facilities include a liquified natural gas (LNG) import terminal, a LNG storage facility, dual cryogenic pipelines between the terminal and storage facility, and an associated 35-mile-long natural gas sendout pipeline. The EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity. You are invited to attend the site visit.

The site visit will be held on Thursday, July 13, 2006. Anyone interested in participating in the site visit should meet at 9 a.m. (EST) in Quoddy Bay, LLC's parking lot on Route 190, at 95 County Road, Perry, Maine 04667. Participants must provide their own transportation, although transportation may be provided to the location of the LNG storage facility.

This event is posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information. For additional information, please contact the Commission's Office of External Affairs at (202) 502–8004 or 1–866–208–FERC (3372).

Magalie R. Salas,

Secretary.

[FR Doc. E6–10612 Filed 7–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Notice of Availability of the Draft Site-Wide Environmental Impact Statement for Continued Operation of Los Alamos National Laboratory, Los Alamos, NM

AGENCY: U.S. Department of Energy (DOE), National Nuclear Security Administration (NNSA).

ACTION: Notice of availability and public hearings.

SUMMARY: NNSA announces the availability of the Draft Site-wide Environmental Impact Statement for Continued Operation of Los Alamos National Laboratory, Los Alamos, New Mexico (LANL Draft SWEIS) (DOE/EIS–0380), and the dates and locations for the public hearings to receive comments on the Draft LANL SWEIS. The Draft LANL SWEIS was prepared in accordance with the Council on Environmental Quality's National Environmental Policy Act (NEPA) Implementing Regulations (40 CFR parts 1500–1508) and the DOE NEPA Implementing Procedures (10 CFR part 1021). The Draft LANL SWEIS analyzes the potential environmental impacts associated with continuing ongoing Los Alamos National Laboratory (LANL) operations and foreseeable new and modified operations and facilities. The Draft LANL SWEIS analyzes the No Action Alternative and two action alternatives: a Reduced Operations Alternative and an Expanded Operations Alternative. The No Action Alternative would continue currently assigned operations at LANL in support of DOE and NNSA missions. The Reduced Operation Alternative also includes most operations discussed under the No Action Alternative with reductions to certain LANL activities below the No Action Alternative level. The Expanded Operations Alternative includes operations discussed under the No Action Alternative plus new and expanded levels of operations in support of reasonably foreseeable future mission requirements.

DATES: The NNSA invites members of Congress, American Indian Tribal Governments, state and local governments, other Federal agencies, and the general public to provide comments on the Draft LANL SWEIS. The comment period extends from the publication of this Notice of Availability through September 5, 2006. Written comments must be received or postmarked by September 5, 2006. Comments postmarked after this date will be considered to the extent practicable. The NNSA will consider the comments in the preparation of the Final LANL SWEIS. Public hearings to present information and receive comments on the Draft LANL SWEIS will be held at three locations. This information will also be published in local New Mexico newspapers in advance of the hearings. Any necessary changes will be announced in the local media and on the web site noted in the **ADDRESSES** section of this notice. Oral and written comments will be accepted at the public hearings. The locations, dates, and times for these public hearings are as follows:

Tuesday, August 8, 2006, at 6:30 p.m. to 9:30 p.m., Fuller Lodge, Pajarito Room, 2132 Central Avenue, Los Alamos, NM.

Wednesday, August 9, 2006, at 6:30 p.m. to 9:30 p.m., Northern New Mexico Community College, Eagle Memorial Sportsplex, 921 Paseo de Onate, Espa±ola, NM.

Thursday, August 10, 2006, at 6:30 p.m. to 9:30 p.m., Santa Fe Community College, Main Building, Jemez Rooms, 6401 Richards Avenue, Santa Fe, NM.

The following Web site may be accessed for additional information: *http://www.doeal.gov/laso/nepa/sweis.htm*. For information or to record comments call 1–877–491–4957

ADDRESSES: Copies of the Draft LANL SWEIS are available for review at: The Los Alamos Outreach Center, 1619 Central Avenue, Los Alamos, New Mexico, 87544; the Office of the Northern New Mexico Citizens Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, New Mexico; and the Zimmerman Library, University of New Mexico, Albuquerque, New Mexico 87131. The Draft SWEIS will also be available on the Department of Energy Los Alamos Site Office's LASO NEPA website at: *http://www.doeal.gov/laso/nepa/sweis.htm*. Additionally, a copy of the Draft LANL SWEIS or its Summary may be obtained upon request by writing to: U.S. Department of Energy, National Nuclear Security Administration, Los Alamos Site Office, Attn: Ms. Elizabeth Withers, Office of Environmental Stewardship, 528 35th Street, Los Alamos, New Mexico, 87544; or by facsimile ((505) 667–5948); or by e-mail at: *LANL_SWEIS@doeal.gov*.

Specific information regarding the public hearings can also be obtained by the means described above. Comments concerning the Draft LANL SWEIS can be submitted to the NNSA Los Alamos Site Office by the means described above or by leaving a message on the LASO EIS Hotline at (toll free) 1–877–491–4957. The Hotline will have instructions on how to record comments. Please mark all envelopes, faxes and e-mail: "Draft LANL SWEIS Comments".

FOR FURTHER INFORMATION CONTACT: For general information on NNSA NEPA process, please contact: Ms. Alice Williams, NA–56, NEPA Compliance Officer for Defense Programs, U.S. Department of Energy, National Nuclear Security Administration, 1000 Independence Avenue, SW., Washington, DC 20585, or telephone 202–586–6847, or Ms. Elizabeth Withers, NEPA Compliance Officer, U.S. Department of Energy, Los Alamos Site Office, 528 35th Street, Los Alamos, New Mexico, 87004, or telephone 505–845–4984. For general information about the DOE NEPA process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: The primary purpose and need for continued operation of LANL is to provide support for DOE and NNSA core missions as directed by Congress and the President. NNSA's need to continue operating LANL is focused on their obligation to ensure a safe and reliable nuclear weapons stockpile. LANL is also needed to support other Federal agencies, including the Department of Homeland Security. The Draft LANL SWEIS analyzes the environmental impacts of operations at LANL.

LANL is located in north-central New Mexico and covers an area of about 40 square miles (104 square kilometers). LANL was established in 1943 as "Project Y" of the Manhattan Project with a single-focused national defense mission—to build the world's first nuclear weapon. After World War II ended, Project Y was designated a permanent research and development laboratory and its mission support work was expended from defense and related research and development to incorporate a wide variety of new work assignments in support of other Federal Government and civilian programs. LANL is now a multi-disciplinary, multipurpose institution engaged in theoretical and experimental research and development.

DOE issued a Final SWEIS and Record of Decision in 1999 for the continued operation of LANL. DOE regulations implementing NEPA require the evaluation of site-wide NEPA analyses every five years to determine their continued applicability; such a five-year evaluation was initiated for the 1999 SWEIS in 2004, and NNSA subsequently made a determination to prepare a new SWEIS for LANL operations. Decisions regarding LANL operations that will be based upon impact information contained within this SWEIS will replace previous decisions announced through the 1999 ROD for LANL operations.

The alternatives evaluated in the Draft LANL SWEIS represent a range of operational levels ranging from the

minimal reasonable activity levels (Reduced Operations Alternative), to the highest reasonable activity levels that could be supported by current facilities, plus the potential expansion and construction of new facilities for existing capabilities and for specifically identified future actions (Expanded Operations Alternative). The No Action Alternative would continue current mission support work at LANL and includes approved interim actions and facility construction, expansions or modifications, and decontamination and decommissioning for which NEPA impact analysis has already been completed. All alternatives assume LANL will continue to operate as a NNSA national security laboratory for the foreseeable future.

Following the end of the public comment period described above, the NNSA will consider and respond to the comments received, and issue the Final LANL SWEIS. The NNSA will consider the environmental impact analysis presented in the Final LANL SWEIS, along with other information, in determining the Record of Decision for the continued operation of LANL.

Signed in Washington, DC, this 26th day of May 2006.

Thomas P. D'Agostino,

Acting Administrator, National Nuclear Security Administration.

[FR Doc. 06–6055 Filed 7–6–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Big Stone II Power Plant and Transmission Project Draft Environmental Impact Statement (DOE/EIS–0377)

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice extending comment period.

SUMMARY: The Western Area Power Administration (Western), U.S. Department of Energy (DOE), Upper Great Plains Customer Service Region, and the Rural Utilities Service (U.S. Department of Agriculture), and U.S. Army Corps of Engineers (U.S. Department of Defense) as cooperating agencies, announce the extension of the public comment period for the Big Stone II Power Plant and Transmission Project Draft Environmental Impact Statement (EIS).

DATES: The comment period on the Draft EIS is extended until July 24, 2006.

ADDRESSES: Written comments on the Draft EIS should be addressed to Ms. Nancy Werdel, NEPA Document Manager, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213, fax (720) 962–7263 or 7269, or e-mail *BigStoneEIS@wapa.gov.*

FOR FURTHER INFORMATION CONTACT: For further information or to request a copy or summary of the Draft EIS, contact Ms. Nancy Werdel, NEPA Document Manager, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213, (800) 336–7288, fax (720) 962–7263 or 7269, or e-mail *BigStoneEIS@wapa.gov.*

For general information on DOE's NEPA review process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, U.S. Department of Energy, Washington, D.C. 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: On May 23, 2006, Western published a notice in the **Federal Register** (71 FR 29617) announcing the availability of the Draft EIS and a schedule for public hearings. The Environmental Protection Agency published its notice of availability of the Draft EIS (EPA EIS No. 20060178) on May 19, 2006 (71 FR 29148), that began a 45-day comment period, ending July 3, 2006. Based on requests received from agencies and members of the public, Western is extending the comment period until July 24, 2006. Further information on this proceeding is contained in the DOE Notice of Availability previously referenced.

Dated: June 28, 2006.

Michael S. Hacskaylo,

Administrator.

[FR Doc. E6–10656 Filed 7–6–06; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6677–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 2006 (71 FR 17845).

Draft EISs

EIS No. 20060125, ERP No. D–FRC–L05235–WA, Baker River Hydroelectric Project, Application to Relicense the Upper Baker and Lower Baker Developments, Mt. Baker-Snoqualmie National Forest, Baker River, Whatcom and Skagit Counties, WA.

Summary: Although EPA had no objections to the proposed project, EPA recommended that updated information be provided in the final EIS on the CWA 401 water quality certification. Rating LO.

EIS No. 20060160, ERP No. D–BPA–L08064–OR, Klondike III Wind Project (300 megawatts {MW□) and Biglow Canyon Wind Farm (400 megawatts {MW□) Integration Project, Construction and Operation of a Double-Circuit 230-Kilovolt (kV) Transmission, Sherman County, OR.

Summary: EPA expressed environmental concern about wetland impacts and requested additional information on tribal consultations and outcomes, and extent of public involvement in the project planning. Rating EC1.

EIS No. 20060163, ERP No. DB–COE–K36100–CA, American River Watershed Project, Post Authorization Decision Document, Folsom Dam Raise, Folsom Bridge Project, Propose to Construct a Permanent Bridge and Roadway across the American River, City of Folsom, Sacramento County, CA.

Summary: EPA expressed environmental concerns about impacts to air quality and requested additional information related to mitigation and partnerships with local transportation agencies to reduce the traffic impacts in the area. Rating EC2.

Final EISs

EIS No. 20060145, ERP No. F–COE–D35060–PA, Allegheny and Ohio Rivers Commercial Sand and Gravel Dredging Operations, Granting and Extending Permits for Continuance of Dredging and US Army COE Section 10 and 404 Permits Issuance, PA.

Summary: EPA continues to express environmental concerns about shallow river bottom impacts and CWA Section 404 issues. EPA requested the adoption of an adaptative management process, additional conceptual mitigation, and permit restrictions.

EIS No. 20060169, ERP No. F–FRC–C03015–00, Crown Landing Liquefied

Natural Gas Terminal, Construct and Operate in Gloucester County, NJ and New Castle County, DE; and Logan Lateral Project, Construct and Operate a New Natural Gas Pipeline and Ancillary Facilities in Gloucester County, NJ and Delaware, PA.

Summary: While EPA has no objection to the proposed action, EPA did request clarification on mitigation plans for wetlands and shallow water habitat impacts, as well as a Clean Air Act General Conformity Analysis.

EIS No. 20060175, ERP No. F–FRC–G03029–LA, Creole Trail Liquefied National Gas (LNG) Terminal and Pipeline Project, Construction and Operation, Cameron, Calcasieu, Beauregard, Allen, Jefferson, Davis and Acadia Parishes, LA.

Summary: EPA expressed environmental concerns about uncertainties over the evaluation of dredged material and requested that a Record of Decision not be issued until these concerns are adequately addressed.

EIS No. 20060176, ERP No. F–FRC–G03028–00, Port Arthur Liquefied Natural Gas (LNG) Project, Construction and Operation, U.S. Army COE Section 10 and 404 Permits, (FERC/EIS–0182D), Jefferson and Orange Counties TX and Cameron, Calcasieu and Beauregard Parishes, LA.

Summary: EPA does not object to the preferred action.

EIS No. 20060202, ERP No. F–NOA–E86003–00, Snapper Grouper Fishery, Amendment 13C to the Fishery Management Plan, Phase Out Overfishing of Snowy Grouper, Golden Tilefish, Vermilion Snapper and Sea Bass, Implementation, South Atlantic Region.

Summary: EPA does not object to the proposed action.

EIS No. 20060210, ERP No. F–UAF–K11109–AZ, Barry M. Goldwater Range (BMGR), Integrated Natural Resources Management Plan (INRMP), Implementation, Yuma, Pima, and Maricopa Counties, AZ.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20060224, ERP No. F–GSA–L80018–WA, Peace Arch Port of Entry Redevelopment Project, Improvements to Security, Safety and Functionality, Canadian Border in Blaine, Whatcom County, WA.

Summary: EPA's previous issues were resolved, therefore EPA does not object to the proposed action.

Dated: July 3, 2006.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E6–10678 Filed 7–6–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6676–9]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.eps.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements
Filed 6/26/2006 through 6/30/2006
Pursuant to 40 CFR 1506.9.

Special Notice: EIS's filed June 19 through June 23, 2006 scheduled to appear in the **Federal Register** on June 30, 2006 was published on Monday July 3, 2006. Comment periods and wait periods will be calculated from June 30, 2006.

EIS No. 20060274, Fifth Draft Supplement, AFS, 00, Northern Spotted Owl Management Plan, Removal or the Modification to the Survey and Management Mitigation Measures, Standards and Guidelines (to the Northwest Forest Plan) New Information to Address Three Deficiencies Final Supplemental EIS (2004), Northwest Forest Plan, OR, WA, and CA, Comment Period Ends: 10/5/2006, Contact: Kathy Anderson 503–808–2256.

EIS No. 20060275, Draft EIS, AFS, OR, Maury Mountains Allotment Management Plan, To Implement or Eliminate Livestock Gazing in Six Allotments in the Maury Mountains of the Ochoco National Forest, Prineville, OR, Comment Period Ends: 8/21/2006, Contact: Kevin Keown 541–416–6500.

EIS No. 20060276, Draft EIS, FRC, TX, Calhoun Point Comfort Liquefied Natural Gas (LNG) Project, (Docket Nos. CP05–91–000 and CP06–380–00) Construction of New Pipeline on 73 acres, Port of Port Lavaca, Calhoun and Jackson Counties, TX, Comment Period Ends: 8/21/2006, Contact: Todd Sedmak 1–866–208–FERC.

EIS No. 20060277, Draft EIS, NNS, NM, Los Alamos National Laboratory Continued Operations, Los Alamos County, NM, Comment Period Ends: 9/5/2006, Contact: Elizabeth Wither 505–845–4984.

EIS No. 20060278, Draft DIS, NOA, 00, North Atlantic Right Whale Ship Strike Reduction Strategy, To Implement the Operational Measures to Reduce the Occurrence and Severity of Vessel Collisions with the Right Whale, Serious Injury and Deaths Resulting from Collisions with Vessels, Comment Period Ends: 9/5/2006, Contact: Jessica Gribbon 703–706–9404.

EIS No. 20060279, Final Supplement, AFS, 00, Southwestern Region Amendment of Forest Plans, Implementation, Updated Information, Standards and Guidelines for Northern Goshawk and Mexican Spotted Owl, AZ and NM, Wait Period Ends: 8/7/2006, Contact Rita Moots 505–842–3125.

EIS No. 20060280, Draft EIS, AFS, 00, North Zone Range 05 Project, Reauthorizing Livestock Grazing on Eight Existing Allotments, Black Hills National Forest, Bearlodge and Northern Hills Ranger Districts, Crook County, WY and Lawrence County, SD, Comment Period Ends: 8/21/2006. Contact: Alice Allen 605–673–4853.

Amended Notices

EIS No. 20060178, Draft EIS, WPA, 00, Big Stone II Power Plant and Transmission Project, Propose Power Plant, Transmission Alternatives, and Substation Modification (DOE/EIS–0377), U.S. Army COE Section 10 and 404 Permits, Big Stone City, Grant County, SD and Big Stone County, MN, Comment Period Ends: 7/24/2006, Contact: Nancy Werdel 720–962–7251.

Revision of **Federal Register** Notice Published on 5/19/2006: Extended Comment Period from 7/3/2006 to 7/24/2006.

Dated: July 3, 2006.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 06–6077 Filed 7–6–06; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0312; FRL–8069–8]

Notice of Filing of Pesticide Petitions for Establishment or Amendment of Regulations for Residues of a Pesticide Chemical in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions

proposing the establishment or amendment of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before August 7, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0312 and pesticide petition number PP 6E7030, by one of the following methods:

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0312. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Rebecca Edelstein, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 605-0513; e-mail address: *edelstein.rebecca@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

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

II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated

the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select "Quick Search" and type the OPP docket ID number. Once the search has located the docket, clicking on the "Docket ID" will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Exemption from Tolerance

PP 6E7030. BioProdex, Inc., Gainesville Technology Enterprise Center (GTEC), Box 5, Suite 205, 2153 SE Hawthorne Road, Gainesville, FL 32641, proposes to establish an exemption from the requirement of a tolerance for residues of the microbial pesticide, Tobacco mild green mosaic tobamovirus (TMGMV), in or on all food commodities. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 22, 2006.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E6–10570 Filed 7–6–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0313; FRL–8069–7]

Notice of Filing of Pesticide Petitions for Establishment of Regulations for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment or amendment of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before August 7, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0313 and pesticide petition number (PP) 6E70229, by one of the following methods:

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0313. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Rebecca Edelstein, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 605-0513; e-mail address: *edelstein.rebecca@epa.gov*.

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

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

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

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2. *Tips for preparing your comments.* When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

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

II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select "Quick Search" and type the OPP docket ID number. Once the search has located the docket, clicking on the "Docket ID" will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Exemption from Tolerance

PP 6E7029. BioProdex, Inc., Gainesville Technology Enterprise Center (GTEC), Box 5, Suite 205, 2153 SE Hawthorne Road, Gainesville, FL 32641, proposes to establish a temporary exemption from the requirement of a tolerance for residues of the microbial pesticide, Tobacco mild green mosaic tobamovirus (TMGMV), in or on food commodities all grass and grass hay. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 22, 2006.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E6–10571 Filed 7–6–06; 8:45 am]

BILLING CODE 6560–50–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/*.

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 August 4, 2006.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Glacier Bancorp, Inc., Kalispell, Montana; to acquire 100 percent of the voting shares of First National Bank of Morgan, through a merger with and into New First National Bank of Morgan, both in Morgan, Utah.

Board of Governors of the Federal Reserve System, July 3, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–10625 Filed 7–6–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has

determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 25, 2006.

A. Federal Reserve Bank of New York (Anne McEwen, Financial Specialist) 33 Liberty Street, New York, New York 10045-0001:

1. NRW.Bank Duesseldorf, and WestLB Beteiligungsholding GmbH Duesseldorf, both of Duesseldorf, Germany; to engage through its subsidiaries NY Credit Real Estate GP LLC, New York, NY; New York Credit Real Estate Fund, L.P., New York, NY; New York Credit Advisors LLC, New York, NY; and BOA Lending L.L.P., Las Vegas, NV, in extending credit and servicing loans and acting as a financial or investment advisor, through a joint venture, pursuant to section 225.28(b)(1) and 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, July 3, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–10626 Filed 7–6–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Protection of Human Subjects: Interpretation of Assurance Requirements

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Office of Public Health and Science, Office of the Secretary, Department of Health and Human Services (HHS) is providing public notice to clarify a requirement contained in the Federalwide Assurance (FWA) form for international (non-U.S.) institutions, approved by the Office for Human Research Protections (OHRP) under the HHS protection of human subjects regulations. HHS clarifies that the requirements of HHS regulations must be satisfied for all HHS-conducted or -supported research covered by an FWA, regardless of whether the research is conducted domestically or internationally. To date, HHS has not deemed any other procedural standards equivalent to the protection of human subjects.

FOR FURTHER INFORMATION CONTACT: Irene Stith-Coleman, Office for Human Research Protections, Office of Public Health and Science, The Tower Building, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852, (240) 453–6900, facsimile (301) 402–2071; e-mail: *Irene.Stith-Coleman@hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Health and Human Services (HHS), through the Office for Human Research Protections (OHRP), regulates research involving human subjects conducted or supported by HHS. The Federal Policy for the Protection of Human Subjects (the Common Rule), adopted by 14 other departments and agencies, is codified for HHS at 45 CFR part 46, subpart A.

The HHS protection of human subjects regulations apply to all research involving human subjects conducted, supported or otherwise subject to regulation by HHS. 45 CFR 46.101(a). Each institution engaged in HHS-conducted or -supported human subjects research must provide written assurance, satisfactory to the Secretary of HHS, that it will comply with the HHS protection of human subjects regulations. [45 CFR 46.103(a)]

The FWA is the only form of assurance currently accepted by OHRP. The FWA was designed to be used by HHS as well as the other departments and agencies that have adopted the Common Rule. The FWA consists of two documents, the FWA form and the FWA Terms of Assurance, which are incorporated by reference into the FWA form. There are separate FWA forms and Terms of Assurance for U.S. domestic institutions and for international (non-U.S.) institutions. The "Applicability" section of the FWA form for international (non-U.S.) institutions includes several national and international procedural standards to which the institution can indicate its adherence, including the HHS regulations for the protection of human subjects, 45 CFR part 46. The FWA Terms of Assurance for international (non-U.S.) institutions state as follows:

> If a U.S. Federal department or agency head determines that the procedures prescribed by the institution afford protections that are at least equivalent to those provided by the U.S. Federal Policy for the Protection of Human Subjects, the department or agency head may approve the substitution of the foreign procedures in lieu of the procedural requirements provided above [the requirements of the U.S. Federal Policy], consistent with the requirements of section 101(h) of the U.S. Federal Policy for the Protection of Human Subjects.

II. Clarification of HHS' Position

Some regulated institutions may have been confused by the fact that several national and international procedural standards are listed on the FWA form for international (non-U.S.) institutions, and interpreted this to mean that non-U.S. institutions have a choice of whether or not the requirements of 45 CFR part 46 must be met for HHS-conducted or -supported research conducted at their institutions. Such an interpretation would be erroneous. For HHS-conducted or -supported research, all institutions holding an OHRP-approved FWA and engaged in such research must comply with the requirements of 45 CFR part 46. That compliance is required regardless of whether the institution marked one or more other procedural standards on the FWA form for international (non-U.S.) institutions as a standard to which the institution committed itself to comply.

For example, if a non-U.S. institution selects a procedural standard on its FWA that does not explicitly require continuing review by an institutional review board (IRB) at least annually, the institution still must ensure that an IRB designated under the FWA conducts continuing review of non-exempt human subjects research supported by HHS at intervals appropriate to the degree of risk, but no less than once per year, as required by HHS regulations at 45 CFR 46.109(e). Likewise, if a non-U.S. institution selects a procedural standard on its FWA that does not explicitly require that an IRB retain IRB records for at least three years after the completion of research which is conducted, the institution still must ensure that such IRB records are retained for at least three years after completion of any non-exempt human subjects research supported by HHS, as required by HHS regulations at 45 CFR 46.115(b).

As stated in the FWA Terms of Assurance for international (non-U.S.) institutions, the Secretary has the authority to determine that alternative procedural standards provide protections at least equivalent to those provided by the HHS protection of

human subjects regulations, and to allow compliance with the alternative procedures rather than with the HHS regulatory requirements. 45 CFR 46.101(h). However, to date, the Secretary has not made any determinations that other procedures provide equivalent protections to those afforded by the HHS regulations. HHS continues to consider whether, and how, to implement the regulatory authority to allow compliance with alternative procedural standards in place of compliance with 45 CFR part 46. One or more determinations that alternative procedural standards provide protections at least equivalent to those of 45 CFR part 46 may be made at some time in the future, but until such time, 45 CFR part 46 is the procedural standard which must be complied with for all HHS-conducted or -supported human subjects research conducted domestically or internationally.

The heads of other Common Rule departments and agencies may independently reach different conclusions about which, if any, procedural standard(s) to accept as providing protections at least equivalent to the Common Rule. This is among the reasons that multiple procedural standards are included on the FWA form for international (non-U.S.) institutions, which may be relied upon by all Common Rule departments and agencies.

HHS believes that this view provides the greatest protection to human subjects of research conducted or supported by HHS, and is the most ethically defensible position.

Dated: June 23, 2006.

Bernard A. Schwetz,

Director, Office for Human Research Protections.

[FR Doc. E6–10511 Filed 7–6–06; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Availability of Funding Opportunity Announcement

Funding Opportunity Title/Program Name: Performance Outcomes Measures Project.

Announcement Type: Initial.

Funding Opportunity Number: Program Announcement No. HHS–2006–AoA–PO–0612.

Statutory Authority: The Older Americans Act, Public Law 106–501.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.048, Title IV and Title II, Discretionary Projects.

Dates: The deadline date for the submission of applications is August 15, 2006.

I. Funding Opportunity Description

The purpose of this announcement is to solicit applications for POMP projects that will complete work on the POMP-developed performance measurement surveys and enhance their utility for the Aging Network as follows:

- Conduct validity tests for POMP surveys.
- Conduct pilot testing for statewide performance measurement methodology.
- Assist in the development of performance measurement toolkits for use by the Aging network.

A detailed description of the funding opportunity may be found at *http://www.grants.gov.*

II. Award Information

1. *Funding Instrument Type:* Grants.

2. *Anticipated Total Priority Area Funding per Budget Period:* These grants are two-year projects. For the first year, AoA intends to make available, under this program announcement, grant awards for 6 to 10 projects at a federal share of approximately $35,000-$50,000. The maximum award will be $50,000. Second year award amounts will be similar to first year amounts, contingent on the availability of federal funds and satisfactory progress.

III. Eligibility Criteria and Other Requirements

1. Eligible Applicants

Eligibility for grant awards is limited to State Agencies on Aging.

2. Cost Sharing or Matching

Grantees are required to provide at least 25 percent of the total program costs from non-federal cash or in-kind resources in order to be considered for the award.

3. DUNS Number

All grant applicants must obtain a D–U–N–S number from Dun and Bradstreet. It is a nine-digit identification number, which provides unique identifiers of single business entities. The D–U–N–S number is free and easy to obtain from: *http://www.dnb.com/US/duns_update/.*

4. Intergovernmental Review

Executive Order 12372, Intergovernmental Review of Federal Programs, is not applicable to these grant applications.

IV. Application and Submission Information

1. Address To Request Application Package

Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Office of Evaluation, Washington, DC 20201, by calling 202–357–0145, or online at *http://www.grants.gov.*

Please note AoA is requiring applications for this announcement to be submitted electronically through *http://www.grants.gov.* The Grants.gov registration process can take several days. If your organization is not currently registered with www.grants.gov, please begin this process immediately. For assistance with *http://www.grants.gov,* please contact Arthur Miller at AoA's Grants.gov helpdesk at 202–357–3438. At *http://www.grants.gov,* you will be able to download a copy of the application packet, complete it off-line, and then upload and submit the application via the Grants.gov Web site.

2. Address for Application Submission

Applicants unable to submit their application via *http://www.grants.gov* may request permission to submit a hard copy from Stephen Daniels, Director, Office of Grants Management at *Stephen.Daniels@aoa.hhs.gov.*

With prior approval, applications may be mailed to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, Washington, DC 20201, attn: Stephen Daniels.

With prior approval, Applications may be delivered (in person, via messenger) to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, One Massachusetts Avenue, NW., Room 4604, Washington, DC 20001, attn: Stephen Daniels.

If you elect to mail or hand deliver your application, you must submit one original and two copies of the application. Instructions for electronic mailing of grant applications are available at *http://www.grants.gov.*

3. Submission Dates and Times

To receive consideration, applications must be received by the deadline listed in the **Dates** section of this Notice.

V. Responsiveness Criteria

Each application submitted will be screened to determine whether it was received by the closing date and time.

Applications that fail to meet the application due date will *not* be reviewed and will receive *no* further consideration.

VI. Application Review Information

Eligible applications in response to this announcement will be reviewed according to the following evaluation criteria:

- Purpose and Need for Assistance—(20 points).
- Approach/Method—Workplan and Activities—(35 points).
- Outcomes/Evaluation/ Dissemination—(25 points).
- Level of Effort—(20 points).

VII. Agency Contacts

Direct inquiries regarding programmatic issues to U.S. Department of Health and Human Services, Administration on Aging, Office of Evaluation, Washington, DC 20201, telephone: (202) 357–0145.

Dated: July 3, 2006.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. E6–10641 Filed 7–6–06; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–06–05CI]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

CDC Oral Health Management Information System -New- National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC seeks to improve the oral health of the nation by targeting efforts to improve the infrastructure of state and territorial oral health departments, strengthen and enhance program capacity related to monitoring the population's oral health status and behaviors, develop effective programs to improve the oral health of children and adults, evaluate program accomplishments, and inform key stakeholders, including policy makers, of program results. Through a cooperative agreement program (Program Announcement 03022), CDC provides approximately $3 million per year over 5 years to 12 states and one territory to strengthen the states' core oral health infrastructure and capacity and reduce health disparities among high-risk groups. The CDC is authorized to do this under sections 301 and 317(k) of the Public Health Service Act [42 U.S.C. 241 and 247b(k)].

Information systems provide a central repository of information, such as the plans of the state or territorial oral health programs (their goals, objectives, performance milestones and indicators), as well as state and territorial oral health performance activities including programmatic and financial information. The management information system (MIS) will allow a CDC project officer to enter information related to technical assistance, consultative plans, communication and site visits. For state and territorial oral health programs, this MIS will provide a central location that will allow for the more efficient collection of information needed to meet reporting requirements. The system will allow state and territorial oral health programs immediate access to information and better equip them to respond to inquiries in a timely fashion and to make programmatic decisions in a more efficient, informed manner.

The MIS will support CDC's broader mission of reducing oral health disparities by enabling CDC staff to more effectively identify the strengths and weaknesses of individual state and territorial oral health programs; to identify national progress toward reaching the goals of Healthy People 2010; and to disseminate information related to successful public health interventions implemented by state and territorial programs to prevent and control the burden of oral diseases. The CDC anticipates that the state burden of providing hard-copy reports will be reduced with the introduction of the Web-based progress reporting system. It is assumed that states will experience a learning curve in using this application that burden will be reduced once they have familiarized themselves with it.

There are no costs to respondents except their time to participate in the survey.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hrs.)	Total burden (hours)
State Program Staff	12	2	9	216
Territory Program Staff	1	2	9	18
Total	13	4	18	234

Dated: June 30, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–10620 Filed 7–6–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–06–05AA]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Early Hearing Detection and Intervention Hearing Screening and Follow-up Survey -New- National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Center on Birth Defects and Developmental Disabilities (NCBDDD) of the Centers for Disease Control and Prevention promotes the health of babies, children, and adults with disabilities. Activities related to addressing hearing loss (HL) among newborns and infants are part of NCBDDD's mission. HL is a common birth defect that affects approximately 12,000 infants across the United States each year, and can result in developmental delays when left undetected. As awareness about infant HL increases, so does the demand for accurate information about incidence, rate of screening, referral to care, and loss to follow-up.

Given the lack of a standardized and readily accessible source of data, CDC's Early Hearing Detection and Intervention (EHDI) program has developed a survey to be used annually for State and Territory EHDI Program Coordinators that utilizes uniform definitions to collect aggregate, standardized EHDI data from states and territories. This information is important for helping to ensure infants and children are receiving recommended screening and follow-up services, documenting the occurrence and etiology of differing degrees of HL among infants, and determining the overall impact of infant HL on future outcomes, such as cognitive development and family dynamics. These data will also assist state EHDI programs with quality improvement activities and provide information that will be helpful in assessing the impact of Federal initiatives. The public will be able to access this information via CDC's EHDI Web site (*http://www.cdc.gov/ncbddd/ehdi/*). There are no costs to respondents other than their time. The total estimated annualized burden is 209 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
States Contacted	55	1	10/60
States Completed	50	1	4

Dated: June 30, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–10621 Filed 7–6–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–216 and CMS 10191]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New Collection.

Title of Information Collection: Organ Procurement Organization/Histocompatibility Laboratory Statement of Reimbursable Cost, Manual Instructions and Supporting Regulations Contained in 42 CFR 413.20 and 413.24.

Use: CMS is requesting reapproval of Form CMS–216–94 (OMB No.0938–0102). The current form implements various provisions of the Social Security Act, including Section 1881(a) which provides Medicare coverage for end-stage renal disease patients who meet certain entitlement requirements and kidney donors. It also implements Sections 1881(b)(2)(B) and 1861(v)(1)(A) of the Act to determine the reasonable costs incurred to furnish treatment for renal patients and transplant patients. The reasonable costs of securing and transporting organs cannot be determined for the fiscal year until the Organ Procurement Organization/Histocompatibility Laboratory files its cost report (Form CMS–216) at year-end and costs are verified by the Medicare fiscal intermediary.

Form Number: CMS–216 (OMB#: 0938–0102).

Frequency: Recordkeeping—Daily, Reporting—Annually.

Affected Public: Business or other for-profit, Not-for-profit institutions, and the Federal Government.

Number of Respondents: 108.

Total Annual Responses: 108.

Total Annual Hours: 4860.

2. *Type of Information Collection Request:* New Collection.

Title of Information Collection: Medicare Part D Audit Guide, Version 1.0 and Supporting Regulation contained in 42 CFR Section 423.505.

Use: 42 CFR 423.505 provides CMS the regulatory authority to audit, evaluate, or inspect any Part D sponsors' performance related to the law in the areas of medication therapy management, drug utilization management, formulary, and grievances and appeals. The information collected will be an integral resource for oversight, monitoring, compliance, and auditing activities necessary to ensure quality provision of the Medicare Prescription Drug Benefit to beneficiaries.

Form Number: CMS–10191 (OMB#: 0938–New).

Frequency: Recordkeeping and Reporting—Annually.

Affected Public: Business or other for-profit.

Number of Respondents: 564.

Total Annual Responses: 564.

Total Annual Hours: 54,144.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed or faxed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: June 28, 2006.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E6–10586 Filed 7–6–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–136 and CMS–10198]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: Proper Claim Not Filed and Supporting Regulation in 42 CFR 411.32(c).

Use: Section 411.32(c) requires physicians, providers, other suppliers, and beneficiaries, in case where they failed to submit a proper claim with a third party payer to report these situations on the current Medicare forms. The primary payer will notify the physician, provider, other supplier, or beneficiary of the amount normally payable, the amount of the reduction payable because the claim was not filed properly, and the amount the physician, provider, other supplier, or beneficiary is being paid under the "primary plan" due to the reduction. The information is transmitted on an explanation of benefits or remittance advice determination that third party payers provide to all covered individuals and physicians, providers and other suppliers as part of an industry practice. The information contained in this explanation, whether or not it concerns improperly filed claims, is submitted to Medicare as part of the claims process.

Form Number: CMS–R–136 (OMB#: 0938–0564).

Frequency: Reporting—On occasion.

Affected Public: Business or other for-profit Not-for-profit institutions, and Individuals or Households.

Number of Respondents: 1,129,000.

Total Annual Responses: 1,129,000.

Total Annual Hours: 1.

2. *Type of Information Collection Request:* New Collection.

Title of Information Collection: Creditable Coverage Disclosure to CMS Instructions contained in 42 CFR 423.56.

Use: Section 1860D–13 of the Medicare Modernization Act requires certain entities that provide prescription drug coverage to Medicare Part D eligible individuals to disclose to CMS whether such coverage meets the actuarial requirements specified in the guidelines provided by CMS. The actuarial determination measures whether the expected amount of paid claims under the entity's prescription drug coverage is at least as much as the expected amount of paid claims under the standard Medicare prescription drug benefit. This information will be used for research, program evaluation and to verify whether or not beneficiaries are subject to a late enrollment penalty.

Form Number: CMS–10198 (OMB#: 0938–New).

Frequency: Recordkeeping, Third party disclosure and Reporting—On occasion and Annually.

Affected Public: Business or other for-profit, Not-for-profit institutions and Federal, State, local or tribal government.

Number of Respondents: 446,160.

Total Annual Responses: 466,373.

Total Annual Hours: 37,555.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on September 5, 2006. CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—B, Attention: William N. Parham, III, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 28, 2006.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E6–10587 Filed 7–6–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration for Developmental Disabilities

Award To: Oregon Health & Science University, Child Development & Rehabilitation Center.

Purpose: To supplement a grant award for support of "Making It Real: Participatory Action Research (PAR) for University Centers for Excellence in Developmental Disabilities (UCEDDs)".

Amount of Award: $65,000 for one year.

Project Period: 7/1/2006—6/30/2007.

Justification for Exception to Competition: After consulting with relevant, informed sources, including individuals with developmental disabilities and their families, the Administration for Developmental Disabilities (ADD) determined that it was beneficial to continue funding the Oregon Health & Science University, Child Development & Rehabilitation Center project to strengthen and expand the inclusion of people with developmental disabilities and their family members in participatory action research projects at University Centers for Excellence in Developmental Disabilities (UCEDDs).

The Oregon Institute on Disability & Development, the Oregon Health and Science University, Child Development and Rehabilitation Center will receive a sole source program expansion supplemental grant for "Making It Real: Participatory Action Research (PAR) for UCEDDs," a training initiative on the critical and emerging needs of individuals with developmental disabilities and their families. Through the project, a tool kit is being created that will include tested educational modules on participatory action research. Through the creation of the toolkit, every UCEDD will be able to access resources that will enhance and increase PAR and support initiatives that are most meaningful to people with developmental disabilities and their families. It will also be available to individuals with developmental disabilities, family members, advocacy groups, and other interested organizations. By continuing funding of this project, additional resources will be developed, including materials in Spanish. In addition, the expansion supplement will allow for more time and resources to enhance training and dissemination efforts.

The Administration for Children and Families intends to supplement the current grant by $65,000. The grantee will continue to provide a 25 percent match.

FOR FURTHER INFORMATION CONTACT: Jennifer G. Johnson, Ed.D., Program Specialist, Administration on Developmental Disabilities, 200 Independence Avenue, SW., Room 405–D, Washington, DC 20201. Telephone: 202/690–5982 (v); 202/205–8037 (f). E-mail: *jennifer.johnson@acf.hhs.gov.*

Dated: June 21, 2006.

Patricia A. Morrissey,

Commissioner, Administration for Developmental Disabilities.

[FR Doc. E6–10578 Filed 7–6–06; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1990D–0428]

Human-Labeled Drugs Distributed and Used in Animal Medicine; Withdrawal of Compliance Policy Guide

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of a compliance policy guide (CPG) that was issued on March 19, 1991.

DATES: July 7, 2006.

FOR FURTHER INFORMATION CONTACT: Diane D. Jeang, Division of Compliance Policy (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–632–6833.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 30, 1992 (57 FR 33729), FDA announced the availability of a revised CPG 7125.35 entitled "Human-Labeled Drugs Distributed and Used in Animal Medicine." The CPG is being withdrawn because it is obsolete. This CPG explained how FDA would exercise its enforcement discretion with respect to the distribution and use of human-labeled drug products for use in animals.

The Animal Medicinal Drug Use Clarification Act of 1994 (AMDUCA) was signed into law on October 22, 1994. AMDUCA allows veterinarians to prescribe extralabel uses of approved animal drugs and approved human drugs for animals under certain conditions. An extralabel use must be by or on the order of a licensed veterinarian within the context of a veterinarian-client-patient relationship and must be in conformance with the implementing regulations published in part 530 (21 CFR part 530). A list of drugs specifically prohibited from extralabel use in animals is in § 530.41.

With the enactment of AMDUCA and the issuance of implementing regulations, FDA is withdrawing CPG 7125.35 because it is obsolete. On September 24, 1998, a CPG section 615.100 entitled "Extralabel Use of New Animal Drugs in Food-Producing Animals (CPG 7125.06)" was withdrawn for the same reason (63 FR 51074).

Dated: June 20, 2006.

Margaret O'K. Glavin,

Associate Commissioner for Regulatory Affairs.

[FR Doc. E6–10672 Filed 7–6–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D–0214]

Streptomycin Residues in Cattle Tissues; Withdrawal of Compliance Policy Guide

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of the compliance policy guide (CPG) entitled "Sec. 616.100 Streptomycin Residues in Cattle Tissues (CPG 7125.22)." This CPG is obsolete.

DATES: The withdrawal is effective July 7, 2006.

FOR FURTHER INFORMATION CONTACT: Diane D. Jeang, Division ofCompliance Policy (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–632–6833.

SUPPLEMENTARY INFORMATION: FDA issued the CGP entitled "Sec. 616.100 Streptomycin Residues in Cattle Tissues (CPG 7125.22)" on October 1, 1980. The CPG was issued because there were no published tolerances for residues of streptomycin in cattle tissue and the available data supported an action level of 2 part per million (ppm) streptomycin/dihydrostreptomycin

residues in cattle kidney tissue. The U.S. Department of Agriculture, Food Safety Quality Service (now known as the Food Safety Inspection Service) agreed to report any detectable residues in other edible tissue and to report to FDA only those cattle kidney tissue reports where the streptomycin residue was 2 ppm or more.

Since issuing this CPG, FDA has established tolerances for dihydrostreptomycin (59 FR 41976, August 16, 1994) and streptomycin (58 FR 47210, September 8, 1993). Tolerances are established for residues of dihydrostreptomycin in uncooked, edible tissues of cattle and swine of 2.0 ppm in kidney and 0.5 ppm in other tissues, and 0.125 ppm in milk. (See 21 CFR 556.200.) Tolerances are established for residues of streptomycin in uncooked, edible tissues of chickens, swine, and calves of 2.0 ppm in kidney, and 0.5 ppm in other tissues. (See 21 CFR 556.610.)

FDA is withdrawing CPG 7125.22, in its entirety, to eliminate obsolete compliance policy.

Dated: June 20, 2006.

Margaret O'K. Glavin,

Associate Commissioner for Regulatory Affairs.

[FR Doc. E6–10671 Filed 7–6–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The Health Education Assistance Loan (HEAL) Program: Forms (OMB No. 0915–0034 Extension)

The HEAL program provides federally insured loans to assure the availability of funds for loans to eligible students to pay for their education costs. In order to administer and monitor the HEAL program, the following forms are utilized: The Application for Contract of Federal Loan Insurance form (used by lenders to make application to the HEAL insurance program and formerly entitled Lenders Application for Contract of Federal Loan Insurance form); the Borrower's Deferment Request form (used by borrowers to request deferments on HEAL loans and used by lenders to determine borrower's eligibility for deferment); the Borrower Loan Status update electronic submission (submitted monthly by lenders to the Secretary on the status of each loan); and the Loan Purchase/Consolidation electronic submission (submitted by lenders to the Secretary to report sales, and purchases of HEAL loans).

The estimates of burden for the forms are as follows:

Collection activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Application for Contract of Federal Loan Insurance	17	1	17	8 min	3
Borrower's Deferment Request:					
Borrowers	436	1	436	10 min	73
Employers	261	1.669	436	5 min	36
Borrower Loan Status Update	8	18	144	10 min	24
Loan Purchase/Consolidation	17	248	4,216	4 min	281
Total	739		5,249		417

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Kraemer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 29, 2006.

Cheryl R. Dammons,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–10591 Filed 7–6–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee to the Director, National Institutes of Health (NIH).

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 witht he grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Name of Committee: Advisory Committee to the Director, NIH.

Date: August 17, 2006.

Time: 2 p.m. to 3 p.m.

Place: National Institutes of Health, Building 31, 31 Center Drive, Room 5B64, Bethesda, MD 20892.

Agenda: To review and evaluate grant applications (Telephone Conference Call).

Contact Person: Shelly Pollard, ACD Coordinator, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 5B64, Bethesda, MD 20892, (301) 496–0959, *pollards@mail.nih.gov.*

Dated: June 29, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6046 Filed 7–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 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, T32 Training Applications in NeuroAIDS.

Date: July 18, 2006.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Peter J. Sheridan, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@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. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 29, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6040 Filed 7–6–06; 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 section 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, Postdoctoral Research and Training.

Date: July 20, 2006.

Time: 1 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, 45 Center Drive—Room 3AS–13, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Brian R Pike, PhD., Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301–594–3907, *pikbr@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. 93.375, 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: June 29, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6041 Filed 7–6–06; 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 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 associate 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, Membrane Trafficking in Epithelial Cells.

Date: July 25, 2006.

Time: 1 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: Robert Wellner, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes Health, Room 706, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, *rw175w@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Hematopoietic Cell Transplantation.

Date: July 27, 2006.

Time: 1 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: Robert Wellner, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes Health, Room 706, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. *rw175w@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: June 29, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6042 Filed 7–6–06; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Stress and Aging.

Date: July 20, 2006.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Mary Nekola, PhD., Chief, Scientific Review Office, National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814–9692, 301–496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Mentored Clinical Scientist Development Award (K08).

Date: July 20, 2006.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20725, (Telephone Conference Call).

Contact Person: William Cruce, PhD., Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7704, *crucew@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Long Term Care.

Date: July 31, 2006.

Time: 11 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jon E. Rolf, PhD., Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Bethesda, MD 20814, (301) 402–7703, *rolfj@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 29, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6043 Filed 7–06–06; 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 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 Aging Special Emphasis, NIH Toolbox.

Date: July 12, 2006.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD., Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892. 301–402–7700, *rv23r@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. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 29, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6045 Filed 7–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed 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 Allergy and Infectious Diseases Special Emphasis Panel, K99 Review Panel.

Date: July 26–27, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Washingtonian Center, 204 Boardwalk Place, Gaithersburg, MD 20878.

Contact Person: Annie Walker-Abbey, PhD., Scientific Review Administrator, Scientific Review Program, NIH/NIAID/DEA/DHHS, 6700B Rockledge Drive, RM 3266, MSC–7616, Bethesda, MD 20892–7616, (301) 451–2671.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Molecular Mechanisms of T Cell Activation.

Date: July 27, 2006.

Time: 1pm. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health/NIAID, 6700 B Rockledge Drive, Room 3121, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Paul A. Amstad, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, DHHS/National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, (301) 402–7098, *pamstad@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology,

and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 29, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–6047 Filed 7–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Sleep Apnea, Arrhythmia and Cancer Interventions.

Date: July 10, 2006.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anna L. Riley, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, *rileyann@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, Cardiorespiratory Fitness and Prostate Cancer.

Date: July 13, 2006.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anna L. Riley, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, *rileyann@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, Environmental Exposure.

Date: July 19, 2006.

Time: 1 p.m. to 1:30 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: Claire E. Gutkin, Ph.D., MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC7759, Bethesda, MD 20892, 301–594–3139, *gutkincl@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, Behavioral Medicine Interventions and Assessments.

Date: July 24, 2006.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Karen Lechter, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, 301–496–0726. *lechterk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Conditions and Biobehavioral Medicine.

Date: July 26, 2006.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Karen Lechter, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, 301–496–0726. *lechterk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Behavioral Medicine Interventions.

Date: July 28, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Karen Lechter, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, 301–496–0726. *lechterk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pathogenesis of Bacteria.

Date: August 1, 2006.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rossana Berti, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3191, MSC 7846, Bethesda, MD 20892, 301–402–6411. *bertiros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biophysics Special.

Date: August 1, 2006.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Custer, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Minority/Disability Predoctoral Fellowship Review Panel.

Date: August 2–3, 2006.

Time: 8 a.m. to 5:30 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: Krish Krishnan, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Diagnosis, Inflammation and Immunity.

Date: August 2, 2006.

Time: 10 a.m. to 12:30 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: Rolf Menzel, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892, 301–435–0952, *menzelro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Behavior Related to Hormonal Changes.

Date: August 3, 2006.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gamil C. Debbas, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018, *debbosg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurogenesis and Circadian Biology.

Dote: August 4, 2006.

Time: 8:30 a.m. to 6 p.m.

Agendo: To review and evaluate grant applications.

Ploce: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contoct Person: Mary Custer, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1164, *custerm@csr.nih.gov.*

Nome of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Fatigue Syndrome, Fibromyalgia Syndrome, Temporomandibular Dysfunction.

Date: August 4, 2006.

Time: 10 a.m. to 4 p.m.

Agendo: To review and evaluate grant applications.

Ploce: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contoct Person: J. Terrell Hoffeld, DDS, PhD., Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301–435–1781, *th88q@nih.gov.*

Nome of Committee: Center for Scientific Review Special Emphasis Panel, Alzheimer's and Niemann Pick Disease.

Dote: August 4, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Ploce: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joanne T. Fujii, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4144, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 30, 2006.

Anna Snouffer,

Acting Director, Office of Federol Advisory Committee Policy.

[FR Doc. 06–6039 Filed 7–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Nome of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Parasitology.

Dote: July 7, 2006.

Time: 2 p.m. to 3:30 p.m.

Agendo: To review and evaluate grant applications.

Ploce: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contoct Person: Alexander D. Politis, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150. *politisa@csr.nih.gov.*

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.

Nome of Committee: Center for Scientific Review Special Emphasis Panel, BDCN Bioengineering Research Partnerships.

Dote: July 24, 2006.

Time: 1 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).

Contoct Person: Vinod Charles, PhD., Scientific Review Adminstrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, 301–435–0902, *charlesvi@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 29, 2006.

Anna Snouffer,

Acting Director, Office of Federol Advisory Committee Policy.

[FR Doc. 06–6044 Filed 7–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Public Workshop: Operationalizing Privacy: Compliance Frameworks & Privacy Impact Assessments Session—A Tutorial on How to Write Privacy Impact Assessments and Privacy Threshold Analysis

AGENCY: Privacy Office, Department of Homeland Security (DHS).

ACTION: Notice announcing public workshop.

SUMMARY: The Privacy Office of the Department of Homeland Security will host a public workshop, Operationalizing Privacy: Compliance Frameworks & Privacy Impact Assessments (PIAs) Session—A Tutorial on How to Write PIAs and Privacy Threshold Analysis (PTAs).

DATES: The workshop will be held on Wednesday, July 12, 2006, from 8:30 a.m. to 12:30 p.m.

ADDRESSES: The workshop will be held in the Auditorium of the GSA Regional Headquarters, 7th & D Streets, SW., Washington, DC, 20024.

FOR FURTHER INFORMATION CONTACT: Kathleen Kavanaugh, Privacy Office, Department of Homeland Security, Arlington, VA 22202 by telephone (571) 227–3813, by facsimile (571) 227–4171, or by e-mail to *privacyworkshop@dhs.gov.*

SUPPLEMENTARY INFORMATION: The DHS Privacy Office is holding a public workshop that will provide in-depth training on how to write PIAs and PTAs. A case study will be used to illustrate a step-by-step approach to researching, preparing, and writing these documents.

The workshop is open to the public and there is no fee for attendance. For general security purposes, the GSA Regional Headquarters requires that all attendees show a valid form of photo identification, such as a driver's license, to enter the building.

The DHS Privacy Office has developed PIA guidance and templates for PIAs and PTAs for DHS programs. The guidance and templates are posted on our Web site at *http://www.dhs.gov/privacy.* In addition, the DHS Privacy Office will post information about the

workshop, including a detailed agenda, on the Web site prior to the event.

Registration: Registration is recommended but not required. For non-registrants seating will be allocated on a first-come, first-served basis, so please arrive early. Persons with disabilities who require special assistance should indicate this in their admittance request and are encouraged to identify anticipated special needs as early as possible. You may register by e-mail at *privacyworkshop@dhs.gov* or by calling (571) 227–3813.

Dated: June 28, 2006.

Maureen Cooney,

Acting Chief Privacy Officer, Chief Freedom of Information Act Officer.

[FR Doc. E6–10582 Filed 7–6–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5044–N–13]

Notice of Proposed Information Collection for Public Comment; Public Housing Homeownership Program—Application, Documentation, Reporting and Recordkeeping

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* September 5, 2006.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Paperwork Reduction Act Compliance Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_Deitzer@hud.gov,* telephone (202) 708–2374. This is not a toll-free number. Copies of documentation submitted to OMB may be obtained from Ms. Deitzer.

FOR FURTHER INFORMATION CONTACT: Aneita Waites, (202) 708–0713, extension 4114, for copies of the proposed forms and other available documents. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Homeownership Program—Application, Documentation, Reporting and Recordkeeping.

OMB Control Number: 2577–0233.

Description of the need for the information and proposed use: Public Housing Agencies (PHAs) make available public housing units; public housing projects, and other housing units or developments owned, assisted, or operated, or otherwise acquired for purchase by low-income families for use as principal residences by such families. Families who are interested in purchasing a unit must submit applications to the PHA or purchase and resale entities (PREs). A PRE must prepare and submit to the PHA and HUD a homeownership program before the PRE may purchase any public housing units or projects. The PRE must demonstrate legal and practical capability to carry out the program, provide a written agreement that specifies the respective rights and obligations of the PRE and the PRE, the PHA must develop a homeownership program and obtain HUD approval before it can be implemented, provide supporting documentation and additional supporting documentation for acquisition or non-public housing for homeownership. PHA applications can be submitted electronically via the Internet. PHAs will be required to maintain records and report annually on the public housing homeownership program.

Agency form number: None.

Members of affected public: State or local government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents:

No. respondents	Frequency of submissions	Hours of responses	Burden hours 1000
1000	1	9.7	9700

Status of the proposed information collection: Extension of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: June 30, 2006.

Robert Benjamin,

Senior Project Analyst.

[FR Doc. E6–10670 Filed 7–6–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5045–N–27]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 7, 2006.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 29, 2006.

Mark R. Johnston,

Acting Deputy Assistant Secretary for Special Needs.

[FR Doc. 06–5983 Filed 7–6–06; 8:45 am]

BILLING CODE 4210–67–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Proposed Information Collection

AGENCY: Office of the Secretary, Office of Budget, Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Budget, Office of the Secretary, Department of the Interior (DOI), announces the proposed extension of a public information collection required by the Payments in Lieu of Taxes (PILT) Act, and that it is seeking comments on its provisions. After public review, the Office of Budget will submit the information collection to Office of Management and Budget (OMB) for review and approval.

DATES: Consideration will be given to all comments received by September 5, 2006.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of Budget, Attn: William Howell, Department of the Interior, MS 4116 MIB, 1849 C St., NW., Washington, DC 20240. Individuals providing comments should reference OMB control #1093–0005, "Payments in Lieu of Taxes (PILT Act), Statement of Federal Land Payments, (43 CFR 44)."

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to the above address, or call William Howell, (202) 208–3157.

SUPPLEMENTARY INFORMATION:

I. Abstract

Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement 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)). This notice identifies an information collection activity that the Office of Budget is planning to submit to OMB for extension or re-approval.

Public Law 97–258 (31 U.S.C. 6901–6907), as amended, the Payment in Lieu of Taxes (PILT) Act, was designed by Congress to help local governments recover some of the expenses they incur in providing services on public lands. These local governments receive funds under various Federal land payment programs such as the National Forest Revenue Act, the Mineral Lands Leasing Act, and the Taylor Grazing Act. PILT payments supplement the payments that local governments receive under these other programs.

The PILT Act requires that the Governor of each State furnish the Department of the Interior with a listing of payments disbursed to local governments by the States on behalf of the Federal Government under 12 statutes described in Section 4 of the Act (31 U.S.C. 6903). The Department of the Interior uses the amounts reported by the States to reduce PILT payments to units of general local governments from that which they might otherwise receive. If such listings were not furnished by the Governor of each affected State, the Department would not be able to compute the PILT payments to units of general local government within the States in question.

The information collection supporting the PILT Act was initially administered by the Bureau of Land Management, within the Department of the Interior, as "Payments in Lieu of Taxes (PILT Act), Statement of Federal Land Payments, (43 CFR 1881)," OMB control #1004–0109. However, in fiscal year 2004, administrative authority for the PILT program was transferred from the Bureau of Land Management to the Office of Budget within the Office of the Secretary of the Department of the Interior. Applicable DOI regulations pertaining to the PILT program to be administered by the Office of the Secretary were published as a final rule in the **Federal Register** on December 7, 2004. Recently, the Office of Budget, within the Office of the Secretary, requested emergency approval of the information collection as "Payments in Lieu of Taxes (PILT Act), Statement of Federal land Payments, (43 CFR 44)." OMB approved the information collection under control # 1093–0005. The Office of Budget, Office of the Secretary is now planning to extend the information collection approval for the standard three years in order to enable the Department of the Interior to continue to comply with the PILT Act.

II. Data

(1) *Title:* Payments in Lieu of Taxes (PILT Act), Statement of Federal Land Payments, (43 CFR 44).

OMB Control Number: 1093–0005.

Current Expiration Date: 11/30/2006.

Type of Review: Information Collection: Renewal.

Affected Entities: State, local, or tribal government.

Estimated annual number of respondents: 50.

Frequency of response: Annual.

(2) *Annual reporting and recordkeeping burden:*

Total annual reporting per respondent: 20 hours.

Total annual reporting: 1000 hours.

(3) *Description of the need and use of the information:* The statutorily-required information is needed to compute payments due units of general local government under the PILT Act (31 U.S.C. 6901–6907). The Act requires that the Governor of each State furnish a statement as to amounts paid to units of general local government under 12 revenue-sharing statutes in the prior fiscal year.

III. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection and 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 collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons

to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: June 28, 2006.

Pam Haze,

Co-Director, Office of Budget, Office of the Secretary.

[FR Doc. E6–10669 Filed 7–6–06; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Natural Resource Damage Assessment and Restoration Advisory Committee Meeting

ACTION: Notice; FACA Committee Meeting announcement.

SUMMARY: As required by the Federal Advisory Committee Act, Public Law 92–463, the Department of the Interior, Natural Resource Damage Assessment and Restoration Program Office gives notice of the upcoming meeting of the Department's Natural Resource Damage Assessment and Restoration Advisory Committee. The Advisory Committee will meet in the Rio Grande Room in Building 67 on the Denver Federal Center from 8:30 a.m. to 5 p.m. mountain time on July 26 and July 27, 2006. Members of the public are invited to attend the Committee Meeting to listen to the committee proceedings and to provide public input.

Public Input: Any member of the public interested in providing public input at the Committee Meeting should contact Ms. Barbara Schmalz, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Each individual providing oral input is requested to limit those comments to three minutes. This time frame may be adjusted to accommodate all those who would like to speak. Requests to be added to the public speaker list must be received in writing (letter, e-mail, or fax) by noon mountain time on July 18, 2006. Anyone wishing to submit written comments should provide a copy of those comments to Ms. Schmalz in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file formats are: Adobe Acrobat, WordPerfect, Word, or Rich Text files) by noon mountain time on July 18, 2006.

Document Availability: In preparation for this meeting of the Advisory Committee, the Committee and the public can find helpful background information at the Restoration Program Web site *http://restoration.doi.gov.* The site provides a good introduction to the program for those who are relatively new to the damage assessment and restoration arena and a useful reference for seasoned practitioners and policy leaders. Links to the statutory and regulatory framework for the program are found at *http://restoration.doi.gov/laws.htm.* DOI Program policies are found at *http://restoration.doi.gov/policy.htm.* Reference materials and preliminary subcommittee reports will also be posted on the site as they become available from the four subcommittees. After July 18, interested individuals may view the draft agenda for the meeting online at *http://restoration.doi.gov/faca* or may request the draft agenda from Ms. Schmalz.

Agenda for Meeting

The agenda will cover the following principal subjects:

—Discussion of subcommittee reports.
—Formal public input (if any).
—Committee agreement on each subcommittee scope and plan.
—Develop schedule for next Committee meeting.

We estimate that each subcommittee report, discussion, and associated public input will take approximately four hours. However, the timeframes will remain flexible. If a subcommittee report and discussion requires less than four hours, the committee will move directly on to the next topic.

Meeting Access: Individuals requiring special accommodation at this meeting must contact Ms. Barbara Schmalz (see contact information below) by noon mountain time on July 18, 2006, so that appropriate arrangements can be made.

DATES: July 26, 2006, from 8:30 a.m. to 5 p.m. mountain time (open to the public); July 27, 2006, from 8:30 a.m. to 5 p.m. mountain time (open to the public).

ADDRESSES: Rio Grande Room, Mezzanine Level, Building 67, Denver Federal Center; 6th Avenue & Kipling, Denver CO 80225.

All individuals attending the Committee Meeting will need to present photo identification to the entry gate security officers to gain access to the Denver Federal Center. Attendees will need to use the south entrance to Building 67 and present photo identification to the building security officers to gain access to Building 67.

FOR FURTHER INFORMATION CONTACT: Barbara Schmalz, U.S. Department of the Interior, Denver Federal Center, 6th Avenue & Kipling, Building 56, Room 1003, Mail Stop D–108, Denver, CO 80225–0007; phone 303–445–2500; fax 303–445–6320 or *barbara_schmalz@ios.doi.gov.*

Dated: June 30, 2006.

Frank M. DeLuise,

Designated Federal Officer, DOI Natural Resource Damage Assessment and Restoration Advisory Committee.

[FR Doc. E6–10602 Filed 7–6–06; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–0777–XZ–241A]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held July 26, 2006 from 1 p.m. to 5 p.m. and will continue on July 27, 2006 from 8 a.m. to 2 p.m.

ADDRESSES: Comfort Inn of Alamosa, 6301 Road 107 South, Alamosa, Colorado.

FOR FURTHER INFORMATION CONTACT: Ken Smith, (719) 269–8500.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Royal Gorge Field Office and San Luis Valley, Colorado.

Planned agenda topics on July 26 include: Manager updates on current land management issues; and updates on timber, insect problems and energy development potential on public lands in the San Luis Valley and updates on other public land issues. On July 27, the Council will tour and discuss issues at various sites included on public lands. All meetings are open to the public. The public is encouraged to make oral comments to the Council at 1:15 p.m. on July 26 or written statements may be submitted for the Councils consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. The public is also welcome to attend the field tour on July 27, however they may need to provide their own transportation. Summary minutes for the Council Meeting will be maintained in the Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Meeting Minutes and agenda (10 days prior to each meeting) are also available at: *http://www.blm.gov/rac/co/frrac/co_fr.htm.*

Dated: June 26, 2006.

Roy L. Masinton,

Royal Gorge Field Manager.

[FR Doc. E6–10660 Filed 7–6–06; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection Activities Under OMB Review; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal of currently approved collection (OMB No. 1006–0002).

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Recreation Use Data Report, OMB No. 1006–0002. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Your comments must be received on or before August 7, 2006.

ADDRESSES: You may send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov.* A copy of your comments should also be directed to the Bureau of Reclamation, Land Resources Office, 84–53000, Attention: Mr. Vernon Lovejoy, P.O. Box 25007, Denver, Colorado 80225–0007.

FOR FURTHER INFORMATION CONTACT: For additional information or a copy of the proposed Recreation Use Data Report forms, contact Mr. Lovejoy at the address provided above or by telephone at (303) 445–2913.

SUPPLEMENTARY INFORMATION:

Title: Recreation Use Data Report (Form No. 7–2534—Part 1, Managing Partners and Form No. 7–2535—Part 2, Concessionaires).

Abstract: Reclamation collects Reclamation-wide recreation and concession information (1) in support of existing public laws including the Land and Water Conservation Fund Act (Pub. L. 88–578) and the Federal Water Project Recreation Act (Pub. L. 89–72); and (2) to fulfill reports to the President and the Congress. This collection of information allows Reclamation to (1) meet the requirements of the Government Performance and Results Act (GPRA), (2) fulfill congressional and financial reporting requirements, and (3) support specific information required by the Land and Water Conservation Fund Act and the Department of the Interior's GPRA-based strategic plan. Collected information will permit relevant program assessments of resources managed by Reclamation, its recreation managing partners, and/or concessionaires for the purpose of implementing Reclamation's mission to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American people. Specifically, the collected information provides Reclamation with the ability to (1) evaluate program and management effectiveness pertaining to existing recreation and concessionaire resources and facilities, and (2) validate effective public use of managed recreation resources, located on Reclamation project lands in the 17 Western States.

Frequency: Annually.

Respondents: State, local, or tribal governments; agencies who manage Reclamation's recreation resources and facilities; and commercial concessions, subconcessionaires, and nonprofit organizations located on Reclamation lands with associated recreation services.

Estimated Total Number of Respondents: 275.

Estimated Number of Responses per Respondent: 1.

Estimated Total Number of Annual Responses: 275.

Estimated Total Annual Burden on Respondents: 138 hours.

Estimate of Burden for Each Form:

Form No.	Burden estimate per form (in minutes)	Annual number of respondents	Annual burden on respondents (in hours)
7–2534 (Part 1, Managing Partners)	30	160	80
7–2535 (Part 2, Concessionaires)	30	115	58
Total Burden Hours			138

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Reclamation, including whether the information will have practical use; (b) the accuracy of Reclamation's estimated burden of the proposed collection of information; (c) ways to enhance the quality, use, 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 automated collection techniques or other forms of information technology.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Reclamation will

display a valid OMB control number on the forms in this information collection. A **Federal Register** notice with a 60-day comment period soliciting comments on this information collection was published in the **Federal Register** on March 6, 2006 (71 FR 11225, Mar. 6, 2006). Reclamation did not receive any comments on this information collection during the comment period.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

Department of the Interior practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Roseann Gonzales,

Director, Office of Program and Policy Services, Denver Office.

[FR Doc. E6–10659 Filed 7–6–06; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreements in In re EaglePicher Holdings, Inc., Under The Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

Notice is hereby given that on June 30, 2006, four proposed Settlement Agreements were filed with the United States Bankruptcy Court for the Southern District of Ohio in *In re EaglePicher Holdings, Inc.*, No. 05–12601 (Bankr. S.D. Ohio.). The Settlement Agreements among the United States on behalf of U.S. EPA, the States of Michigan, Oklahoma, Illinois, and Kansas, and Debtor EaglePicher Holdings, Inc., and its affiliated Debtors resolve CERCLA claims as provided in the Settlement Agreements for the following facilities: Miami, Oklahoma; Hockerville, Oklahoma; Galena, Kansas; Baxter Springs, Kansas; Columbus, Kansas; Galena, Illinois; 215 and 221 Industrial Drive, Hillsdale, Michigan; South Street, Hillsdale, Michigan; Inkster, Michigan; and River Rouge, Michigan.

Under each of the Settlement Agreements, a custodial trust will be created to fund the clean up of the properties listed above. Under the Oklahoma Settlement Agreement, the custodial trust will be funded in the amount of $705,000 for the Miami and Hockerville Sites. Under the Michigan Settlement Agreement, the custodial trust will be funded in the amount of $2,400,000 for the cleanup of the facilities located in the Hillsdale and in the amount of $2,200,000 for the cleanup of the Inkster and River Rouge sites. Under the Kansas Settlement Agreement, funding in the amounts of $6,560,000, $349,000 and $282,000 are to be placed in the custodial trust for the Galena, Baxter Springs and Columbus Sites respectively. Under the Illinois Settlement, funding in the amount of $1,150,000 is to be placed in the custodial trust for the Galena, Illinois facility.

The Department of Justice will receive for a period of fourteen (14) days from the date of this publication comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resource Division, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *In re EaglePicher Holdings, Inc.*, DJ No. 90–11–3–747/2.

The proposed consent decree may be examined at the office of the United States Attorney for the Southern District of Ohio; and at U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. Copies of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $26.25 for the Kansas Settlement Agreement; $24.75 for the Oklahoma Settlement Agreement; $26.75 for the Michigan Settlement Agreement; and $24.75 for the Illinois Settlement Agreement, (25 cents per page reproduction costs) payable to the U.S. Treasury for the consent decree in *In re EaglePicher Holdings, Inc.*, DJ No. 90–11–3–747/2.

Bruce S. Gelber,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–6049 Filed 7–6–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of the Consent Decree Under the Clean Water Act

Notice is hereby given that on June 22, 2006, a proposed Consent Decree in *United States* v. *Puerto Rico Aqueduct and Sewer Authority* ("PRASA"), Civil action No. 06–1624 (SEC) was lodged with the United States court for the District of Puerto Rico.

The proposed Consent Decree resolves PRASA's Clean Water Act (CWA) violations involving discharges in violation of CWA permits; failure to operate and properly maintain all 61 wastewater treatment plants; and discharges of raw sewage from seven collection systems. Under the terms of the Consent Decree, PRASA will pay a $1 million penalty, undertake a Supplemental Environment Project valued at $3 million, and implement injunctive relief valued at approximately $1.7 billion. PRASA agrees to complete 145 short-term, mid-term and/or long-term capital improvement projects at its wastewater treatment plants over the next 15 years. PRASA will also implement a Spill Response and Cleanup Plan and an Integrated Maintenance Program to promote proper operation and maintenance of its wastewater treatment plants.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *PRASA*.

The Consent Decree may be examined at the Office of the United States Attorney, Federal Office Building, Rm. 10, Carlos E. Chardón Avenue, San Juan, Puerto Rico, and at U.S. EPA Region II, 290 Broadway, New York, New York. During the public comment period, the Consent Decree may also be examined on the following Department of Justice

Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $39.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resource Division.

[FR Doc. 06–6048 Filed 7–6–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

June 27, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Process Safety Management of Highly Hazardous Chemicals (PSM) (29 CFR 1910.119).

OMB Number: 1218–0200.

Frequency: On occasion; Annually; Every 3 years; and Every 5 years.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Federal Government; and State, local, or tribal government.

Number of Respondents: 37,970.

Number of Annual Responses: 8,134,631.

Estimated Time per Response: Varies by task.

Total Burden Hours: 47,852,750.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Clean Air Act Amendments ("CAAA") of 1990 required the Occupational Safety and Health Administration ("OSHA" or "the Agency") to develop a standard on Process Safety Management of Highly Hazardous Chemicals ("the PSM Standard" or "the Standard") containing certain minimum requirements to prevent accidental releases of chemicals that could pose a threat to employees. Under the authority granted by the Act, OSHA published the PSM Standard at 29 CFR 1910.119. The Standard, rather than setting specific engineering requirements, emphasizes the application of documented management controls; using the controls, companies address the risk associated with handling or working near highly hazardous chemicals. The Standard contains a number of paperwork requirements such as developing written process safety information, procedures and management practices, to update operating procedures and safe work practices, to evaluate safety history and policies of contractors, to conduct periodic evaluations, and to document employee training.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E6–10632 Filed 7–6–06; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

June 30, 2006.

The Department of Labor (DOL) has submitted the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employee Benefits Security Administration.

Type of Review: Extension of currently approved collection.

Title: Prohibited Transaction Class Exemption 97–41; Collective Investment Funds Conversion Transactions.

OMB Number: 1210–0104.

Frequency: On occasion.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Number of Respondents: 50.

Number of Annual Responses: 105.

Estimated Annual Time per Respondent: Approximately 35 hours.

Total Burden Hours: 1,756.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $281,570.

Description: The Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (Code) provide that the Secretary of Labor and the Secretary of Treasury, respectively, may grant exemptions from certain prohibited transaction provisions under ERISA and the Code. Section 408(a) of ERISA authorizes the Secretary of Labor to grant administrative exemptions from the restrictions of section 406 of ERISA, while section 4975(c)(2) of the Code authorizes the Secretary of Treasury or his delegate to grant exemptions from the prohibitions of section 4975(c)(1).

Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978, effective on December 31, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975 of the Code, with certain enumerated exceptions, to the Secretary of Labor. As a result, the Secretary of Labor now possesses authority under section 4975(c)(2) of the Code as well as under 408(a) of ERISA to issue individual and class exemptions from the prohibited transaction rules of ERISA and the Code.

Prohibited Transaction Class Exemption (PTE) 97–41, which was finalized in 1997 in response to an application submitted on behalf of Federated Investors, permits an employee benefit plan to purchase shares of a registered open-end investment company (mutual fund) in exchange for plan assets transferred from a collective investment fund (CIF) maintained by a bank or plan adviser, even though the bank or plan advisor is the investment advisor for the mutual fund and also serves as a fiduciary for the plan, provided that the purchase and transfer is in connection with a complete withdrawal of the plan's investment in the CIF and certain other conditions are met.

Among other conditions, the exemption requires the bank or plan advisor to provide an independent fiduciary of the plan with advance written notice of the proposed transfer and full written disclosure of information concerning the mutual fund, including current prospectus; disclosure of the investment advisory and other fees the plan will be charged or pay to the bank or any unrelated third party, including the nature and extent of any differential between the rates of the fees; the reasons why the bank or plan advisor considers the in-kind transfers appropriate for the plan; and a statement of whether there are any limitations applicable to the bank with respect to which plan assets may be invested in the mutual fund and, if so, the nature of such limitations; and the identity of securities that will have to be valued for the transfer. The independent fiduciary must given prior written approval of the transfer (and written approval of any electronic transmission of subsequent confirmations from the bank or plan advisor); and the bank or advisor must send written (or electronic, if approved) confirmation of the transfer. Subsequent to a transfer, the bank or plan advisor must provide the plan with updated prospectuses at least annually for mutual funds in which the plan remains invested; the bank or plan advisory must also provide, upon the independent fiduciary's request, a report or statement of all fees paid by the mutual fund to the bank or plan advisor, which may be in the form of the most recent financial report.

The information collection request is a set of third-party disclosures. Respondents are not required to submit information to the Department. Availability of the exemption is conditioned on the bank's or plan advisor's delivery of advance notice to the independent fiduciary of a plan concerning the withdrawal of the plan's assets from a CIF, and written (or electronic) confirmation to the same fiduciary after the completion of each transaction involving the transfer of assets. The notice and confirmation requirements incorporated in the class exemption are intended to protect the interests of plan participants and beneficiaries.

Agency: Employee Benefits Security Administration.

Type of Review: Extension of currently approved collection.

Title: Acquisition and Sale of Trust REIT Shares by Individual Account Plans Sponsored by Trust REITs.

OMB Number: 1210–0124.

Frequency: On occasion; Annually; and Quarterly.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Number of Respondents: 45.

Number of Annual Responses: 104,545.

Estimated Annual Time Per Respondent: Approximately 105 hours.

Total Burden Hours: 4,733.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $39,690.

Description: The Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (Code) provide that the Secretary of Labor and the Secretary of Treasury, respectively, may grant exemptions from certain prohibited transaction provisions under ERISA and the Code. Section 408(a) of ERISA authorizes the Secretary of Labor to grant administrative exemptions from the restrictions of section 406 of ERISA, while section 4975(c)(2) of the Code authorizes the Secretary of Treasury or his delegate to grant exemptions from the prohibitions of section 4975(c)(1).

Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978, effective on December 31, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975 of the Code, with certain enumerated exceptions, to the Secretary of Labor. As a result, the Secretary of Labor now possesses authority under section 4975(c)(2) of the Code as well as under 408(a) of ERISA to issue individual and class exemptions from the prohibited transaction rules of ERISA and the Code.

Prohibited Transaction Exemption 04–07, issued by the Department in 2004, permits an individual account pension plan sponsored by a real estate investment trust (REIT) that is organized as a business trust under State law (Trust REIT), or by its affiliates, to purchase, hold and sell publicly traded shares of beneficial interest in the Trust REIT. Such purchases, holdings, and sales would otherwise be prohibited under sections 406 of ERISA and 4975 of the Code.

The class exemption requires, among other conditions, that the Trust REIT (or its agent) provide the person who has authority to direct acquisition or sale of REIT shares with the most recent prospectus, quarterly report, and annual report concerning the Trust REIT immediately before an initial investment in the Trust REIT. The person with such authority may be, under the terms of the plan, either an

independent fiduciary or a participant exercising investment rights pertaining to his or her individual account under the plan. Updated versions of the reports must be provided to the directing person as subsequently published. The exemption further requires the plan to maintain records concerning investments in a Trust REIT, subject to appropriate confidentiality procedures, for a period of six years and make them available to interested persons including the Department and participants and beneficiaries. The confidentiality procedures must be designed to protect against the possibility that an employer may exert undue influence on participants regarding share-related transactions, and the participants and beneficiaries of the plan must be provided with a statement describing the confidentiality procedures in place and the fiduciary responsible for monitoring these procedures.

The information collection requirements of the exemption are intended to protect the interests of Plan participants and beneficiaries by ensuring that Plan participants, Plan fiduciaries, and employers and employee organizations with employees and members covered by a Plan of the Trust REIT or one of its employer affiliates are informed about the plan's transactions involving Trust REIT shares and can monitor compliance with the conditions of the exemption. In addition, the disclosure requirements provide fiduciaries with sufficient information on which to decide whether to invest in Trust REIT shares and whether to continue such investments. The Department and the IRS, as well as the other specified interested persons, also can rely on the recordkeeping requirement to oversee compliance with the conditions of the exemption.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E6–10633 Filed 7–6–06; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

June 29, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension of currently approved collection.

Title: Wage Statement.

OMB Number: 1215–0148.

Form Numbers: WH–501 (English) and WH–501 (Spanish).

Frequency: On occasion and per pay period.

Type of Response: Recordkeeping; Reporting; and Third party disclosure.

Affected Public: Farms and Business or other for-profit.

Number of Respondents: 1,385,864.

Number of Annual Responses: 41,344,000.

Estimated Average Response Time: 1 minute.

Total Annual Burden Hours: 689,067.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Sections 201(d) and 301(c) of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and section 500.80 of Regulations 29 CFR part 500, Migrant and Seasonal Agricultural Worker Protection, require that each farm labor contractor, agricultural employer, and agricultural association which employs any migrant or seasonal worker, make, keep, and preserve records for three years for each worker. These records include the basis on which earnings are paid, the number of piece work units earned, if paid on piece work basis, the number of hours worked, the total pay period earnings, the specific sums withheld and the purpose of each sum withheld, and the net pay. It is also required that an itemized written statement of this information be provided to each worker each pay period. The WH–501 (English) and WH–501 (Spanish) are optional forms which a farm labor contractor, agricultural employer and agricultural association can maintain as a record and provide as a statement of earnings to migrant and seasonal agricultural workers and users of such workers listing the method of payment of wages.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E6–10634 Filed 7–6–06; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

June 29, 2006.

The Department of Labor (DOL) has submitted the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employee Benefits Security Administration.

Type of Review: Extension of currently approved collection.

Title: Bank Collective Investment Funds; Prohibited Transaction Class Exemption 91–38.

OMB Number: 1210–0082.

Frequency: On occasion.

Type of Response: Recordkeeping.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Number of Respondents: 1,200.

Number of Annual Responses: 1,200.

Estimated Annual Time Per Respondent: 10 minutes.

Total Burden Hours: 200.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) gives the Secretary of Labor the authority to "grant a conditional or unconditional exemption of any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by sections 406 and 407(a)." In order to grant an exemption under section 408, the Department must determine that the exemption is: (1) Administratively feasible; (2) in the interests of the plan and its participants and beneficiaries; and, (3) protective of the rights of the participants and beneficiaries of such plan.

Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978, effective on December 31, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975 of the Code, with certain enumerated exceptions, to the Secretary of Labor. As a result, the Secretary of Labor now possesses authority under section 4975(c)(2) of the Code as well as under 408(a) of ERISA to issue individual and class exemptions from the prohibited transaction rules of ERISA and the Code.

Section 406 of ERISA prohibits certain types of transactions between plans and related parties (called parties in interest), such as plan fiduciaries, sponsoring employers, unions, service providers and affiliates. In particular, under section 406, a fiduciary of a plan may not cause the plan to engage in a transaction involving plan assets (*e.g.*, a sale, lease, loan, transfer, or furnishing of goods or services) with a party in interest or use the plan's assets for the benefit of a party in interest.

Prohibited Transaction Class Exemption (PTE) 90–1 provides an exemption from the restrictions of section 406, in part, for certain transactions between insurance company pooled separate accounts and parties in interest to plans that invest assets in the pooled separate accounts. The exemption provides a general exemption for any transaction between a party in interest with respect to a plan and an insurance company pooled separate account in which the plan has an interest (or any acquisition or holding by the pooled separate account of employer securities or employer real estate), provided that the party in interest is not the insurance company (or an affiliate of the insurance company) and that the amount of the plan's investment in the separate account does not exceed certain specified percentages (or that the separate account is a specialized account with a policy of investing substantially all of its assets in short-term obligations).

The class PTE also provides specific, additional exemptions for the following types of transactions with a party in interest: (1) Furnishing goods to an insurance company pooled separate account, (2) leasing of real property of the pooled separate account, (3) transactions involving persons who are parties in interest to a plan merely because they are service providers or provide nondiscretionary services to the plan; (4) the insurance company's provision of real property management services in connection with real property investments of the pooled separate account, and (5) furnishing of services, facilities and goods by a place of public accommodations owned by the separate account.

In addition to other specified conditions, the insurance company intending to rely on the general exemption or any of the specific exemptions must maintain records of the transactions to which the exemption applies for a period of six years and make the records available on request to specified interested persons (including plan fiduciaries, the Department, and the Internal Revenue Service). This information collection requirement is considered necessary in order to ensure that the exemption meets the standards of section 408.

This exemption requires recordkeeping, including disclosure of records on request to the Department and other interested persons. The Department believes that this information collection protects the interests of participants and beneficiaries in plans by enabling interested persons, including the Department, to verify that the conditions of the exemptions have been met.

Agency: Employee Benefits Security Administration.

Type of Review: Extension of currently approved collection.

Title: PTE 90–1; Insurance Company Pooled Separate Accounts.

OMB Number: 1210–0083.

Frequency: On occasion.

Type of Response: Recordkeeping.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Number of Respondents: 70.

Number of Annual Responses: 70.

Estimated Annual Time Per Respondent: 1.67 hours.

Total Burden Hours: 120.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) gives the Secretary of Labor the authority to "grant a conditional or unconditional exemption of any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by sections 406 and 407(a)." In order to grant an exemption under section 408, the Department must determine that the exemption is: (1) Administratively feasible; (2) in the interests of the plan and its participants and beneficiaries; and, (3) protective of the rights of the participants and beneficiaries of such plan. Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978, effective on December 31, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975 of the Code, with certain enumerated exceptions, to the Secretary of Labor. As a result, the Secretary of Labor now possesses authority under section 4975(c)(2) of the

Code as well as under 408(a) of ERISA to issue individual and class exemptions from the prohibited transaction rules of ERISA and the Code.

Section 406 of ERISA prohibits certain types of transactions between plans and related parties (called parties in interest), such as plan fiduciaries, sponsoring employers, unions, service providers and affiliates. In particular, under section 406, a fiduciary of a plan may not cause the plan to engage in a transaction involving plan assets (*e.g.*, a sale, lease, loan, transfer, or furnishing of goods or services) with a party in interest or use the plan's assets for the benefit of a party in interest.

Prohibited Transaction Class Exemption (PTE) 90–1 provides an exemption from the restrictions of section 406, in part, for certain transactions between insurance company pooled separate accounts and parties in interest to plans that invest assets in the pooled separate accounts. The exemption provides a general exemption for any transaction between a party in interest with respect to a plan and an insurance company pooled separate account in which the plan has an interest (or any acquisition or holding by the pooled separate account of employer securities or employer real estate), provided that the party in interest is not the insurance company (or an affiliate of the insurance company) and that the amount of the plan's investment in the separate account does not exceed certain specified percentages (or that the separate account is a specialized account with a policy of investing substantially all of its assets in short-term obligations).

The class PTE also provides specific, additional exemptions for the following types of transactions with a party in interest: (1) Furnishing goods to an insurance company pooled separate account, (2) leasing of real property of the pooled separate account, (3) transactions involving persons who are parties in interest to a plan merely because they are service providers or provide nondiscretionary services to the plan; (4) the insurance company's provision of real property management services in connection with real property investments of the pooled separate account, and (5) furnishing of services, facilities and goods by a place of public accommodations owned by the separate account.

In addition to other specified conditions, the insurance company intending to rely on the general exemption or any of the specific exemptions must maintain records of the transactions to which the exemption applies for a period of 6 years and make the records available on request to specified interested persons (including plan fiduciaries, the Department, and the Internal Revenue Service). This information collection requirement is considered necessary in order to ensure that the exemption meets the standards of section 408.

This exemption requires recordkeeping, including disclosure of records on request to the Department and other interested persons. The Department believes that this information collection protects the interests of participants and beneficiaries in plans by enabling interested persons, including the Department, to verify that the conditions of the exemptions have been met.

Agency: Employee Benefits Security Administration.

Type of Review: Extension of currently approved collection.

Title: Foreign Exchange Transactions; Prohibited Transaction Class Exemption 94–20.

OMB Number: 1210–0085.

Frequency: On occasion.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Number of Respondents: 239.

Number of Annual Responses: 1,195.

Estimated Annual Time Per Respondent: 10 minutes.

Total Burden Hours: 200.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) gives the Secretary of Labor the authority to "grant a conditional or unconditional exemption of any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by sections 406 and 407(a)." In order to grant an exemption under section 408, the Department must determine that the exemption is: (1) Administratively feasible; (2) in the interests of the plan and its participants and beneficiaries; and, (3) protective of the rights of the participants and beneficiaries of such plan.

Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978, effective on December 31, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975 of the Code, with certain enumerated exceptions, to the Secretary of Labor. As a result, the Secretary of Labor now possesses authority under section 4975(c)(2) of the Code as well as under 408(a) of ERISA to issue individual and class exemptions from the prohibited transaction rules of ERISA and the Code.

Section 406 of ERISA prohibits certain types of transactions between plans and related parties (called parties in interest), such as plan fiduciaries, sponsoring employers, unions, service providers and affiliates. In particular, under section 406, a fiduciary of a plan may not cause the plan to engage in a transaction involving plan assets (e.g., a sale, purchase, lease, loan, transfer, or furnishing of goods or services) with a party in interest or use the plan's assets for the benefit of a party in interest.

In 1994, in response to an application from the American Bankers Association, the Department adopted a prohibited transaction class exemption (PTE 94–20) permitting banks, broker-dealers, and their affiliates (hereinafter, respondent) that are parties in interest to a plan to engage in foreign currency transactions with the plan, provided the transaction is directed by a plan fiduciary independent of the respondent and that certain other conditions are satisfied. To protect the interests of participants and beneficiaries of the employee benefit plan, the exemption requires, among other things, that a respondent wishing to rely on the exemption (1) maintain written policies and procedures applicable to trading in foreign currencies with an employee benefit plan; (2) provide a written confirmation of each foreign currency transaction to the independent plan fiduciary directing the transaction; and (3) maintain records of the transactions for a period of six years and make them available upon request to specified interested persons, including plan fiduciaries, participants and beneficiaries, and the Department. This information collection request relates to the foregoing requirements.

The information collection requirements include recordkeeping, third party disclosure, and disclosure to the Department. These requirements enable the Department and other interested persons to monitor compliance with the conditions of the exemption. These conditions are necessary, as required under section 408(a) of ERISA, to ensure that respondents rely on the exemption only

in the circumstances protective of plan participants and beneficiaries.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E6–10635 Filed 7–6–06; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

June 29, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Ira Mills at the Department of Labor on 202–693–4122 (this is not a toll-free number) or e-mail: *Mills.Ira@dol.gov*. This ICR can also be accessed online at *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: New.

Title: Plan for Evaluation of the Trade Adjustment Assistance Program.

OMB Number: 1205–0NEW.

Frequency: Other; one time collection.

Affected Public: Individuals or households; State, Local, or Tribal Government.

Type of Response: Reporting.

Number of Respondents: 9,490.

Annual Responses: 9,490.

Average Response Time: 95 minutes for respondents.

Total Annual Burden Hours: 11,962.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: This data collection plan is for a six-year evaluation of the Trade Adjustment Assistance program. The evaluation is comprised of an impact analysis using a comparison group methodology. A process study is also included to determine what programmatic and administrative features may affect performance. Data collection includes: Baseline and follow-up surveys of TAA participants and comparison group members, site visits to states and local areas, and an internet/phone survey of local TAA coordinators.

Ira L. Mills,

Departmental Clearance Officer/Team Leader.

[FR Doc. E6–10636 Filed 7–6–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Job Corps: Preliminary Finding of No Significant Impact (FONSI) for the Proposed Job Corps Center located at 6767 North 60th Street, Milwaukee, WI

AGENCY: Office of the Secretary, Department of Labor.

ACTION: Preliminary Finding of No Significant Impact (FONSI) for the proposed Job Corps Center to be located at 6767 North 60th Street, Milwaukee, Wisconsin.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Office of the Secretary (OSEC) in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared for a proposed new Job Corps Center to be located in Milwaukee, Wisconsin, and that the proposed plan for a new Job Corps Center will have no significant environmental impact. This Preliminary Finding of No Significant Impact (FONSI) will be made available for public review and comment for a period of 30 days.

DATES: Comments must be submitted by August 7, 2006.

ADDRESSES: Any comment(s) are to be submitted to Michael F. O'Malley, Office of the Secretary (OSEC), Department of Labor, 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–3108 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Copies of the EA are available to interested parties by contacting Michael F. O'Malley, Architect, Unit Chief of Facilities, U.S. Department of Labor, Office of the Secretary (OSEC), 200 Constitution Avenue, NW., Room N–4460, Washington, DC 20210, (202) 693–3108 (this is not a toll-free number) or by visiting the Milwaukee Public Library, Mill Road Branch, 6431 North 76th Street, Milwaukee, Wisconsin 53223—Viewing Hours: M.–Th. 10:30 a.m.–8:30 p.m. & F.–S. 10 a.m.–5 p.m. or by visiting the City of Milwaukee Department of City Development, 809 North Broadway, Milwaukee, Wisconsin 53202—Viewing Hours: M.–F. 8 a.m.–4:45 p.m.

SUPPLEMENTARY INFORMATION: This EA summary addresses the proposed construction of a new Job Corps Center in Milwaukee, Wisconsin. The site for the proposed Job Corps Center is a 23-acre undeveloped parcel of land owned by James Cape & Sons Company.

The new center will require construction of approximately eight new buildings. The proposed Job Corps Center will provide housing, training, and support services for approximately 300 students. The current facility utilization plan includes new dormitories, a cafeteria building, administration offices, recreation facilities, and classroom facilities.

The construction of the Job Corps Center on this proposed site would be a positive asset to the area in terms of environmental and socioeconomic improvements, and long-term productivity. The proposed Job Corps Center will be a new source of employment opportunity for people in the Milwaukee metropolitan area. The Job Corps program provides basic education, vocational skills training, work experience, counseling, health care and related support services. The program is designed to graduate students who are ready to participate in the local economy.

The proposed project will not have any significant adverse impact on any natural systems or resources. No state or Federal threatened or endangered species (proposed or listed) have been identified on the subject property.

The Job Corps Center construction will not affect any existing historic structures, as there are no historic or archeologically sensitive areas on the proposed property parcel.

Air quality and noise levels should not be affected by the proposed development project. Due to the nature of the proposed project, it would not be a significant source of air pollutants or additional noise, except possibly during construction of the facility. All construction activities will be conducted in accordance with applicable noise and air pollution regulations, and all pollution sources will be permitted in accordance with applicable pollution control regulations.

The proposed Job Corps Center is not expected to significantly increase the vehicle traffic in the vicinity.

The proposed project will not have any significant adverse impact on the surrounding water, sewer, and storm water management infrastructure. The new buildings to be constructed for the proposed Job Corps Center will be tied in to the existing City of Milwaukee Water Works system. The new buildings to be constructed for the proposed Job Corps Center will also be tied in to the existing Milwaukee Metropolitan Sewerage District wastewater treatment system.

We Energies will provide the electricity for the site. This is not expected to create any significant impact to the regional utility infrastructure.

The Job Corps Center is not expected to result in a significant increase in vehicular traffic, since many of the Job Corps Center residents will either live at the Job Corps Center or use public transportation. While some Job Corps Center students and staff may use personal vehicles, their number would not result in a significant increase in vehicular traffic in the area. However, the proposed Job Corps Center entrance would be from North 60th Street. North 60th Street is a well-used, two-lane thoroughfare. Milwaukee County Transit System will provide public transportation. Bus Route 76 travels along North 60th Street past the location of the proposed Job Corp Center. There are a number of connecting bus routes within walking distance of the site.

No significant adverse affects to local medical, emergency, fire and police services are anticipated. The primary medical provider located closest to the proposed Job Corps parcel is the Northwest General Hospital, approximately 3.5 miles from the proposed Job Corps Center. Security services at the Job Corps will be provided by the center's security staff. Law enforcement services are provided by the City of Milwaukee Police Department—District 4, located approximately 1.6 miles from the proposed project site. The City of Milwaukee Fire Department will provide fire protection. Milwaukee Fire Department #9 which operates 24 hours a day is located approximately 1.2 miles from the site.

The proposed project will not have a significant adverse sociological effect on the surrounding community. Similarly, the proposed project will not have a significant adverse effect on demographic and socioeconomic characteristics of the area.

The alternatives considered in the preparation of this FONSI were as follows: (1) No Action; and (2) Continue Project as Proposed. The No Action alternative was not selected. The U.S. Department of Labor's goal of improving the Job Corps Program by improving the learning environment at Job Corps Centers would not be met under this alternative. Due to the suitability of the proposed site for establishment of a new Job Corps Center, and the absence of any identified significant adverse environmental impacts from locating a Job Corps Center on the subject property, the "Continue Project as Proposed" alternative was selected.

Based on the information gathered during the preparation of the EA, no environmental liabilities, current or historical, were found to exist on the proposed Job Corps Center site. The construction of the Job Corps Center at 6767 North 60th Street, Milwaukee, Wisconsin will not create any significant adverse impacts on the environment.

Dated: June 28, 2006.

Esther R. Johnson,

National Director of Job Corps.

[FR Doc. E6–10631 Filed 7–6–06; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Workforce Investment Act: Job Corps Program; Selection of Sites for Centers

AGENCY: Office of Job Corps, Office of the Secretary, Labor.

SUMMARY: The Department of Labor requests assistance in identifying sites for locating new Job Corps Centers. This notice specifies the requirements and criteria for selection.

DATES: Proposals are requested by September 30, 2006.

ADDRESSES: Proposals shall be addressed to the National Director, Office of Job Corps, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N4463, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Esther R. Johnson, National Director, Office of Job Corps. Telephone: (202) 693–3000 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL) is soliciting proposals for sites to establish new Job Corps centers. The Job Corps program is designed to serve disadvantaged young women and men, 16 through 24, who are in need of additional educational, career technical (vocational), and other support services in order to acquire the skills to begin a career, return to school or enter the Armed Forces. The program is primarily a residential program operating 24 hours per day, 7 days per week with non-resident enrollees limited by legislation to 20 percent of national enrollment. While the 20 percent level should be used as a guideline, the percentage of non-residents can vary from center to center, depending upon local needs.

Job Corps currently offers a comprehensive, integrated Career Development Services System which provides services for students from the time they apply through enrollment, career preparation and career development activities, and post-center career transition services. Career preparation and career development activities occur primarily on-center and include academic, career technical (vocational), information technology and social skills training; personal and career counseling; medical care; meals and housing; and related support services. Career transition services begin towards the end of the training period and continue for up to two years after a student leaves the center and returns home. These services include career search, job placement and transitional support to meet individual students' needs, such as housing, transportation and child care after they leave the Job Corps center.

Job Corps will be implementing a new framework for building a 21st century system of excellence. The components envisioned for a new program delivery model include high-growth, high-demand industry/occupational clusters; aligning program content with 21st century workplace requirements, and involving industry, education and workforce partners as an integral part of the Job Corps system. Training for each

industry cluster will involve approximately 150–200 students.

For this solicitation, the Department intends to select localities for new Job Corps centers from the proposals submitted in response to this solicitation. The centers will be stand-alone facilities of sufficient size to serve about 300 students each. These centers will be primarily residential, but may encompass a small nonresidential component. Selection of the sites will be made based on those which best meet the needs of the Job Corps Program. Development of the sites selected is contingent upon additional funding by Congress.

Congress authorized this expansion and appropriated funding to begin the expansion process in the FY 2005 and FY 2006 Department of Labor Appropriations. The accompanying Congressional Report language indicated that the Department should give priority in site selection to the states which do not currently have a Job Corps center, and to sites which can be started as a satellite (residential or non-residential) in conjunction with an existing Job Corps Center that is serving an entire State or region and which can later be converted to a stand-alone facility. This solicitation is for site selection only and not for the operation of these Job Corps centers. A competitive procurement for selection of a center operator at each site will be initiated and completed well after the site selection process has been completed.

The Workforce Investment Act provides authorization for the establishment of Job Corps centers and requires that students be assigned to Job Corps centers closest to their homes. The determination of a locality's need for a Job Corps center will be made by analyzing State-level poverty and unemployment rates for youth using standardized uniform data available from Federal agencies, such as 2000 census data, Bureau of Labor Statistics publications, and information on existing Job Corps centers, slots, enrollment levels, and locations.

In addition to this analysis, the Department will also assess the facilities at proposed sites. The assessment will focus on property acquisition costs, the cost and suitability of existing structures, environmental conditions at the site, suitability of surroundings for a facility of this type, zoning issues, and the need for, and cost of, new construction and renovation. Priority will be given to proposed sites that offer no-cost or low-cost turnkey facilities (those in move-in condition requiring little or no construction rehabilitation work) which can quickly be made ready for use by Job Corps.

Further, the Department will assess each jurisdiction's plan to use State and local resources, both public and private, through contributions/linkages that reduce the Federal cost of operating a Job Corps center. Such contributions/linkages may include, but not be limited to, the following: the provision of work-based learning sites and donations of training equipment or curriculum by the local employer community and local industry; provision of academic tutors and youth mentors; provision of child care services by local jurisdictions, including programs such as Head Start; provision of health services; alcohol and drug counseling; referral of eligible youth to Job Corps, and job placement and other career transition services after students leave Job Corps. Other linkages may include arrangements with public school systems for high school diploma programs; resources/linkages for credentialing of Job Corps instructors; linkages with one-stops and other local workforce development programs and services; community college networks; social service agencies; business and industry; computer-based education; and other training programs to provide such services as classroom training, high-growth career technical training, and advanced learning opportunities. Contributions of this nature will make maximum use of available statewide and community resources in meeting the needs of Job Corps-eligible youth.

Eligible applicants for submitting proposals are units of State and/or local governments.

Since Job Corps is primarily a residential program and provides academic education, career technical (vocational) training, career development and extensive support services, space and facilities suitable for the following types of utilization are required for a Job Corps center.

- *Residential*—Adequate housing, including bath and lounge facilities, internet access, as well as appropriate administrative space.
- *Academic Education*—Space for classrooms, computer labs, video-conferencing and library resources.
- *Career Technical (Vocational) Training*—Classroom and shop space to satisfy the needs of specific career technical training (career technical (vocational)) clusters (*e.g.*, construction, information technology, and healthcare). The configuration of career technical areas is determined by the ultimate occupational mix offered at the center. Industry clusters such as information technology and finance and business will require classroom space and possibly lab space. Some trades, such as construction and automotive may require shop areas in addition to classroom space.
- *Food Services*—Cafeteria, including food preparation and food storage areas.
- *Medical/Dental*—Medical examining rooms, nurses' station, infirmary space for male and female students, and dental facilities.
- *Recreation*—Gymnasium/multi-purpose recreational facility and large level outdoor area.
- *Administration*—General office and conference space.
- *Storage/Support*—Warehousing and related storage including operations and maintenance support.
- *Parking*—Sufficient for a minimum of 70 vehicles.

Other factors that influence the suitability and cost of facilities necessary to operate a Job Corps center include the following:

Configuration of Facility

The preferred configuration of a facility is a campus-type environment permitting a self-contained center with all space requirements located on-site. Low-rise buildings such as those commonly found in public schools and college settings are preferred.

The Office of Job Corps has developed prototype designs for selected facilities where new construction is necessary. Parties interested in obtaining copies of these designs may do so by contacting the Office of Job Corps at the address provided.

Location of Facilities

Facilities should be located in areas where neighbors are supportive and no major pervasive community opposition exists. Past experience indicates that commercial, light industrial and rural locations are most desirable, while residential locations are the least conducive to community acceptance. In addition, access to emergency medical services, fire and law enforcement assistance should be within reasonable distances. If non-residential enrollment is planned, direct and easy access to the center by public transportation is an important consideration. Proposed sites should be within reasonable commuting distance of planned linkages with other programs and services, and transportation to these linkages should be easily available. Proposed sites should also be in full compliance with the Americans with Disabilities Act Guidelines of 1990 (28 CFR part 36, revised July 1, 1994) or require minimal renovation to ensure full access by persons with disabilities.

Locations with major environmental issues, zoning restrictions, flood plain and storm drainage requirements, or uncertainty regarding utility connections that cannot be resolved efficiently and in a timely manner are less than desirable. Likewise, a facility with buildings eligible for protection under the National Historical Preservation Act may receive less than favorable consideration, due to restrictions on and costs for renovation.

Communities are encouraged to hold public hearings in close proximity to the facilities being proposed to assess the level of community support for a Job Corps center. The Office of Job Corps has brochures and other descriptive information about the program. Copies may be obtained at the address provided.

Own/Lease

The Department prefers ownership over leased facilities, particularly if a substantial investment of construction funds is needed to make the site suitable for Job Corps utilization. Exceptions are long-term (*e.g.*, 25 years or longer) leases at a nominal cost (*e.g.*, $1/year).

Size

The following table shows the approximate gross square footage (GSF) required for the various types of buildings needed to operate a residential Job Corps center with 300 students. The substitution of non-resident for resident students will decrease the dormitory space required for a residential center but will not affect other buildings.

GROSS SQUARE FEET (GSF) REQUIREMENTS BY TYPE OF BUILDING

Building type	GSF per student	GSF per 300 students
Housing	175	52,500
Education/Vocation	85	25,500
Food Services	44	13,200
Recreation	82	24,600
Medical/Dental	12	3,600
Administration	26	7,800
Storage/Support	57	17,100
Total		*144,300

***Note:** The GSF space requirements for the individual functions are only approximate but in general, the GSF needed for a new center that accommodates a 300 person population ranges between 145,000 GSF to 150,000 GSF.

Land Requirements

Between 20 and 30 acres of land are needed for a residential center of 300 students.

Availability of Utilities

It is critical that all basic utilities (*i.e.*, sewer, water, electric and gas) are available and in proximity to the site and in accordance with EPA standards.

Safety, Health and Accessibility

Job Corps is required to comply with the requirements of the Occupational Safety and Health Act (OSHA), the Environmental Protection Act (EPA), and the Uniform Federal Accessibility Standards (UFAS), and the Americans with Disabilities Act (ADA) of 1990. The cost involved in complying with these requirements is an important factor in determining the economic feasibility of utilizing a site. For example, a site which contains an excessive amount of asbestos probably would not be cost-effective due to associated removal costs. Further, sites with any environmental hazard that cannot be corrected economically will be at a disadvantage, as will sites requiring substantial rehabilitation to comply with accessibility requirements for persons with disabilities.

Cost

The availability of low-cost facilities is a major consideration in light of resource limitations. In evaluating facility costs, the major items that must be considered are:

- Site acquisition or lease costs;
- Site/utility work;
- Architectural and engineering services;
- New construction requirements;
- Rehabilitation and modifications of existing buildings, and
- Equipment requirements.

An assessment of these initial capital costs and consideration of future repair, maintenance and replacement costs will be used in evaluating the economic feasibility of a particular facility. Preference will be given to existing turnkey facilities that meet Job Corps' standards for a training facility. While not preferable, consideration will be given to the use of raw land which is suitable for a Job Corps center and on which facilities can be constructed economically.

Proposal Submission

In preparing proposals, eligible applicants should identify sites which meet the evaluation criteria and guidelines specified above. Proposals should address each area with as much detail as practicable to enable the Department to determine the suitability of locating a Job Corps center at the proposed site. In this regard, proposals must contain, at a minimum, the specific information and supporting documentation as described below.

Facilities

Submissions must provide a full description of existing buildings, including a building site layout, square footage, age, and general condition of each structure. Included in the description must be a discussion of the facility's current or previous use, the number of years unoccupied, if applicable, and the condition of sub-systems such as heating, ventilation and air conditioning systems, plumbing, and electrical. Documentation in the nature of photographs of the property and/or facilities must be submitted as well. In addition, a videotaped presentation of the site may be provided. The proposal must identify the extent to which hazardous materials such as asbestos, PCB, and underground storage tanks are present at the site or, if appropriate, confirm that contaminants do not exist. The results of any environmental assessment for the proposed site, if one has been done, must be provided.

The proposal must also address the availability and proximity of utilities to the proposed site, including electrical, water, gas, and sanitary sewer and runoff connections. It must describe whether the water and sewer utilities for existing buildings are connected to the municipal system or operated separately. A statement on current zoning classification and any zoning restrictions for the proposed site must also be included. Use of the site as a Job Corps center should be compatible with surrounding local land use and also with local zoning ordinances. Confirmation must be provided as to whether or not any buildings at the site are on a Federal or State Historical Preservation Register.

The proposal must also describe the available acreage at the site, and the nature of the surrounding environment including whether it is commercial, industrial, light industrial, rural, or residential. In some instances, proposed sites may be part of a substantially larger acreage which has or contemplates having other uses. This type of joint usage may or may not be compatible with providing a quality training environment for young women and men.

Finally, the proposal must address the cost of acquiring the site, which may involve transferring the site to the government at no cost, entering into a low-cost, long-term lease agreement, or arranging for a negotiated purchase price based on a fair market appraisal. Estimated acquisition costs along with the basis for the estimate must be

included in the proposal. Any building documents, such as blueprints, should be available for review when a site inspection is conducted by the Department.

Contributions/Linkages

An important aspect of any proposal will be its description of how State and local resources will be used to contribute to enhanced services to Job Corps youth and/or to reduce Federal operating costs or otherwise benefit the program. It is therefore essential that precise and comprehensive information about the linkages be provided to ensure that the proposed site receives every opportunity for a thorough and fair evaluation. The proposal should contain the following information for each linkage:

- A comprehensive description of the service to be provided, including projected listing of resources that will be involved such as number of instructors/staff, types of equipment and materials, or other specific service or contribution.
- The projected number of students to be served and over what period of time, as well as the specific benefit to Job Corps students while in Job Corps and/or after leaving the program.
- Whether the service will be provided at no cost to Job Corps or will be available on a shared cost basis with Job Corps.
- Whether the linkage will be provided on-site or off-site.
- Distance to linkage/service, if off-site, and any arrangements for transportation to off-site services, including any cost to Job Corps.
- The estimated annual value of the contribution and the basis on which the estimate was determined (*e.g.*, two full-time staff devoted to Job Corps at an annual salary of $35,000 each for a total annual value of $70,000; one hour of a professional's time per week for 52 weeks at an hourly rate of $20.00 for an annual value of $1,040; 15 computers at a cost of $1,000 each for an annual value of $22,500).
- Any limitations associated with the linkage, such as eligibility restrictions (*e.g.*, age, in-state versus out of state residents, etc.), limited hours of service, and availability over time (*e.g.*, year round versus selected months).
- Long-term prospects for continuation of the commitment (*e.g.*, one time only, one year, ongoing). If dependent on outside funding sources or levels which vary significantly, what is the likelihood that the linkage will be funded?
- Documentation that addresses timeframes and steps involved in firming up the linkage, if appropriate, including obtaining State or local legislation, State or local workforce investment board approval, fitting into other planning cycles, or securing other agreements or arrangements which may be necessary to ensure provision of the service.
- A letter of commitment confirming each aspect of the linkage, including the level of resources and annual value of these resources, from the head of the agency or other entity responsible for delivering the contribution.
- Name of the agency/organizations(s), address, telephone number and contact person.

In providing information on linkages, applicants should keep in mind that Job Corps is an open-entry, open-exit, individualized, self-paced career development services system that operates on a year-round basis. This type of learning environment may have implications for the types of linkages being offered.

- In preparing the linkage/contribution part of their proposals, eligible applicants should provide full information on each linkage/contribution. All items listed above should be addressed for each linkage/contribution, providing as much information as needed to ensure that each proposed linkage receives a fair assessment.

Community Support

Information should include letters of community support from elected officials, government agencies, local workforce investment boards, community and business leaders and neighborhood associations; and local academic and training providers. The letter should also describe the availability of and access to cultural/recreation activities in the community, and unique features in the surrounding area which would enhance the location of a Job Corps center at that site. Proposals should also include any other information the applicant believes pertinent to the proposed site for consideration by the Department. It is important that, before proposing the use of any particular location, appropriate clearances are obtained from local and State political leadership.

Other Information

The site selection process for new sites for Job Corps centers normally takes 9 months to complete. This allows sufficient time for eligible applicants to prepare and submit proposals, and for the Department to conduct a preliminary site assessment of all proposed facilities, as well as a comprehensive site utilization study for those sites determined to have high potential for the establishment of a Job Corps center, based on the preliminary assessment results.

The Department hereby requests eligible proposers to submit an original and three copies of their proposals to be received no later than September 30, 2006 using the guidance provided above.

Signed in Washington, DC, the 28th day of June 2006.

Esther R. Johnson,

National Director.

FR Doc. E6–10630 Filed 7–6–06; 8:45 am]

BILLING CODE 4510–23–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (06–044)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to the Desk Officer for NASA, Office of Information and Regulatory Affairs, Room 10236, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, PRA Officer, Office of the Chief Information Officer, NASA Headquarters, 300 E Street, SW., JE000, Washington, DC 20546, (202) 358–1350, *walter.kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection is used to assess the contribution of NASA Small Business Innovation Research (SBIR) technology to the National Economy in accordance with the Government Performance and Results Act (GPRA).

II. Method of Collection

The survey will be electronic and is available on NASA's SBIR Web site at *http://www.sbir.nasa.gov/SBIR/survey.html*. Electronic submission of the subject information is available to 100% of all surveyed firms.

III. Data

Title: NASA Small Business Innovation Research Commercial Metrics.

OMB Number: 2700–0095.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1000/once every 3 years.

Estimated Total Annual Burden Hours: 200.

Estimated Total Annual Cost: $11,000.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

John McManus,

Chief Information Officer (Acting).

[FR Doc. E6–10654 Filed 7–6–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06–043)]

Privacy Act of 1974; Privacy Act System of Records

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of proposed revisions to an existing Privacy Act system of records.

SUMMARY: The National Aeronautics and Space Administration proposes to revise an existing system of records titled "Johnson Space Center Exchange Activities Records" (JSC 72XOPR), last published on December 13, 1999 (64 FR 69568). This system of records is being revised to allow additional information to be collected from people who participate in social, sports, wellness activities and other similar activities sponsored by the NASA Johnson Space Center (JSC) Exchange, to update the categories of individuals covered by the system, to update the categories of records in the system, and to update routine uses. The additional categories of individuals include spouses and dependents of current or past civil servants or contractor employees and others assigned to work at NASA. The additional categories of records in the system include personal body composition, fitness and exercise measures; medical history and physician releases as they pertain to exercise; facility usage records, membership and service accounts receivable and other pertinent information. The new routine uses allow for the development and implementation of programs for the health and welfare of the JSC workforce; statistical computations on work force health; maintenance of membership information; and providing patron usage information on employees of JSC contractors to their employer organizations.

DATES: Submit comments August 7, 2006.

ADDRESSES: Patti F. Stockman, Privacy Act Officer, Office of the Chief Information Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546–0001, (202) 358–4787, *NASA–PAOfficer@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: NASA Privacy Act Officer, Patti F. Stockman, (202) 358–4787, *NASA–PAOfficer@nasa.gov.*

NASA 72 XOPR

SYSTEM NAME:

Johnson Space Center's Exchange Activities Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Location 5 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and past civil servant employees of the Johnson Space Center (JSC), current and past JSC contractor employees, current and past JSC Exchange Operation employees, current and past military personnel or others assigned to JSC (per an IPA, MOU, etc.), current and past civil servants and Contractors on TDY from other NASA centers, spouses and dependents of any of the defined above and any other personnel authorized to use the Exchange services and participate in sports or special activities sponsored by the Exchange, and student applicants under the JSC Exchange Scholarship Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

For present and past employees of the JSC Exchange Operations, the system includes a variety of records relating to personnel actions and determinations made about an individual while employed by the NASA Exchange-JSC. These records contain information about an individual relating to birth date; Social Security Number; home address and telephone number; marital status; references; veteran preference, tenure, handicap; position description, past and present salaries, payroll deductions, leave; letters of commendation and reprimand; adverse actions, charges and decisions on charges; notice of reduction in force; personnel actions, including but not limited to, appointment, reassignment, demotion, detail, promotion, transfer and separation; minority group; records relating to life insurance, health and retirement benefits, designation of beneficiary; training; performance ratings; physical examination; criminal matters; data documenting the reasons for personnel actions or decisions made about an individual; awards; and other information relating to the status of the individual.

For successful applicants under the JSC Exchange Scholarship Program, the system contains financial transactions or holdings, employment history, medical data and other related information supplied by the individual Center employees who applied for the Exchange Scholarship.

For participants in social, sports, wellness activities and other similar activities sponsored by the Exchange, information includes birth date; e-mail, home address and telephone number; height; weight; body composition, fitness, and exercise measures; medical history and physician release as it pertains to exercise; emergency contact information; organizational code; employee identification number; facility usage records; patron usage; accounts receivable records; membership applications; other special activities applications, and all other pertinent information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473; 44 U.S.C. 3101; NASA Policy Directive 9050.6; Treasury Fiscal Requirement Manual, Part III.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The following are routine uses for information maintained on JSC Exchange Operations employees only: (1) Provide information in accordance with legal or policy directives and regulations to the Internal Revenue Service, Department of Labor, Department of Commerce, Texas State Government Agencies, labor unions; (2) provide information to insurance carriers with regard to worker's compensation, health and accident, and retirement insurance coverages; (3) provide employment or credit information to other parties as requested by a current or former employee of the JSC Exchange Operations; and (4) standard routine uses 1 through 4 inclusive as set forth in Appendix B. The following routine use for information maintained on participants in social, sports, or wellness activities sponsored by the Exchange: (1) Patron usage is provided on employees of JSC contractors to their employer organizations, and (2) standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RECEIVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard-copy documents and electronic records in systems on secure JSC Servers.

RETRIEVABILITY:

For JSC Exchange employees, records are retrieved by name and filed as current or past employee. For Scholarship applicants, records are retrieved by name. For participants in social, sports, or wellness activities sponsored by the Exchange, records are retrieved by name and employer.

SAFEGUARDS:

Hard-copy records are located in locked metal file cabinets with access limited to those whose official duties require access. Electronic records are maintained in a password protected system, with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

All records are disposed of in accordance with NASA Retention Schedules, Schedule 9 Item 6/E. Personnel records of JSC Exchange operations employees are retained indefinitely in Agency space to satisfy payroll, reemployment, unemployment compensation, tax, and employee retirement purposes. For successful applicants under the JSC Exchange Scholarship Program, records are maintained until completion of awarded scholarship and are then destroyed. Records pertaining to unsuccessful applicants are returned to the individual. For participants in social, sports, or wellness activities sponsored by the Exchange, records are maintained for stated participation period and are then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Exchange Operations, NASA Exchange-JSC, Location 5, as set forth in Appendix A.

NOTIFICATION PROCEDURE:

Individuals may obtain information from the System Manager.

RECORD ACCESS PROCEDURE:

Same as above.

CONTESTING RECORD PROCEDURES:

The NASA regulations for access to records and for contesting contents and appealing initial determinations by the individual concerned appear in 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

For employees of the JSC Exchange Operations, information is obtained from the individual employee, the employee references, insurance carriers, JSC Space Medical Division, JSC Security, employment agencies, Texas Employment Commission, credit bureaus, and creditors.

With respect to the JSC Exchange Scholarship Program, the information is obtained from the parents or guardians of the scholarship participants.

For current and past civil servant employees of the Johnson Space Center (JSC), current and past JSC contractor employees, current and past Exchange Operation employees, current and past military personnel or others assigned to JSC (per an IPA, MOU, etc.), current and past Civil Servants and Contractors on TDY from other NASA centers, spouses and dependants of any of the defined above and any other personnel authorized to use the Exchange services, participate in social, sports, or wellness activities sponsored by the Exchange and other similar activities, information is obtained from the individual participant or their parent or guardian if it is a child under the age of 18.

John W. McManus,

Acting Chief Information Officer.

[FR Doc. E6–10653 Filed 7–6–06; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–456 and STN 50–457; STN 50–454 and STN 50–455; 50–461; 50–10, 50–237, and 50–249; 50–373 and 50–374; 50–352 and 50–353; 50–219; 50–171, 50–277, and 50–278; 50–254 and 50–265; 50–289; and 50–295 and 50–304]

Exelon Generation Company, LLC; Amergen Energy Company, LLC; Braidwood Station, Unit Nos. 1 and 2; Byron Station, Unit Nos. 1 and 2; Clinton Power Station, Unit 1; Dresden Nuclear Power Station, Units 1, 2, and 3; Lasalle County Station, Units 1 and 2; Limerick Generating Station, Units 1 and 2; Oyster Creek Nuclear Generating Station; Peach Bottom Atomic Power Station, Units 1, 2 and 3; Quad Cities Nuclear Power Station, Units 1 and 2; Three Mile Island Nuclear Station, Unit 1; and Zion Nuclear Power Station, Units 1 and 2; Exemption

1. Background

Exelon Generation Company, LLC, and AmerGen Energy Company, LLC (the licensees) are the holders of the Facility Operating License (FOL) Nos. NPF–72 and NPF–77 for the Braidwood Station, Unit Nos. 1 and 2 (Braidwood), which consists of two pressurized-water reactors (PWRs) located in Will County, Illinois; NPF–37 and NPF–66 for the Byron Station, Unit Nos. 1 and 2 (Byron), which consists of two PWRs located in Ogle County, Illinois; NPF–62 for the Clinton Power Station, Unit 1 (Clinton), which consists of a boiling-water reactor (BWR) located in DeWitt County, Illinois; DPR–2, DPR–19, and DPR–25 for the Dresden Nuclear Power Station, Units 1, 2, and 3 (Dresden), which consists of three BWRs located in Grundy County, Illinois; NPF–11 and NPF–18 for the LaSalle County Station, Units 1 and 2 (LaSalle), which consists of two BWRs located in LaSalle County, Illinois; NPF–39 and NPF–85 for the Limerick Generating Station, Units 1 and 2 (Limerick), which consists of two BWRs located in Montgomery County, Pennsylvania; DPR–16 for Oyster Creek Nuclear Generating Station (Oyster Creek), which consists of a BWR located in Ocean County, New Jersey; DPR–12, DPR–44, and DPR–56 for the Peach Bottom Atomic Power Station, Units 1, 2, and 3 (Peach Bottom), which consists of three BWRs located in York and Lancaster Counties, Pennsylvania; DPR–29 and DPR–30 for the Quad Cities Nuclear Power Station, Units 1 and 2 (Quad Cities), which consists of two BWRs located in Rock Island County, Illinois; DPR–50 for the Three Mile Island Nuclear Station, Unit 1 (Three

Mile Island), which consists of a PWR located in Dauphin County, Pennsylvania; and DPR–39 and DPR–48 for the Zion Nuclear Power Station, Units 1 and 2 (Zion), which consists of two PWRs located in Lake County, Illinois. The licenses provide, among other things, that the facilities are subject to all the rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, Commission) now or hereafter in effect.

2. Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), Section 50.54(a)(3), requires that changes to the quality assurance program description that do not reduce commitments must be submitted to the NRC in accordance with the reporting requirements of 10 CFR 50.71(e).

The regulation at 10 CFR 50.71(e)(4) requires that revisions to the final safety analysis report (FSAR) be submitted annually or six months after a refueling outage, provided the interval between updates does not exceed 24 months. As an alternative, the licensees propose that changes to the quality assurance program that do not reduce commitments be submitted on a 24-month calendar schedule, not to exceed 24 months from the previous submittal. The exemption would apply to each of the licensees' plants identified above.

3. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the purpose of the rule". Operational quality assurance programs are generally described in Chapter 17.2 of a licensee's Updated Safety Analysis Report (USAR) or, alternately, in a topical report incorporated into the USAR by reference. The licensees' quality assurance program, described in the Quality Assurance Topical Report (QATR), is common to the 21 units requesting the exemption. Compliance with 10 CFR 50.54(a)(3) would require these changes to be submitted annually or after a refueling outage for each of the licensees' units.

The licensees stated that the proposed exemption is strictly administrative and does not reduce commitments or effectiveness of the quality assurance program as described in the QATR, and does not adversely affect plant equipment, operation, or procedures. The exemption will not alter the manner in which changes to the common QATR are evaluated in order to ensure that there is no reduction in commitment. Changes to the common QATR will be reviewed through the existing applicable administrative and programmatic control processes to ensure that QATR changes are properly evaluated and implemented. The methods and procedures used to evaluate changes to the common QATR are not changed or modified.

The underlying purpose of the rule is to ensure that periodic submittals required under 10 CFR 50.54(a)(3) would allow the NRC staff to provide regulatory oversight of changes to the licensees' quality assurance program, and to ensure that the changes are consistent with the regulations.

The exemption requested by the licensees only extends the reporting period, and does not exceed the time period between successive updates established by 10 CFR 50.71(e). Reporting of routine and administrative changes to the quality assurance program that do not reduce commitments for each of the licensees' units over a 2-year period is not consistent with the underlying purpose of the rule, nor is it necessary to achieve the purpose of the rule. Therefore, the NRC staff concludes that, pursuant to 10 CFR 50.12(a)(2)(ii), special circumstances are present.

The NRC staff examined the licensees' rationale that supports the exemption request and concluded that the alternative reporting cycle of 24 months for submitting QATR changes specified under 10 CFR 50.54(a)(3) provides adequate control and is consistent with the underlying purpose of 10 CFR 50.54(a)(3).

Based on the foregoing, the NRC staff concludes that the changes specified in 10 CFR 50.54(a)(3) are administrative and routine in nature. Also, the NRC staff concludes that the requested exemption would not result in any significant reduction in the effectiveness of the quality assurance program implemented by the licensees. Therefore, the NRC staff concludes that the proposed exemption would not present an undue risk to the public health and safety.

4. Conclusion

Accordingly, the Commission has determined that pursuant to 10 CFR Part 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the licensees an exemption from the requirements of 10 CFR 50.54(a)(3) for Braidwood, Byron, Clinton, Dresden, LaSalle, Limerick, Oyster Creek, Peach Bottom, Quad Cities, Three Mile Island, and Zion stations.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant effect on the quality of the human environment (71 FR 29359).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 27th day of June 2006.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–10622 Filed 7–6–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454 and STN 50–455]

Exelon Generation Company, LLC; Byron Station, Unit Nos. 1 and 2; Exemption

1.0 Background

The Exelon Generation Company, LLC (Exelon, licensee) is the holder of Facility Operating License Nos. NPF–37 and NPF–66 which authorize operation of the Byron Station Unit 1 and Unit 2, respectively. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Ogle County, Illinois.

2.0 Request/Action

Pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Section 50.12, "Specific exemptions," Exelon has requested an exemption from 10 CFR 50.44, "Combustible gas control system for nuclear power reactors"; 10 CFR 50.46, "Acceptance criteria for emergency core cooling systems [ECCS] for light-water nuclear power reactors";

and Appendix K to 10 CFR part 50, "ECCS Evaluation Models." The regulation at 10 CFR 50.44 specifies requirements for the control of hydrogen gas generated after a postulated loss-of-coolant accident (LOCA) for reactors fueled with zirconium cladding. Section 50.46 contains acceptance criteria for ECCS for reactors fueled with zircaloy or ZIRLO™ cladding. Appendix K to 10 CFR part 50 requires that the Baker-Just equation be used to predict the rates of energy release, hydrogen concentration, and cladding oxidation from the metal-water reaction.

The exemption request relates solely to the specific types of cladding material specified in these regulations. As written, the regulations presume the use of zircaloy or ZIRLO™ fuel rod cladding. Thus, an exemption from the requirements of 10 CFR 50.44, 10 CFR 50.46, and Appendix K to 10 CFR part 50, is needed to irradiate lead test assemblies (LTAs) comprised of the AXIOM™ developmental clad alloys at Byron Station, Unit Nos. 1 and 2.

3.0 Discussion

3.1 Material Design

3.1.1 Fuel Material Design

In order to meet future demands of the nuclear industry, Westinghouse is evaluating the in-reactor performance of several developmental alloys. The licensee states that the material properties and mechanical performance of the advanced cladding alloys are expected to be similar to Zircaloy-4 and ZIRLO™, and that any difference in phase transition temperatures and mechanical strength will be considered in the LTA fuel rod design evaluation. Further, preliminary autoclave testing indicates that the advanced alloys exhibit acceptable corrosion resistance. This is consistent with the NRC staff's expectation that unirradiated properties of any advanced cladding alloy will be accounted for in the LTA fuel rod design evaluation.

The licensee's September 23, 2005, letter stated:

> The current licensed fuel performance code predictions for the developmental cladding will be compared to post-irradiation examination data at Byron Station. If significantly adverse observations are found relative to predictions, the adverse rod(s) will either be removed and the fuel assembly will be reconstituted with suitable replacement rods, or the entire fuel assembly will be removed from the following fuel cycle(s) until deviations are understood and addressed.
>
> Where appropriate, concurrent data obtained from other LTA programs for the same developmental claddings will be factored into the assessment of the LTAs at Byron Station. Specifically, before the assemblies are reinserted, all available information will be reviewed to ensure existing design assumptions remain valid.

Based upon the limited number of advanced alloy fuel rods placed in non-limiting core locations, specifically accounting for significant deviations in unirradiated material and mechanical properties, and an LTA post-irradiation examination program aimed at qualifying model predictions and understanding deviations, the NRC staff finds the LTA mechanical design acceptable for Byron Station Unit Nos. 1 and 2.

3.1.2 Core Physics and Non-LOCA Analysis

The exemption request relates solely to the specific types of cladding material specified in the regulations. No new or altered design limits for purposes of 10 CFR Part 50, Appendix A, General Design Criterion 10, "Reactor design," need to be applied or are required for this program.

The standard reload methodologies will be applied to the advanced cladding alloys. Nuclear design evaluations will assure that LTAs will be placed in non-limiting core locations. As such, additional thermal margin to design limits will be maintained between LTA fuel rods and the hot rod evaluated in safety analyses. Thermal-hydraulic and non-LOCA evaluations will confirm that the LTAs are bounded by the current analysis of record.

Based upon testing to date it is not anticipated that any of the advanced cladding fuel rods would fail during normal operation. However, if any failures occurred, their effects would be well within technical specification limits for doses and, in all cases, core coolable geometry would be maintained. The NRC staff agrees that the placement of a limited number of advanced alloy fuel rods in non-limiting locations would not challenge reported dose consequences nor core coolability.

Based upon the limited number of advanced alloy fuel rods placed in non-limiting core locations, the use of approved models and methods, and expected material performance, the NRC staff finds that the irradiation of up to four LTAs at the Byron Station will not result in unsafe operation nor violation of specified acceptable fuel design limits. Furthermore, in the event of a design-basis accident, these LTAs will not promote consequences beyond those currently analyzed.

3.2 Regulatory Evaluation

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

3.2.1 10 CFR 50.44

The underlying purpose of 10 CFR 50.44 is to assure that means are provided for the control of hydrogen gas that may be generated following a LOCA. The licensee has provided a means for controlling hydrogen gas and has previously considered the potential for hydrogen gas generation stemming from a metal-water reaction. Based upon the material composition of these alloys, which is similar to other licensed zirconium alloys, the high temperature metal-water reaction rates are expected to be similar. Due to the limited number and anticipated performance of the advanced cladding fuel rods, the previous calculations of hydrogen production resulting from a metal-water reaction will not be significantly changed. As such, the limitations of 10 CFR 50.44 related to cladding material is not necessary for the licensee to achieve the underlying purpose of the rule in these circumstances.

3.2.2 10 CFR 50.46

The underlying purpose of 10 CFR 50.46 is to establish acceptance criteria for ECCS performance in response to LOCAs. Due to the limited number of advanced alloy fuel rods, any change in the post-LOCA ductility characteristics of the advanced alloy fuel rods (relative to the 2200 °F peak cladding temperature and 17 percent effective cladding reacted) would not challenge core coolable geometry. Westinghouse performs cycle-specific reload evaluations to assure that 10 CFR 50.46 acceptance criteria are satisfied and will include the LTAs in such analyses. Thus, the limitations of 10 CFR 50.46 related to cladding material are not necessary for the licensee to achieve the underlying purpose of the rule in these circumstances.

3.2.3 10 CFR 50, Appendix K

Paragraph I.A.5 of Appendix K to 10 CFR part 50 states that the rates of energy, hydrogen concentration, and cladding oxidation from the metal-water reaction shall be calculated using the Baker-Just equation. Since the Baker-Just equation presumes the use of zircaloy clad fuel, strict application of the rule would not permit use of the equation for the advanced cladding

alloys for determining acceptable fuel performance. Based upon the material composition of these alloys, which is similar to other licensed zirconium alloys, the high temperature metal-water reaction rates are expected to be similar. Because of the limited number of AXIOM™ clad fuel rods and the similarity in material composition to other advanced cladding fuel rods, the NRC staff concludes that the application of the Baker-Just equation in these conditions is acceptable. Thus, application of 10 CFR Part 50 Appendix K, Paragraph I.A.5 is not necessary for the licensee to achieve the underlying purpose of the rule in these circumstances.

3.2.4 Special Circumstances

In summary, the NRC staff reviewed the licensee's request of proposed exemption to allow up to four LTAs containing fuel rods with AXIOM™ cladding. Based on the NRC staff's evaluation, as set forth above, the NRC staff considers that granting the proposed exemption will not defeat the underlying purpose of 10 CFR 50.46, 10 CFR 50.44, or Appendix K to 10 CFR Part 50. Accordingly, special circumstances, are present pursuant to 10 CFR 50.12(a)(2)(ii).

3.2.5 Other Standards in 10 CFR 50.12

The NRC staff examined the rest of the licensee's rationale to support the exemption request, and concluded that the use of AXIOM™ would satisfy 10 CFR 50.12(a) as follows:

(1) The requested exemption is authorized by law:

No law precludes the activities covered by this exemption request. The Commission, based on technical reasons set forth in rulemaking records, specified the specific cladding materials identified in 10 CFR 50.44, 10 CFR 50.46, and 10 CFR Part 50, Appendix K. Cladding materials are not specified by statute.

(2) The requested exemption does not present an undue risk to the public health and safety as stated in the licensee's exemption request:

The LTA safety evaluation will ensure that the acceptance criteria of 10 CFR 50.46, 10 CFR 50.44, and 10 CFR 50 Appendix K are met following insertion of the assemblies containing AXIOM™ material. Fuel assemblies using AXIOM™ cladding will be evaluated using NRC-approved analytical methods and will address the changes in the cladding material properties. The safety analysis for Byron Station Units 1 and 2 is supported by the applicable Technical Specifications. The Byron Station Units 1 and 2 reload cores containing AXIOM™ cladding will continue to be operated in accordance with the operating limits specified in the Technical Specifications. LTAs using AXIOM™ cladding will be placed in non-limiting core locations. Therefore, this exemption will not pose an undue risk to public health and safety.

The NRC staff has evaluated these considerations as set forth in Section 3.1 of this exemption. For the reasons set forth in that section, the NRC staff concludes that AXIOM™ may be used as a cladding material for no more than four LTAs to be placed in non-limiting core locations during Byron's next refueling outage, and that an exemption from the requirements of 10 CFR 50.44, 10 CFR 50.46, and 10 CFR part 50, Appendix K does not pose an undue risk to the public health and safety.

(3) The requested exemption will not endanger the common defense and security:

The common defense and security are not affected and, therefore, not endangered by this exemption.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Exelon an exemption from the requirements of 10 CFR 50.44, 10 CFR 50.46 and 10 CFR Part 50, Appendix K, for Byron Station, Unit Nos. 1 and 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (71 FR 32144).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of June 2006.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–10623 Filed 7–6–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request for Comments on the Nuclear Regulatory Commission's Low Level Radioactive Waste Program

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Request for comments on the Nuclear Regulatory Commission's low level radioactive waste program.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is conducting a strategic assessment of its low level radioactive waste (LLW) regulatory program. The objective of this assessment is to identify and prioritize activities that the staff can undertake to ensure a stable, reliable and adaptable regulatory framework for effective LLW management, while also considering future needs and changes that may occur in the nation's commercial LLW management system.

DATES: The public comment period begins with publication of this notice and continues for 30 days. Written comments should be submitted as described in the **ADDRESSES** section of this notice. Comments submitted by mail should be postmarked by that date to ensure consideration. Comments received or postmarked after that date will be considered to the extent practical.

ADDRESSES: Members of the public are invited and encouraged to submit comments to the Chief, Rules and Directives Branch, Mail Stop T6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments will also be accepted by e-mail at *NRCREP@nrc.gov* or by fax to (301) 415–5397, Attention: Ryan Whited.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Whited, Chief, Low Level Waste Section, Environmental and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415–7257; fax number: (301) 415–5370; e-mail: *arw2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The NRC last initiated a strategic assessment of its LLW regulatory program in August 1995. As part of that effort, in September 1996, the NRC staff released an "Issues Paper" that identified several options the agency could pursue regarding the overall scope and magnitude of its LLW regulatory program. [The Issues Paper is available in the NRC's Agencywide Document Management System (ADAMS) under accession number ML061700297]. In response to that issues paper, and after taking into consideration public comments as well as the fact that the new disposal facilities that had been anticipated following the 1985 amendment of the Low-Level Radioactive Waste Policy Act of 1980 (LLRWPAA) were not

forthcoming, the Commission decided to simply "maintain" the agency's LLW program at its then-current level. Due to a number of developments in the national system for LLW disposal as well as changes in the regulatory environment over the past 10 years, the NRC's LLW program now faces new challenges, influences and issues. Among these is the fact that several governmental and national technical organizations, as well as major stakeholder and industry groups, states and Congress, have raised questions or expressed opinions regarding the current status of regulation and disposal of radioactive waste in the U.S. Though many of these groups want action to be taken on issues of concern to them, they do not necessarily hold the same views regarding what actions are needed or what issues require the most attention. Meanwhile, a number of new technical issues, involving security matters as well as protection of public health and the environment, have emerged.

As a result, the NRC staff is conducting a new strategic assessment of the agency's LLW regulatory program. The objective of this assessment is to identify and prioritize activities that the staff can undertake to ensure a stable, reliable and adaptable regulatory framework for effective LLW management, while also considering future needs and changes that may occur in the nation's commercial LLW management system. As part of this assessment, the NRC staff is soliciting public comment on what changes, if any, should be made to the current LLW program regulatory framework as well as specific actions that the staff might undertake to facilitate such changes. The staff is requesting that persons consider and address the following nine questions as they develop and provide their remarks:

Regarding the Current LLW Disposal Regulatory System

1. What are your key safety and cost drivers and/or concerns relative to LLW disposal?

2. What vulnerabilities or impediments, if any, are there in the current regulatory approach toward LLW disposal in the U.S., in terms of their effects on:

a. Regulatory system reliability, predictability, and adaptability;
b. Regulatory burden (including cost); and
c. Safety, security, and protection of the environment?

Potential Alternative Futures

3. Assuming the existing legislative and regulatory framework remains unchanged, what would you expect the future to look like with regard to the types and volumes of LLW streams and the availability of disposal options for Class A, B, C, and greater-than-class-C (GTCC) LLW five years from now? Twenty years from now? What would more optimistic and pessimistic disposal scenarios look like compared to your "expected future"?

4. How might potential future disposal scenarios affect LLW storage and disposal in the U.S., in terms of:

a. Regulatory system reliability, predictability, and adaptability;
b. Regulatory burden (including cost); and
c. Safety, security and protection of the environment?

Can the Future Be Altered?

5. What actions could be taken by NRC and other federal and state authorities, as well as by private industry and national scientific and technical organizations, to optimize management of LLW and improve the future outlook? Which of the following investments are most likely to yield benefits:

a. Changes in regulations;
b. Changes in regulatory guidance;
c. Changes in industry practices;
d. Other (name).

6. Are there actions (regulatory and/or industry initiated) that can/should be taken in regard to specific issues such as:

a. Storage, disposal, tracking and security of GTCC waste (particularly sealed sources);
b. Availability and cost of disposal of Class B and C LLW;
c. Disposal options for depleted uranium;
d. Extended storage of LLW;
e. Disposal options for low-activity waste (LAW)/very low level waste (VLLW);
f. On-site disposal of LLW;
g. Other (name).

7. What unintended consequences might result from the postulated changes identified in response to questions 5 and 6?

Interagency Communication and Cooperation

8. Based on your observations of what works well and not-so-well, domestically and/or internationally, with regard to the management of radioactive and/or hazardous waste, what actions can the NRC and other Federal regulatory agencies take to improve their communication with affected and interested stakeholders?

9. What specific actions can NRC take to improve coordination with other Federal agencies so as to obtain a more consistent treatment of radioactive wastes that possess similar or equivalent levels of biological hazard?

On May 23 and 24, 2006, the NRC's Advisory Committee on Nuclear Waste (ACNW) sponsored a public fact-finding meeting with industry representatives and stakeholders at NRC headquarters in Rockville, MD, to: (a) Provide input to the ACNW regarding areas where NRC's regulations for near-surface disposal of LLW in 10 CFR Part 61 might be more risk-informed; and (b) provide information for NRC staff to consider in its strategic assessment of the LLW regulatory program. The transcript of the ACNW meeting is publicly available on the NRC's public Web site at *http://www.nrc.gov/reading-rm/doc-collections/acnw/tr2006/*. The NRC staff intends to utilize the information gathered from the ACNW meeting as well as this solicitation to develop a strategic assessment of the NRC's regulatory program for low-level radioactive waste.

II. Further Information

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 29th day of June, 2006.

For the Nuclear Regulatory Commission.

Scott Flanders,

Deputy Director, Environmentol ond Performonce Assessment Directorote, Division of Woste Monogement ond Environmentol Protection, Office of Nucleor Moteriols Sofety ond Sofeguards.

[FR Doc. E6–10624 Filed 7–6–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Executive Office of the President; Acquisition Advisory Panel; Notification of Upcoming Meetings of the Acquisition Advisory Panel

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Federal advisory committee meetings.

SUMMARY: The Office of Management and Budget announces two meetings of the Acquisition Advisory Panel (AAP or "Panel") established in accordance with the Services Acquisition Reform Act of 2003.

DATES: There are two conditional meetings announced in this **Federal Register** Notice. A Public meeting of the Panel will be held on July 24, 2006 if the Panel does not complete its work at the previously published public meeting on July 21, 2006. Another public meeting of the Panel will be held on July 25, 2006 if the Panel does not complete its work at the July 24th meeting. Both meetings, if held, will begin at 9 a.m. Eastern Time and end no later than 5 p.m. The public is urged to call (202) 208–7279 after 5 p.m. the work day before these meetings for a pre-recorded message to learn if the meeting is cancelled. The public may also visit the Panel's Web site the morning of the meeting for cancellation messages (*http://acquisition.gov/comp/aap/index.html*). There are additional public meetings of the Acquisition Advisory Panel for July 2006 previously published in the **Federal Register**. For a schedule of all public meetings, visit *http://acquisition.gov/comp/aap/index.html* and select the link called "Schedule."

ADDRESSES: Both the July 24th and 25th, 2006 meetings, if held, will be at the new FDIC Building, 3501 N. Fairfax Drive, Arlington, VA in the new auditorium Room C3050D. This facility is ¼ block off of the orange line metro stop for Virginia Square. The public is asked to pre-register one week in advance of the meeting due to security and/or seating limitations (see below for information on pre-registration).

FOR FURTHER INFORMATION CONTACT: Members of the public wishing further information concerning these meetings or the Panel itself, or to pre-register for the meeting, should contact Ms. Laura Auletta, Designated Federal Officer (DFO), at: *laura.auletta@gsa.gov*, phone/voice mail (202) 208–7279, or mail at: General Services Administration, 1800 F. Street, NW., Room 4006, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

(a) *Background:* The purpose of the Panel is to provide independent advice and recommendations to the Office of Federal Procurement Policy and Congress pursuant to Section 1423 of the Services Acquisition Reform Act of 2003. The Panel's statutory charter is to review Federal contracting laws, regulations, and governmentwide policies, including the use of commercial practices, performance-based contracting, performance of acquisition functions across agency lines of responsibility, and governmentwide contracts. Interested parties are invited to attend the meeting.

Meetings: The focus of these meetings will be discussions of and voting on working group findings and recommendations from selected working groups, established at the February 28, 2005 and May 17, 2005 public meetings of the AAP (see *http://acquisition.gov/comp/aap/index.html* for a list of working groups).

(b) *Posting of Draft Reports:* Members of the public are encouraged to regularly visit the Panel's Web site for draft reports. Currently, the working groups are staggering the posting of various sections of their draft reports at *http://acquisition.gov/comp/aap/index.html* under the link for "Working Group Reports." The most recent posting is from the Commercial Practices Working Group. The public is encouraged to submit written comments on any and all draft reports.

(c) *Adopted Recommendations:* The Panel has adopted recommendations presented by the Small Business, Interagency Contracting, and Performance-Based Acquisition Working Groups. While additional recommendations from some of these working groups are likely, the public is encouraged to review and comment on the recommendations adopted by the Panel to date by going to *http://acquisition.gov/comp/aap/index.html* and selecting the link for "Adopted Recommendations."

(d) *Availability of Meeting Materials:* Please see the Panel's Web site for any available materials, including draft agendas and minutes. Questions/issues of particular interest to the Panel are also available to the public on this web site on its front page, including "Questions for Government Buying Agencies," "Questions for Contractors that Sell Commercial Goods or Services to the Government," "Questions for Commercial Organizations," and an issue raised by one Panel member regarding the rules of interpretation and performance of contracts and liabilities of the parties entitled "Revised Commercial Practices Proposal for Public Comment." The Panel encourages the public to address any of these questions/issues in written statements to the Panel.

(e) *Procedures for Providing Public Comments:* It is the policy of the Panel to accept written public comments of any length, and to accommodate oral public comments whenever possible. Please see previously published **Federal Register** Notices for July 2006 opportunities for oral public comments at the Panel's Web site under the link for **Federal Register** Notices (*http://acquisition.gov/comp/aap/index.html*). The Panel Staff expects that public statements presented orally or in writing will be focused on the Panel's statutory charter and working group topics, and not be repetitive of previously submitted oral or written statements, and that comments will be relevant to the issues under discussion.

Written Comments: Written comments should be supplied to the DFO at the address/contact information given in this **Federal Register** Notice in one of the following formats (Adobe Acrobat, WordPerfect, Word, or Rich Text files, in IBM–PC/Windows 98/2000/XP format). *Please note:* Because the Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all public presentations will be treated as public documents and will be made available for public inspection, up to and including being posted on the Panel's Web site.

(f) *Meeting Accommodations:* Individuals requiring special accommodation to access the public meetings listed above should contact Ms. Auletta at least five business days prior to the meeting so that appropriate arrangements can be made.

Laura Auletta,

Designated Federal Officer (Executive Director), Acquisition Advisory Panel.

[FR Doc. E6–10710 Filed 7–6–06; 8:45 am]

BILLING CODE 3110–01–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 20549–0004.

Extension: Rule 27f–1 and Form N–27F–1; SEC File No. 270–487; OMB Control No. 3235–0546.

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 ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these collections of information to the Office of Management and Budget for approval.

Section 27(f) of the Investment Company Act of 1940 ("Act") (15 U.S.C. 80a–27(f)) provides that "[w]ith respect to any periodic payment plan (other than a plan under which the amount of sales load deducted from any payment thereon does not exceed 9 per centum of such payment), the custodian bank

for such plan shall mail to each certificate holder, within sixty days after the issuance of the certificate, a statement of charges to be deducted from the projected payments on the certificate and a notice of his right of withdrawal as specified in this section." Section 27(f) authorizes the Commission to "make rules specifying the method, form, and contents of the notice required by this subsection." Rule 27f–1 (17 CFR 270.27f–1) under the Act, entitled "Notice of Right of Withdrawal Required to be Mailed to Periodic Payment Plan Certificate Holders and Exemption from Section 27(f) for Certain Periodic Payment Plan Certificates," provides instructions for the delivery of the notice required by section 27(f).

Rule 27f–1(d) prescribes Form N–27F–1 (17 CFR 274.127f–1), which sets forth the language that custodian banks for periodic payment plans must use in informing certificate holders of their withdrawal right pursuant to section 27(f). The instructions to the form provide that the notice must be on the sender's letterhead. The Commission does not receive a copy of the form N–27F–1 notice.

The Form N–27F–1 notice informs certificate holders of their rights in connection with the certificates they hold. Specifically, it is intended to encourage new purchasers of plan certificates to reassess the costs and benefits of their investment and to provide them with an opportunity to recover their initial investment without penalty. The disclosure assists certificate holders in making careful and fully informed decisions about whether to invest in periodic payment plan certificates.

The frequency with which each of these issuers or their representatives must file Form N–27F–1 notices varies with the number of periodic payment plans sold. Commission staff spoke with representatives of a number of firms in the industry that currently have periodic payment plan accounts. Based upon these conversations, the staff estimates that 3 issuers of periodic payment plan certificates send out an aggregate of approximately 535 notices per year. The staff further estimates that all the issuers that send Form N–27F–1 notices use outside contractors to print and distribute the notices, and incur no hourly burden. The estimate of annual 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 collection of information requirements of rule 27f–1 is mandatory for custodian banks of periodic payment plans for which the sales load deducted from any payment exceeds 9 percent of the payment.[1] The information provided pursuant to rule 27f–1 will be provided to third parties and, therefore, 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, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312, or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: June 27, 2006.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–10637 Filed 7–6–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form 2–E under Rule 609; SEC File No. 270–222; OMB Control No. 3235–0233.

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 ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information entitled.

Form 2–E Under the Securities Act of 1933, Report of Sales Pursuant to Rule 609 of Regulation E, and Rule 609 Under the Securities Act of 1933, Report of Sales

Under Rule 609 under the Securities Act of 1933 (17 CFR 230.609), Form 2–E (17 CFR 239.201) is used by small business investment companies or business development companies engaged in limited offerings of securities to report semi-annually the progress of the offering, including the number of shares sold. The form solicits information such as the dates an offering has commenced and has been completed, the number of shares sold and still being offered, amounts received in the offering, and expenses and underwriting discounts incurred in the offering. This information assists the staff in determining whether the issuer has stayed within the limits of an offering exemption.

Form 2–E must be filed semi-annually during an offering and as a final report at the completion of the offering. Less frequent filing would not allow the Commission to monitor the progress of the limited offering in order to ensure that the issuer was not attempting to avoid the normal registration provisions of the securities laws.

During the calendar year 2005, there were 36 filings of Form 2–E by 24 respondents. The Commission estimates, based on its experience with disclosure documents generally and Form 2–E in particular, and based on informal contacts with the investment company industry, that the total annual burden associated with information collection, Form 2–E preparation, and submission is four hours per filing or 144 hours for all respondents.

The estimates of average burden hours are made solely for the purposes of the Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Form 2–E does not involve any recordkeeping requirements. The information required by the form is mandatory and the information provided 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

[1] The rule also permits the issuer, its principal underwriter, its depositor, or its recordkeeping agent to mail the notice if the custodian bank has delegated the mailing of the notice to any of them or if the issuer has been permitted to operate without a custodian bank by Commission order. *See* 17 CFR 270.27f–1.

displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or e-mail to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312, or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 29, 2006.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–10638 Filed 7–6–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of AdZone Research, Inc.; Order of Suspension of Trading

July 5, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of AdZone Research, Inc. ("AdZone"), a Delaware corporation headquartered in Calverton, New York. Questions have arisen regarding the accuracy of assertions by AdZone, and by others, in press releases and Internet postings to investors concerning, among other things: (1) The company's contracts with two non-profit organizations, (2) the nature and extent of the orders that the company has received for the sale of licenses of its software products, and (3) the company's recent contributions to its employee Incentive Stock Plan.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDT, July 5, 2006, through 11:59 p.m. EDT, on July 18, 2006.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. 06–6082 Filed 7–5–06; 11:28 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54052; File No. SR–NYSEArca–2006–29]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the One Week Option Series Pilot Program

June 27, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 16, 2006, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. NYSE Arca has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change 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 amend NYSE Arca Rule 5.19(a)(3), "Terms of Index Option Contracts," and Commentary .07 to NYSE Arca Rule 6.4, "Series of Options Open for Trading," to extend until July 12, 2007, its pilot program for listing and trading One Week Option Series ("Pilot Program"). The text of the proposed rule change is available on the Exchange's Web site (*http://www.nysearca.com*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the Pilot Program for an additional year, through July 12, 2007.[5] The Pilot Program allows NYSE Arca to list and trade One Week Option Series, which expire one week after the date on which a series is opened. Under the Pilot Program, NYSE Arca may select up to five approved option classes on which One Week Option Series could be opened.[6] A series could be opened on any Friday that is a business day and would expire on the next Friday that is a business day.[7] If a Friday were not a business day, the series could be opened (or would expire) on the first business day immediately prior to that Friday.

For each class selected for the Pilot Program, the Exchange usually would open five One Week Option Series in that class for each expiration date. The strike price of each One Week Option Series would be fixed at a price per share, with at least two strike prices above and two strike prices below the value of the underlying security or calculated index value at about the time that the One Week Option Series is opened. NYSE Arca will not open a One

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Commission approved the Pilot Program on July 12, 2005. *See* Securities Exchange Act Release No. 52013 (July 12, 2005), 70 FR 41471 (July 19, 2005) (SR–PCX–2005–32). Under NYSE Arca Rules 5.19 and 6.4, the Pilot Program is scheduled to expire on July 12, 2006.

[6] A One Week Option Series could be opened in any option class that satisfied the applicable listing criteria under NYSE Arca rules (*i.e.*, stock options, options on Exchange Traded Fund Shares as defined under NYSE Arca Rule 5.3, or options on indexes). The Exchange could also list and trade One Week Option Series on any option class that is selected by another exchange that employs a similar pilot program.

[7] One Week Option Series would be settled in the same manner as the monthly expiration series in the same class. Thus, if the monthly option contract for a particular class were A.M.-settled, as most index options are, the One Week Option Series for that class also would be A.M.-settled; if the monthly option contract for a particular class were P.M.-settled, as most non-index options are, the One Week Option Series for that class also would be P.M.-settled. Similarly, One Week Option Series for a particular class are physically settled or cash-settled in the same manner as the monthly option contract in that class.

Week Option Series in the same week that the corresponding monthly option series is expiring, because the monthly option series in its last week before expiration is functionally equivalent to the One Week Option Series. The intervals between strike prices on a One Week Option Series would be the same as the intervals between strike prices on the corresponding monthly option series. Finally, NYSE Arca would aggregate positions in a One Week Option Series with positions in its corresponding monthly series for purposes of the Exchange's rules on position limits.

The Exchange believes that One Week Option Series can provide investors with a flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie option contracts. While NYSE Arca has not listed any One Week Option Series during the first year of the Pilot Program, there has been significant investor interest in trading short-term options at the Chicago Board Options Exchange ("CBOE").[8] To have the ability to respond to customer interest in the future, the Exchange proposes the continuation of the Pilot Program.

In the original proposal to establish the Pilot Program, the Exchange stated that if it were to propose an extension, expansion, or permanent approval of the program, the Exchange would submit, along with any filing proposing such amendments to the program, a report providing an analysis of the Pilot Program covering the entire period during which the Pilot Program was in effect.[9] Since the Exchange did not list any One Week Options Series during the first year of the Pilot Program, there is no data available to compile such a report at this time. Therefore, the Exchange did not submit a report with its proposal to extend the Pilot Program.

2. Statutory Basis

The Exchange believes that One Week Option Series could stimulate customer interest in options and provide a flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie option contracts. For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[10] in general and furthers the objectives of Section 6(b)(5) of the Act[11] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13] Because the foregoing proposed rule change (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder. As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business before doing so.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the operative delay to permit the Pilot Program extension to become effective prior to the 30th day after filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the benefits of the Pilot Program to continue without interruption.[14] Therefore, the Commission designates that the proposal will become operative on July 12, 2006.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NYSEArca–2006–29 on the subject line.

[8] CBOE filed a report with the Commission on June 13, 2006, stating that CBOE has listed Short Term Options Series in four different option classes. *See* Securities Exchange Act Release No. 53984 (June 14, 2006), 71 FR 35718 (June 21, 2006) (extending CBOE's Short Term Option Series Pilot Program).

[9] *See* Form 19b–4 for File No. SR–PCX–2005–32, filed March 16, 2005.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] As set forth in the Exchange's original filing proposing the Pilot Program, if the Exchange were to propose an extension, expansion, or permanent approval of the Pilot Program, the Exchange would submit, along with any filing proposing such amendments to the program, a report that would provide an analysis of the Pilot Program covering the entire period during which the Pilot Program was in effect. The report would include, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which One Week Option Series were opened; (2) an assessment of the appropriateness of the option classes selected for the Pilot Program; (3) an assessment of the impact of the Pilot Program on the capacity of NYSE Arca, OPRA, and market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the Pilot Program and how NYSE Arca addressed such problems; (5) any complaints that NYSE Arca received during the operation of the Pilot Program and how NYSE Arca addressed them; and (6) any additional information that would assist in assessing the operation of the Pilot Program. The report must be submitted to the Commission at least sixty (60) days prior to the expiration date of the Pilot Program. *See* Form 19b–4 for File No. SR–PCX–2005–32, filed March 16, 2005.

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–NYSEArca–2006–29. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the 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 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–NYSEArca–2006–29 and should be submitted on or before July 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–10639 Filed 7–6–06; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

The U.S. Small Business Administration (SBA), National Small Business Development Center Advisory Board will host a public meeting via conference call on Tuesday, July 18, 2006 at 1 p.m. (EST). The purpose of this meeting is to discuss follow-up items regarding the site visits to the SBA San Diego and Los Angeles Small Business Development Center networks, and the Board meeting that was held on Monday, June 26, 2006.

Anyone wishing to make an oral presentation to the Board must contact Erika Fischer, Senior Program Analyst, U.S. Small Business Administration, Office of Small Business Development Centers, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 205–7045 or fax (202) 481–0681.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. E6–10628 Filed 7–6–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region I Regulatory Fairness Board

The U.S. Small Business Administration (SBA) Region I Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Friday, July 14, 2006, at 9 a.m. The meeting will take place at the Thomas P. O'Neill Federal Building, 10 Causeway Street, Room 265, Boston, MA 02222. The purpose of the meeting is to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Joan Trudell, in writing or by fax, in order to be put on the agenda. Joan Trudell, Public Information Officer, SBA, Massachusetts District Office, Thomas P. O'Neill Federal Building, 10 Causeway Street, Room 265, Boston, MA 02222, phone (617) 565–5572 and fax (617) 565–5597, e-mail: *joan.trudell@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Matthew K. Becker,

Committee Management Officer.

[FR Doc. E6–10627 Filed 7–6–06; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and 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 packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; 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.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. Annual Earnings Test Direct Mail Follow-Up Program Notices—20 CFR 404.452–404.455—0960–0369. The Mid-Year Mailer (MYM) is used to ensure that Retirement and Survivors Insurance (RSI) payments are correct. Beneficiaries under full retirement age (FRA) use Forms SSA–L9778, L9779, and L9781 to update their current year estimate and their estimate for the following year. MYM Forms SSA–L9784 and L9785 are designed to request earnings estimates in the year of FRA for the period prior to the month of FRA. Only one individually tailored form is sent per respondent. Respondents are RSI beneficiaries with earnings over the exempt amount.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 225,000.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

[16] 17 CFR 200.30–3(a)(12).

Estimated Annual Burden: 37,500 hours.

2. Internet Request for Replacement of Forms SSA–1099/SSA–1042S—20 CFR 401.45—0960–0583. The information collected will be used by SSA to verify identity and to provide replacement copies of Forms SSA–1099/SSA–1042S needed to prepare Federal tax returns. This internet option to request a replacement SSA–1099/SSA–1042S will eliminate the need for a phone call to the national 800 number or a visit to a local field office. The respondents are beneficiaries who are requesting a replacement SSA–1099/SSA–1042S.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 21,000.

Frequency of Response: 1.

Average Burden per Response: 1.5 minutes.

Estimated Annual Burden: 525 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections 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 packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. Statement of Self-Employment Income—20 CFR 404.101, 404.110, 404.1096(a)–(d), 404.610–404.611, 422.505—0960–0046. SSA uses the information on Form SSA–766 to expedite the payment of benefits to an individual who is self-employed and who is establishing insured status in the current year. Respondents are self-employed individuals who may be eligible for Social Security benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 5,000.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 417 hours.

2. Certification by Religious Group—20 CFR 404.1075—0960–0093. Form SSA–1458 is used to determine if the religious group meets the qualifications set out in Section 1402(g) of the Internal Revenue Code which permits members of certain religious groups and sects to be exempt from payment of Self-Employment Contribution Act taxes. The respondents are spokespersons for religious groups or sects.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 180.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 45 hours.

3. Request for Internet Services—Authentication; Automated Telephone Speech Technology—Knowledge-Based Authentication—20 CFR 401.45—0960–0596. Individuals and third parties who request personal information from SSA records, or register with SSA in order to participate in SSA's online business services, are asked to provide certain identifying information to verify their identity. As an extra measure of protection, SSA asks requestors who use the Internet and telephone services to provide additional identifying information unique to those services so that SSA can authenticate their identities before releasing personal information. The respondents are current beneficiaries who are requesting personal information from SSA and/or individuals or third parties who are registering for SSA's online business services.

Type of Request: Revision of an OMB-approved information collection.

Forms	Number of respondents	Frequency of response	Average burden per response	Burden hours
Internet Requestors	2,076,138	1	1½ minutes ..	51,903
Telephone Requestors	20,889,488	1	1½ minutes ..	522,237
Totals	22,965,626			574,140

Estimated Annual Burden: 574,140 hours.

4. Request for Reconsideration—20 CFR 404.907–404.921, 416.1407–416.1421, 408.1009—0960–0622. The information collected on Form SSA–561–U2 is used by SSA to document and initiate the reconsideration process for determining entitlement to Social Security benefits (Title II), Supplemental Security Income payments (Title XVI), Special Veterans Benefits (Title VIII), Medicare (Title XVIII) and of initial determinations regarding Medicare Part B income-related premium subsidy reductions. The respondents are individuals filing for reconsideration.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 1,461,700.

Frequency of Response: 1.

Average Burden per Response: 8 minutes.

Estimated Annual Burden: 194,893 hours.

5. Integration Registration Services (IRES) System—20 CFR 401.45—0960–0626. The IRES System registers and authenticates businesses, employers and third parties with SSA, and issues them Personal Identification Numbers (PIN). These PINs will be used in the place of handwritten signatures on forms, when using SSA's Business Services Online. Respondents are employers and third party submitters of wage data, business entities providing tax payer identification information and other electronic records, and data exchange partners conducting business in support of SSA programs.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 460,000.

Frequency of Response: 1.

Average Burden per Response: 2 minutes.

Estimated Annual Burden: 15,333 hours.

6. Request for Deceased Individual's Social Security Record—20 CFR 402.130—0960–0665. The SSA–711 is used to process requests from the public for a microprint of the SS–5, Application for Social Security Card, for a deceased individual. Respondents are members of the public who are requesting deceased individuals' Social Security records.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden per Response: 7 minutes.

Estimated Annual Burden: 5,833 hours.

7. Medical Consultant's Review of Mental Residual Functional Capacity Assessment—20 CFR 404.1520a, 404.1640, 404.1643, 404.1645, 416.920a—0960–0678. Form SSA–392–SUP is used by SSA's regional review component to facilitate the medical/psychological consultant's review of the Mental Residual Functional Capacity Form, SSA–4734–SUP. The SSA–392–

SUP records the reviewing medical/psychological consultant's assessment of the SSA–4734–SUP prepared by the adjudicating component and also records whether the reviewer agrees or disagrees with the manner in which the SSA–4734–SUP was completed. The SSA–392–SUP is required for each SSA–4734–SUP form completed. The respondents are the 256 medical/psychological consultants responsible for reviewing the SSA–4734–SUP.

Type of Request: Extension of an OMB-approved information collection.

Number of Responses: 45,000.

Frequency of Response: 1.

Average Burden per Response: 12 minutes.

Estimated Annual Burden: 9,000 hours.

8. Request for Business Entity Taxpayer Information—0960–NEW. The SSA–1694 will be used to collect information from law firms or other business entities that have partners or employees to whom SSA pays fees that have been authorized as compensation for the representation of claimants before SSA. SSA will collect the name of the firms and/or business entities, as well as their addresses and Employer Identification Numbers (EIN) to keep a record on file for tax purposes. This information will be used to meet any requirement for issuance of a Form 1099–MISC. The respondents are law firms or other business entities that have partners or employees that are attorneys or other qualified individuals who represent claimants before SSA.

Type of Request: Request for a new information collection.

Number of Respondents: 1,000.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 167 hours.

9. Identifying Information for Possible Direct Payment of Authorized Fees—0960–NEW. The SSA–1695 will be used to collect information from appointed representatives that will facilitate the direct payment of authorized fees related to the representation of claimants for benefits before SSA and to issue a Form 1099–MISC, as required. The information will also be used to establish a link between each claim for benefits and the data that will be collected on the SSA–1699 and stored on an Appointed Representative Database. Respondents are attorneys and other individuals who represent claimants for benefits before SSA.

Type of Request: Request for a new information collection.

Number of Respondents: 10,000.

Frequency of Response: 25.

Number of Responses: 250,000

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 41,667 hours.

10. Request for Appointed Representative's Direct Payment Information—0960–NEW. The SSA–1699 will be used to collect information from appointed representatives in order to facilitate the direct payment of authorized fees, including the possible use of direct deposit to a financial institution. SSA will also use the information provided to meet any requirement to issue a Form 1099–MISC when SSA has paid the representative aggregate fees of $600 or more in a taxable year. Business affiliation information will be used to determine if a Form 1099–MISC should be issued to a firm in those situations where the representative is associated with a firm as an employee or partner. Since the SSA–1699 is used as a registration form for the Appointed Representative Database, representatives will only need to fill it out once, unless they need to make a change to any of their information. This form is used in conjunction with the SSA–1695, which links the Appointed Representative Database with the individual claims the representatives handle. Respondents are attorneys or non-attorneys eligible for direct payment (i.e., have met certain prerequisites established by law).

Type of Request: Request for a new information collection.

Number of Respondents: 10,000.

Frequency of Response: 1.

Average Burden per Response: 20 minutes.

Estimated Annual Burden: 3,333 hours.

11. SSI Monthly Wage Reporting Phase 2 Pilot—20 CFR 416.701–732—0960–0715. Supplemental Security Income (SSI) recipients are required to report changes in their income, resources and living arrangements that may affect eligibility or payment amount. Currently, SSI recipients report changes on Form SSA–8150, Reporting Events—SSI, or to an SSA teleservice representative through SSA's toll-free telephone number, or they visit their local Social Security office. The SSI wage reporting program area has the highest error rate largely due to non-reporting, which accounts for approximately $500 million in overpayments each year. Consequently, SSA is evaluating methods for increasing reporting. SSA is conducting a pilot to test an additional method for individuals to report wages for the SSI program. We are testing to determine if, given an easily accessible automated format, individuals will increase compliance with reporting responsibilities. Increased timely reporting could result in a decrease in improper payments. SSA will also be testing the use of knowledge-based authentication to determine if this is an effective method of accessing SSA's system. Lastly, SSA will test recent system enhancements and additional systems enhancements expected in May 2006 that will make reporting easier.

During the pilot, participants who need to report a change in earned income will call an SSA toll-free telephone number to report the change. The participants will access SSA's system using knowledge-based authentication (providing name, SSN and date of birth). Participants will either speak their report (voice recognition technology) or key in the information using the telephone key pad. SSA will issue receipts to participants who report wages using this method. Respondents to this collection are SSI recipients, deemors and representative payees of recipients who agree to participate in the pilot.

Type of Request: Extension of OMB approval.

Number of Respondents: 600.

Frequency of Response: 7.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 350 hours.

Dated: June 30, 2006.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E6–10668 Filed 7–6–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 120–XX, Damage Tolerance Inspections for Repairs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed Advisory Circular (AC) 120–XX; reopening of comment period.

SUMMARY: This action reopens the comment period stated in the Notice of Availability of proposed Advisory Circular (AC) 120–XX, "Damage Tolerance Inspections for Repairs," that was published on April 21, 2006. In that document, the FAA announced the availability and request for comments on a proposed AC, which set forth an acceptable means, but not the only means, of demonstrating compliance with the provisions of the airworthiness

standards for transport category airplanes related to damage tolerance inspections for repairs. In addition, this action announces that at a future date, the FAA may revise the current proposed AC 120–XX to add guidance for damage tolerance inspections for alterations.

DATES: Comments must be received by September 18, 2006.

ADDRESSES: Send all comments on this proposed AC to: Federal Aviation Administration, Attention: Greg Schneider, Airframe/Cabin Safety Branch, ANM–115, FAA, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, WA 98055–4056. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kenna Sinclair, Transport Standards Staff, at the address above, telephone (425) 227–1556.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC by sending such written data, views, or arguments, as they may desire. Commenters should identify AC 120–XX and send comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC. The proposed AC can be found and downloaded from the Internet at *http://www.faa.gov/aircraft/draft_docs.* 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 April 21, 2006, the Federal Aviation Administration (FAA) issued a Notice of Availability of proposed Advisory Circular (AC) 120–XX, "Damage Tolerance Inspections for Repairs."[1] Comments to that document were to be received by June 20, 2006.

By letters dated May 26 and 30, and June 6, 9, and 12, the Air Transport Association of America, Inc. (ATA), Airbus, the Cargo Airline Association (CAA), Boeing Commercial Airplanes, and National Air Carrier Association, Inc. (NACA), respectively, asked the FAA to extend the comment period for the proposed AC. This AC supports the proposed rule entitled "Damage Tolerance Data for Repairs and Alterations," which we published on April 21, 2006.[2] Each petitioner requested a 60-day extension, except Boeing Commercial Airplanes asked for a 90-day extension. Many of the petitioners said the proposed AC and its related proposed rule, as well as other Aging Aircraft proposals and guidance material, present complex issues that would take time to review together.

We appreciate the petitioners' substantive interest in the proposed AC and believe that granting additional time to review the document will allow them to thoroughly assess the impact of this AC and provide meaningful comments. Therefore, we will reopen the comment period until September 18, 2006. This date corresponds to the comment period extension date, approved in a separate **Federal Register** notice, for the associated proposed rule, "Damage Tolerance Data for Repairs and Alterations." The extension of comment period notice for the proposed rule will be published concurrently with today's notice. We believe that extending the comment period for the proposed AC to September 18, 2006 to coincide with that of the proposed rule will allow the petitioners enough time to do a complete review of both the AC and its associated proposed rule.

Reopening of Comment Period

For the reasons provided in this notice, the FAA believes that good cause exists for reopening the comment period for proposed AC 120–XX until September 18, 2006. Absent unusual circumstances, the FAA does not anticipate any further extension of the comment period for that proposed AC.

New Aviation Rulemaking Advisory Committee (ARAC) Recommendations

Recently the ARAC informed us that they will shortly complete the development of new recommendations on damage tolerance for alterations. The current version of proposed AC 120–XX only addresses damage tolerance inspections for repairs. Since the new ARAC recommendations may help industry comply with the portion of the "Damage Tolerance Data for Repairs and Alterations" proposal that relates to alterations, we intend to consider including them in a possible future revision of proposed AC 120–XX. If the current proposed AC is revised to include the new recommendations, we will make it available for public comment.

Although the ARAC recommendations will not be open to public comment as part of today's notice, the public may view those recommendations on the FAA's Web site at *http://www.faa.gov/regulations_policies/rulemaking/committees/arac/issue_areas/tae/aa/.*

We expect to receive the ARAC recommendations in July 2006.

Issued in Washington, DC, June 29, 2006.

John M. Allen,

Acting Director, Flight Standards Service, Aviation Safety.

Dorenda D. Baker,

Acting Director, Aircraft Certification Service, Aviation Safety.

[FR Doc. E6–10599 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–13–P

[1] 71 FR 20750.

[2] 71 FR 20574.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 120–YY, Widespread Fatigue Damage on Metallic Structure

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed Advisory Circular (AC) 120–YY; extension of comment period.

SUMMARY: This action extends the comment period stated in the Notice of Availability of proposed Advisory Circular (AC) 120–YY, "Widespread Fatigue Damage on Metallic Structure," that was published on May 22, 2006. In that document, the FAA announced the availability of and request for comments on proposed revisions to an AC which provides guidance to design approval holders for certain transport category airplanes related to repairs and alterations to preclude widespread fatigue damage.

DATES: Comments must be received by September 18, 2006.

ADDRESSES: Send all comments on this proposed AC to: Walter Sippel, Airframe/Cabin Safety Branch, ANM–115, FAA, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, WA 98055–4056. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Madeleine Kolb, Standardization Branch, ANM–113, at the address above, telephone (425) 227–1134.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC by sending such written data, views, or

arguments, as they may desire. Commenters should identify AC 120–YY and send comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered before the final AC is issued. The proposed AC can be found and downloaded from the Internet at the AIR Web site, *http://www.faa.gov/aircraft/draft_docs*. 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 May 12, 2006, the Federal Aviation Administration (FAA) posted proposed AC 120–YY on the AIR Web site and requested comments. On May 22, 2006, we published a "Notice of Availability of Proposed Advisory Circular (AC) 120–YY, and request for comments," in the **Federal Register** (71 FR 29377). This AC provides guidance on compliance with the proposed rule entitled "Widespread Fatigue Damage," which was published on April 18, 2006, (71 FR 19928). Comments on proposed AC 120–YY were to be received by July 17, 2006.

Five petitioners, the Air Transport Association of America, Inc. (ATA), Airbus, the Cargo Airline Association (CAA), Boeing Commercial Airplanes, and National Air Carrier Association, Inc. (NACA), have asked the FAA to extend the comment period for the proposed AC. Each petitioner requested a 90-day extension to provide enough time to evaluate the proposed AC and related rulemaking and prepare comments to send to the FAA.

The FAA concurs with the petitioners' requests for an extension of the comment period on proposed AC 120–YY, but we believe that an extension of 90 days would be excessive. The FAA concludes that an additional 60 days would be adequate for the petitioners to review and comment on proposed AC 120–YY and, accordingly, extends the comment period to September 18, 2006. That date corresponds to the comment period extension date, announced in a separate **Federal Register** notice to be published today for the associated proposed rule, "Widespread Fatigue Damage."

Extension of Comment Period

For the reasons provided in this notice, the FAA believes that good cause exists for extending the comment period for proposed AC 120–YY to September 18, 2006. Absent unusual circumstances, the FAA does not anticipate any further extension of the comment period for this proposed AC.

Issued in Washington, DC, June 29, 2006.

John M. Allen,

Acting Director, Flight Standards Service, Aviation Safety.

Dorenda D. Baker,

Acting Director, Aircraft Certification Service, Aviation Safety.

[FR Doc. E6–10600 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 4910–13–M]

Notice of Opportunity for Public Comment on Grant Acquired Property Release at Concord Regional Airport, Concord, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(c), notice is being given that the FAA is considering a request from the City of Concord to waive the requirement that approximately 7.30 acres of airport property, located at the Concord Regional Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before August 7, 2006.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Attn: Rusty Nealis, Program Manager, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to W. Brian Hiatt, City Manager of the City of Concord at the following address: City of Concord, Post Office Box 308, Concord, NC 28026.

FOR FURTHER INFORMATION CONTACT: Rusty Nealis, Program Manager, Atlanta AIrports District Office, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747, (404) 305–7142. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the City of Concord to release approximately 7.30 acres of airport property at the Concord Regional Airport. The property consists of one parcel roughly located on the Western edge of Ivey Cline Road approximately 600 ft. South of Popular Tent Road. This property is currently shown on the approved Airport Layout Plan as aeronautical use land; however the property is currently not being used for aeronautical purposes and the proposed use of this property is compatible with airport operations. The City will ultimately sell the property for future industrial use with proceeds of the sale providing funding for future airport development.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Concord Regional Airport.

Issued in Atlanta, Georgia on June 29, 2006.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 06–6056 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2006–25264]

Agency Information Collection Activities: Request for Comments for New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for approval of a new information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on November 21st, 2005. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by August 7, 2006.

ADDRESSES: You may send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to

enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2006–25264.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Jaeschke, (703) 404–6306, Planning and Programming (HFPP–15), Eastern Federal Lands Highway Division, Federal Highway Administration, Department of Transportation, 21400 Ridgetop Circle, Sterling, VA 20166. Office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: George Washington Birthplace National Historic Site, Visitor Transportation Survey.

Background: The transportation related data that is collected is used for management decisions that affect visitor access and mobility, including estimates of the facility's future highway needs and assessments of highway system performance. The information is used by the FHWA to develop and implement legislation and by State and Federal transportation officials to adequately plan, design, and administer effective, safe, and efficient transportation systems in and around the subject facility. This data is essential to the FHWA and Congress in evaluating the effectiveness of the Federal-Lands Highway Program (FLHP). The data that is required by the FLHP is continually reassessed and streamlined by the FHWA.

Respondents: General public visitors to the National Historic Site.

Estimated Average Burden Per Response: The estimated average reporting burden per response is 10 minutes.

Estimated Total Annual Burden: The estimated total annual burden for all respondents is 17 hours.

Electronic Access: Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL) *http://dms.dot.gov*, 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: June 29, 2006.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E6–10594 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Town of Newbury, Massachusetts (Docket Number FRA–2006–25058)

The Town of Newbury has petitioned on its own behalf for a temporary waiver of compliance from the requirements of the regulations governing Use of Locomotive Horns at Highway-Rail Grade Crossings (49 CFR part 222), which generally require that the locomotive horn be sounded at each public crossing unless certain exceptions are met. The Town of Newbury has had in place an intermediate quiet zone and seeks relief from the following requirements of the regulations:

1 Section 222.42, which limits the continuation of an intermediate quiet zone to one year ending June 24, 2006 and requires conversion of the intermediate quiet zone into a new quiet zone by that date; and

2 Section 222.15, which requires joint submission of petitions for waiver of any requirement contained in 49 CFR part 222.

The petition also, in effect, asks that the petitioner be treated as if qualified for a pre-rule quiet zone under § 222.41(c), specifically with respect to the application of the 66.8% excess risk factor and the opportunity to take advantage of an 8-year continuation period within which to implement necessary quiet zone improvements. In support of this request, the petitioner asserts that there have been no relevant collisions in the prior 5-year period and that it has a quiet zone risk index of less than two times the Nationwide Significant Risk Threshold. The petition also notes that the petitioner has active grade crossing warning devices and advance warning signs at each grade crossing within the quiet zone.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2006–25058) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on June 30, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–10645 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 of the Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

North County Transit District (Supplement to Waiver Petition Docket Number FRA–2002–11809)

As a supplement to the North County Transit District (NCTD) Petition for Approval of Shared Use and Waiver of Certain Federal Railroad Administration Regulations (the waiver was granted by the FRA on June 24, 2003), NCTD seeks a permanent waiver of compliance from additional sections of Title 49 of the CFR for operation of its SPRINTER rail

line between Oceanside, CA, and Escondido, CA. *See Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment, 65 FR 42529 (July 10, 2000). See also Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems*, 65 FR 42626 (July 10, 2000).

On February 3, 2005, NCTD submitted an additional request for relief from the following elements of Part 223 (Safety Glazing Standards—Locomotive, Passenger Cars and Cabooses) and Part 229 (Railroad Locomotive Safety Standards). On April 18, 2006, FRA gave conditional relief concerning Part 233 but denied NCTD's request under part 229 concerning headlight intensity.

The NCTD has further advanced the design of the SPRINTER cars and is requesting relief for regulations from which it hereby seeks waivers: 49 CFR Part 229 Railroad Locomotive Safety Standards, § 229.125(a) [headlights] and § 229.125(d)(2) [auxiliary lights]. Since FRA has not yet completed its investigation of NCTD's petition, the agency takes no position at this time on the merits of NCTD's stated justifications.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings because two public hearings concerning NCTD's waiver requests have been held to date. If any interested party desires an opportunity for oral comment, they should notify FRA in writing within 15 days of the date of this notice, and must specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2002–11809) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (Volume 65, Number 70, Pages 19477–78). The statement may also be found at *http://dms.dot.gov*.

Issued in Washington, DC, on June 30, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–10646 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notification of Extension of Comment Period

In accordance with 49 Code of Federal Regulations (CFR) 236.913(e)(1), the Federal Railroad Administration (FRA) gave notice that it had received a petition for approval of a Product Safety Plan (PSP) from BNSF Railway Company (BNSF), submitted pursuant to 49 CFR part 236, subpart H. 71 FR 11014. FRA placed the PSP and supporting documentation in Docket Number FRA–2006–23687. FRA also gave notice that it would accept comments on the petition for approval for the PSP, as required by 49 CFR 236.913(e)(2) for 90 days subsequent to the publication of the notice. That comment period ended on May 31, 2006. FRA is reopening the docket for comment to allow the public time to analyze and comment on revisions to that PSP and supporting documents recently submitted by BNSF in response to the FRA letter of March 8, 2006 (Docket Number FRA–2006–23687–7).

Interested parties are invited to participate in this safety review by providing written information or comments pertinent to FRA's consideration of the above petition for approval of a Product Safety Plan. All communications concerning this safety review should identify the appropriate docket number (*e.g.*, Petition for Approval Docket Number FRA–2006–23687) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. Communication received within 30 days of the date of this notice will be considered by FRA to the extent practicable. All written communications concerning this safety review are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Anyone is able to search the electronic form of all the comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov*.

Issued in Washington, DC on June 30, 2006.

Grady C. Cothen Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–10647 Filed 7–6–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–21018][1]

CUSA GCBS, LLC d/b/a Goodall's Charter Bus Service—Acquisition of Assets and Business Operations—Comartin Enterprises, Inc. d/b/a Contactours

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: CUSA GCBS, LLC d/b/a Goodall's Charter Bus Service (CUSA GCBS or Applicant), a federally regulated motor carrier of passengers (MC–463173), has filed an application under 49 U.S.C. 14303 to purchase the assets and business operations of Comartin Enterprises, Inc. (formerly known as San Diego Mini Tours, Inc.) d/b/a Contactours (Contactours). Applicant is not acquiring Contactours' operating authority. Persons wishing to oppose this application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the

[1] A request for interim approval under 49 U.S.C. 14303(i) was included in this filing (STB Docket No. MC–F–21018 TA). In a decision served on June 23, 2006, temporary approval was granted, effective on the service date of the decision.

transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by August 21, 2006. Applicant may file a reply by September 5, 2006. If no comments are filed by August 21, 2006, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–21018 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of comments to Applicant's representative: Stephen Flott, Flott & Co. PC, PO Box 17655, Arlington, VA 22216–7655.

FOR FURTHER INFORMATION CONTACT: Eric S. Davis, (202) 565–1608. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: CUSA GCBS is a private limited liability company organized under the laws of the State of Delaware by CUSA, LLC (CUSA), a noncarrier, which also owns other federally regulated motor carriers of passengers and non-federally regulated companies. CUSA, in turn, is wholly owned by noncarrier KBUS Holdings, LLC (KBUS), which acquired the assets and business operations of federally regulated motor carriers formerly owned by Coach, USA, Inc., and then consolidated those assets/operations into the passenger carriers now controlled by CUSA.[2] Applicant states that the carriers in the CUSA group have more than 4,900 employees, operate approximately 1,500 motor coaches and over 800 other vehicles in 38 states, and had gross revenues exceeding $250 million in 2005.

Contactours is a motor passenger carrier that operates principally in San Diego and Southern California pursuant to Federal operating authority granted in Docket No. MC–181063. According to applicant, CUSA's experienced senior management team has identified the acquisition of Contactours as a strategic way to expand its contract tour business in Southern California and to extend its Gray Line franchise operations. Applicant has entered into an agreement with Contactours to buy its assets, including vehicles, business operations, and prepaid charter trip deposits.

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction found to be consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

CUSA GCBS has submitted information, as required by 49 CFR 1182.2, including the information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b). Applicant states that the proposed transaction will improve the adequacy of transportation services available to the public, that the proposed transaction will not have an adverse effect on total fixed charges, and that the interests of employees of Contactours will not be adversely impacted. Additional information, including a copy of the application, may be obtained from Applicant's representative.

On the basis of the application, we find that the proposed acquisition of assets and business operations is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed finance transaction is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this notice will be deemed as having been vacated.

3. This notice will be effective on August 21, 2006, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration; 400 7th Street, SW., Room 8214, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

Decided: June 29, 2006.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. E6–10566 Filed 7–6–06; 8:45 am]

BILLING CODE 4915–01–P

[2] *See KBUS Holdings, LLC—Acquisition of Assets and Business Operations—All West Coachlines, Inc., et al.*, STB Docket No. MC–F–21000 (STB served July 23, 2003).

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986): Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, United Arab Emirates, and Republic of Yemen.

Bahrain and Oman have been removed from this list due to actions taken by their respective governments. Iraq is not included in this list, but its status with respect to future lists remains under review by the Department of the Treasury.

Dated: June 30, 2006.

Harry J. Hicks III,

International Tax Counsel (Tax Policy).

[FR Doc. 06–6032 Filed 7–6–06; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Government Securities: Call for Large Position Reports

AGENCY: Office of the Assistant Secretary for Financial Institutions, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury ("Department" or "Treasury") called for the submission of Large Position Reports by those entities whose reportable positions in the 4⅞% Treasury Notes of May 2008 equaled or exceeded $2 billion as of close of business June 28, 2006.

DATES: Large Position Reports must be received before noon Eastern Time on July 12, 2006.

ADDRESSES: The reports must be submitted to the Federal Reserve Bank of New York, Government Securities Dealer Statistical Unit, 4th Floor, 33 Liberty Street, New York, New York 10045; or faxed to 212–720–5030.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena, Executive Director; Lee Grandy, Associate Director; or Kevin Hawkins, Government Securities Specialist; Bureau of the Public Debt, Department of the Treasury, at 202–504–3632.

SUPPLEMENTARY INFORMATION: In a press release issued on July 5, 2006, and in this **Federal Register** notice, the Treasury called for Large Position Reports from entities whose reportable positions in the 4⅞% Treasury Notes of May 2008, Series V–2008, equaled or exceeded $2 billion as of the close of business Wednesday, June 28, 2006. This call for Large Position Reports is a test pursuant to the Department's large position reporting rules under the Government Securities Act regulations (17 CFR part 420). Entities whose reportable positions in this note equaled or exceeded the $2 billion threshold must report these positions to the Federal Reserve Bank of New York. Entities with positions in this note below $2 billion are not required to File reports. Large Position Reports must be received by the Government Securities Dealer Statistical Unit of the Federal Reserve Bank of New York before noon Eastern Time on Wednesday, July 12, 2006, and must include the required position and administrative information. The Reports may be faxed to (212) 720–5030 or delivered to the Bank at 33 Liberty Street, 4th floor.

The 4⅞% Treasury Notes of May 2008, Series V–2008, have a CUSIP number of 912828 FG 0, a STRIPS principal component CUSIP number of 912820 ND 5, and a maturity date of May 31, 2008.

The press release and a copy of a sample Large Position Report, which appears in Appendix B of the rules at 17 CFR part 420, are available at the Bureau of the Public Debt's Internet site at *http://www.publicdebt.treas.gov.*

Questions about Treasury's large position reporting rules should be directed to Treasury's Government Securities Regulations Staff at Public Debt on (202) 504–3632. Questions regarding the method of submission of Large Position Reports should be directed to the Government Securities Dealer Statistical Unit of the Federal Reserve Bank of New York at (212) 720–7993.

The collection of large position information has been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB Control Number 1535–0089.

Dated: July 5, 2006.

Emil W. Henry, Jr.,

Assistant Secretary, Financial Institutions.

[FR Doc. 06–6084 Filed 7–5–06; 1:13 pm]

BILLING CODE 4810–39–M

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Special Citizens Coinage Advisory Committee Public Meeting

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces a special Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for July 10, 2006.

Date: July 10, 2006.

Time: 10 a.m. to 11 a.m.

Location: The meeting will occur via teleconference. Interested members of the public may attend the meeting at the United States Mint, 801 Ninth Street, NW., Washington, DC, 2nd floor.

Subject: Review San Francisco Old Mint Commemorative Coin design candidates and other business.

Interested persons should call 202–354–7502 for the latest update on meeting time and location.

Public Law 108–15 established the CCAC to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advise the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Make recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Cliff Northup, United States Mint Liaison to the CCAC, 801 Ninth Street, NW., Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: July 3, 2006.

David A. Lebryk,

Acting Director, United States Mint.

[FR Doc. 06–6066 Filed 7–3–06; 4:48 pm]

BILLING CODE 4810–37–P

Federal Register

Friday,
July 7, 2006

Part II

Susquehanna River Basin Commission

18 CFR Parts 803, 804, and 805
Review and Approval of Projects; Special Regulations and Standards; Hearings/ Enforcement Actions; Proposed Rule

SUSQUEHANNA RIVER BASIN COMMISSION

18 CFR Parts 803, 804 and 805

Review and Approval of Projects; Special Regulations and Standards; Hearings/Enforcement Actions

AGENCY: Susquehanna River Basin Commission (SRBC).

ACTION: Proposed rule.

SUMMARY: This document contains extensive amendments to project regulations concerning standards and hearings/enforcement actions. Because revisions are too numerous to show within the original regulations, proposed parts 803, 804 and 805 are being published here *in their entirety*, with an explanation of changes in the **SUPPLEMENTARY INFORMATION** section below. These regulations provide the procedural and substantive rules for SRBC review and approval of water resources projects and the procedures governing hearings and enforcement actions. These amendments include additional due process safeguards, add new standards for projects, improve organizational structure, incorporate recently adopted policies and clarify language.

DATES: Comments on these proposed amendments may be submitted to the SRBC on or before September 1, 2006. The Commission has scheduled public hearings on the proposed rules as follows:

a. August 8, 2006, 6:30 p.m.—Owego Treadway Inn, Owego, NY.

b. August 10, 2006, 8:30 a.m.—PA Bureau of Topographic and Geologic Survey, Middletown, PA.

c. August 10, 2006, 6:30 p.m.—Kings College, Snyder Room, Wilkes-Barre, PA.

Those wishing to testify are asked to notify the Commission in advance if possible at the regular or electronic addresses given below.

ADDRESSES: Comments may be mailed to: Mr. Richard A. Cairo, Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102–2391; *rcairo@srbc.net.*

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel/Secretary, 717–238–0423; Fax: 717–238–2436; e-mail: *rcairo@srbc.net.* Also, for further information on the proposed rulemaking action, visit the Commission's Web site at *www.srbc.net.*

SUPPLEMENTARY INFORMATION:

Background

The SRBC adopted a final rule on May 11, 1995, published at 60 FR 31391, June 15, 1995 establishing: (1) The scope and procedures for review and approval of projects under Section 3.10 of the Susquehanna River Basin Compact, Pub. L. 91–575; 83 Stat. 1509 et seq. (the compact); (2) special standards under Section 3.4 (2) of the compact governing water withdrawals and consumptive use of water; and (3) procedures for hearings and enforcement actions.

Need for Amendments

After 11 years of experience with these regulations, the SRBC has uncovered many provisions that require strengthening, reorganization and clarification. In addition, the Commission has since adopted several important policies relating to the management of the basin's water resources and the enforcement of these regulations. As a matter of sound legal practice, these policies need to be incorporated into the language of the regulations.

Highlights of Major Amendments

18 CFR PART 803—REVIEW AND APPROVAL OF PROJECTS

Subpart A—General Provisions

1. Section 803.3 Definitions.—A definition for "change in ownership" has been included because of modifications proposed in § 803.4, related to certain grandfathered uses or withdrawals.

2. Section 803.4 Projects requiring review and approval.—This section reorganizes and expands what projects require review and approval and whether any exemptions apply. In part, this section consolidates provisions currently contained in various sections of the existing regulations. A significant addition is that to the extent that a consumptive water use project involves a withdrawal from ground or surface water, the withdrawal will also be subject to review.

Additionally, the current 100,000 gallons per day (gpd) threshold for withdrawals has been expanded to include any combination of ground or surface water withdrawals exceeding that threshold. This section also will end the recognition of "pre-compact" or "grandfathered" consumptive uses or withdrawals upon a change of ownership, and will end the practice under existing § 803.31 of allowing the transfer of project approvals when a change of ownership occurs.

Exceptions are contained in the definition of the term "change of ownership" for the transfer of projects involving corporate reorganizations, transfers to certain family members, and transfers of agricultural land for so long as it continues to be used for agricultural purposes.

(The existing project review and approval requirements are currently suspended for projects involving agricultural water use and the Commission intends to continue the suspension as its member jurisdictions actively pursue alternative consumptive use compliance options for agricultural operations in cooperation with the Commission.)

Subpart B—Application Procedure

3. Section 803.12 Constant-rate aquifer testing.—Requirements regarding constant-rate aquifer tests are set forth in a new section and expanded to incorporate a time limit for testing to occur.

4. Section 803.14 Contents of application.—This section is reorganized to include a comprehensive list of information that a project sponsor must provide when making application to the Commission.

5. Section 803.16 Completeness of application.—This section replaces § 803.26 and sets out a procedure for dealing with incomplete project applications pursuant to existing Commission practice.

Subpart C—Standards for Review and Approval

6. Section 803.21 General standards.—This section covers the criteria for approval of a project by the Commission. Also, in accordance with current policy, provisions are added to allow the Commission to suspend the processing of a project application if a signatory party or a political subdivision of a signatory party exercising lawful authority over the project has disapproved the project, and to suspend an approval itself if a project sponsor fails to maintain such approvals.

7. Section 803.22 Standards for consumptive uses of water.—This section replaces the current § 803.42. Several changes are made, including the removal of a specific low flow criterion (Q7–10) and inclusion of an approval by rule provision for certain consumptive use projects that obtain their water from public water supplies. These types of projects would no longer have to be individually approved by the Commission.

8. Section 803.23 Standards for water withdrawals.—This section consolidates existing §§ 803.43 (Standards for ground-water withdrawals) and 803.44 (Standards for surface water withdrawals) into a single section covering standards for all withdrawals, and clarifies the

conditions or limitations that can be imposed on withdrawals to avoid adverse impacts on the environment or other users. Application standards for constant-rate aquifer tests for proposed groundwater withdrawals have been moved to § 803.12. Monitoring requirements are moved to new § 803.30 (Monitoring), where details on measuring and recording, reporting, and monitoring methodology are set forth.

9. Section 803.24 Standards for diversions.—This section sets standards for the approval of diversions by incorporating a Commission policy applying to out-of-basin diversions of water and also sets standards for in-basin diversions. As permitted under the terms of section 3.10 of the compact, this new section exempts "out-of-basin" diversions up to 20,000 gpd. In-basin diversions of any quantity continue to be subject to review and approval.

10. Section 803.25 Water conservation standards.—The water conservation standards currently set forth in part 804, subpart B, are moved to § 803.25. While no substantive changes are being made now in these proposed revisions, the Commission considers water conservation to be a vital component of water resources management and will revisit these standards in the near future in close coordination with the member jurisdictions.

Subpart D—Terms and Conditions of Approval

11. Section 803.30 Monitoring.—This section consolidates existing provisions and Commission practice related to monitoring, removes triennial water quality monitoring requirements, sets a daily quantity measurement standard unless otherwise set by the Commission, certifies the accuracy of measurement devices every 5 years, sets quantity reporting as the requirement unless otherwise specified, and special reporting of violations and loss of measurement capabilities.

12. Section 803.31 Duration of approvals and renewals.—This section would be a modification of the existing § 803.30. Approval durations are reduced to a general term of 15 years instead of 25 years, though exceptions for cause are provided. Other changes relate to the expiration and extension of approvals for uninitiated uses of water, the abandonment or discontinuance of a water use, and the renewal of expiring approvals.

13. Section 803.32 Reopening/modification.—The application process for reopening has been simplified for interested parties. Other changes address certain actions now currently imposed as docket conditions, such as:

a. Modify or revoke docket approvals for failure to comply with docket conditions, and failure to obtain or maintain approvals from other federal, state, or local agencies;

b. Require a project sponsor to provide a temporary source of water if interference occurs; and

c. Reopen any approval upon its own motion to make corrective modifications.

14. Section 803.34 Emergencies.—This section expands the current § 803.27, dealing with the issuance of emergency certificates by the Executive Director. It incorporates the details of existing Commission policy and details the procedure for obtaining an emergency certificate to protect the public health, safety, and welfare, or to avoid substantial and irreparable injury.

15. Section 803.35 Fees.—This section makes it clear that project sponsors have an affirmative duty under the Commission's regulations to pay such fees as may be established by the Commission.

18 CFR PART 804—WATER WITHDRAWAL REGISTRATION

16. Section 804.2 Time limits.—The only substantive change in this part is the addition of language clarifying that compliance with a registration or reporting requirement, or both, of a member jurisdiction that is substantially equivalent to the Commission registration requirement shall be considered in compliance with the Commission requirement.

18 CFR PART 805—HEARINGS/ENFORCEMENT ACTIONS

Subpart A—Conduct of Hearings

17. Section 805.1(a) Public hearings.—This section remains largely intact, with revisions to clarify the rules governing standard public hearings before the Commission on such matters as rulemaking, comprehensive plan additions, and project review.

18. Section 805.2 Administrative appeals.—This is a new section providing an administrative appeal procedure for persons aggrieved by any action or decision of the Commission or the Executive Director. Hearings under this section provide another administrative appeal option prior to an appeal to the United States District Court. Also included are provisions for stays and intervention of parties.

19. Section 805.3 Hearing on administrative appeal.—This section adds detailed procedures for hearings to be held on administrative appeals, currently contained in section 805.2 for adjudicatory hearings. Included are the powers of the hearing officer, provisions for recording the hearing proceedings, provisions for staff and other expert testimony, provisions for the inclusion of written testimony, rules for assessing costs, and an in forma pauperis procedure.

Subpart B—Compliance and Enforcement

20. Section 805.11 Duty to comply.—New section affirming the existing duty of any person to comply with any provision of the compact or rules, regulations, orders, approvals, and conditions of approval.

21. Section 805.12 Investigative powers.—This new section sets forth the powers of agents or employees of the Commission to inspect or investigate facilities to determine compliance with any provisions of the compact or the regulations of the Commission. These requirements are currently set forth as conditions in docket approvals. Owners and operators of facilities are also directed to provide true and accurate information as requested by the Commission and are subject to the "falsification to authorities" statutes of the member jurisdictions.

22. Section 805.13 Notice of Violation.—This section provides a procedure for the issuance of a Notice of Violation to an alleged violator of any rule, regulation, order, approval, or docket condition, consistent with current Commission practice.

23. Section 805.14 Orders.—This is a section explicitly stating the authority of both the Executive Director and the Commission to issue various orders, including requiring a project to cease and desist any action or activity to prevent harm and enforce the provisions of the compact, regulations, docket conditions, or any rules or regulations of the Commission.

24. Section 805.15 Show cause proceeding.—This section establishes the basic procedural device for enforcement of Commission regulations and docket conditions through the imposition of penalties or other sanctions on violators pursuant to section 15.17 of the compact. To insure the integrity of this process, provisions are included to separate adjudicatory and prosecutorial functions of the Commission. The provisions of this section also preserve the opportunity for the alleged violator to present testimony for consideration prior to action by the commissioners.

25. Section 805.18 Settlement by agreement.—Paragraph (b) incorporates the standard language of all Commission

settlement agreements that the Commission may reinstitute a civil penalty action if the violator fails to carry out any of the terms of the settlement agreement.

List of Subjects in 18 CFR Parts 803, 804, and 805

Administrative practice and procedure, Water resources.

Accordingly for the reasons set forth in the preamble, 18 CFR parts 803, 804, and 805 are proposed to be revised as follows:

PART 803—REVIEW AND APPROVAL OF PROJECTS

Subpart A—General Provisions

Subpart B—Application Procedure

Subpart C—Standards for Review and Approval

Subpart D—Terms and Conditions of Approval

Authority: Secs. 3.4, 3.5 (5), 3.8, 3.10 and 15.2, Pub. L. 91–575, 84 Stat. 1509 *et seq.*

Subpart A—General Provisions

§ 803.1 Scope.

(a) This part establishes the scope and procedures for review and approval of projects under Section 3.10 of the Susquehanna River Basin Compact, Public Law 91–575, 84 Stat. 1509 *et seq.*, (the compact) and establishes special standards under Section 3.4(2) of the compact governing water withdrawals and the consumptive use of water. The special standards established pursuant to Section 3.4(2) shall be applicable to all water withdrawals and consumptive uses in accordance with the terms of those standards, irrespective of whether such withdrawals and uses are also subject to project review under Section 3.10. This part, and every other part of 18 CFR Chapter VIII, shall also be incorporated into and made a part of the comprehensive plan.

(b) When projects subject to Commission review and approval are sponsored by governmental authorities, the Commission shall submit recommendations and findings to the sponsoring agency, which shall be included in any report submitted by such agency to its respective legislative body or to any committee thereof in connection with any request for authorization or appropriation therefor. The Commission review will ascertain the project's compatibility with the objectives, goals, guidelines and criteria set forth in the comprehensive plan. If determined compatible, the said project will also be incorporated into the comprehensive plan, if so required by the compact. For the purposes of avoiding conflicts of jurisdiction and of giving full effect to the Commission as a regional agency of the member jurisdictions, no expenditure or commitment shall be made by any governmental authority for or on account of the construction, acquisition or operation of any project or facility unless it first has been included by the Commission in the comprehensive plan.

(c) If any portion of this part, or any other part of 18 CFR Chapter VIII, shall, for any reason, be declared invalid by a court of competent jurisdiction, all remaining provisions shall remain in full force and effect.

(d) Except as otherwise stated in this part, this part shall be effective on _____.

(e) When any period of time is referred to in this part, such period in all cases shall be so computed as to exclude the first and include the last day of such period. Whenever the last day of any such period shall fall on Saturday or Sunday, or on any day made a legal holiday by the law of the United States, such day shall be omitted from the computation.

(f) Any forms or documents referenced in this part may be obtained from the Commission at 1721 North Front Street, Harrisburg, PA 17102–2391, or from the Commission's Web site at *http://www.srbc.net.*

§ 803.2 Purposes.

(a) The general purposes of this part are to advance the purposes of the compact and include, but are not limited to:

(1) The promotion of interstate comity;

(2) The conservation, utilization, development, management and control of water resources under comprehensive, multiple purpose planning; and

(3) The direction, supervision and coordination of water resources efforts and programs of federal, state and local governments and of private enterprise.

(b) In addition, §§ 803.22, 803.23 and 803.24 of this part contain the following specific purposes: Protection of public health, safety and welfare; stream quality control; economic development; protection of fisheries and aquatic habitat; recreation; dilution and abatement of pollution; the regulation of flows and supplies of ground and surface waters; the avoidance of conflicts among water users; the prevention of undue salinity; and protection of the Chesapeake Bay.

(c) The objective of all interpretation and construction of this part and all subsequent parts is to ascertain and effectuate the purposes and the intention of the Commission set out in this section. These regulations shall not be construed in such a way as to limit the authority of the Commission, the enforcement actions it may take, or the remedies it may prescribe.

§ 803.3 Definitions.

For purposes of parts 803, 804 and 805, unless the context indicates otherwise, the words listed in this section are defined as follows:

Agricultural water use. A water use associated primarily with the raising of food, fiber or forage crops, trees, flowers, shrubs, turf, livestock and poultry. The term shall include aquaculture.

Application. A written request for action by the Commission including without limitation thereto a letter, referral by any agency of a member jurisdiction, or an official form prescribed by the Commission.

Basin. The area of drainage of the Susquehanna River and its tributaries into the Chesapeake Bay to the southern edge of the Pennsylvania Railroad bridge between Havre de Grace and Perryville, Maryland.

Change of Ownership. A change in ownership shall mean any transfer by sale or conveyance of the real or personal property comprising a project. A change of ownership shall not include:

(1) A corporate reorganization of the following types:

(i) Where property is transferred to a corporation by one or more persons solely in exchange for stock or securities of the same corporation, provided that immediately after the exchange the same person or persons are in control of the transferee corporation, that is, they own 80 percent of the voting stock and 80 percent of all other stock of the corporation.

(ii) Where such transfer is merely a result of a change of the name, identity, internal corporate structure or place of organization and does not affect ownership and/or control.

(2) Transfer of a project to the transferor's spouse or one or more lineal descendents, or any spouse of such lineal descendents, or to a corporation owned or controlled by the transferor, or the transferor's spouse or lineal descendents, or any spouse of such lineal descendents, for so long as the combined ownership interest of the transferor, the transferor's spouse and/or the transferor's lineal descendent(s) and their spouses, continues to be 51 percent or greater.

(3) Transfer of land used primarily for the raising of food, fiber or forage crops, trees, flowers, shrubs, turf, livestock, poultry or aquaculture, for so long as such agricultural use and its associated agricultural water use continues.

Commission. The Susquehanna River Basin Commission, as established in Article 2 of the compact, including its commissioners, officers, employees, or duly appointed agents or representatives.

Commissioner. Member or Alternate Member of the Susquehanna River Basin Commission as prescribed by Article 2 of the compact.

Compact. The Susquehanna River Basin Compact, Pub. L. 91–575; 84 Stat. 1509 *et seq.*

Comprehensive plan. The comprehensive plan prepared and adopted by the Commission pursuant to Articles 3 and 14 of the compact.

Consumptive use. The loss of water transferred through a manmade conveyance system or any integral part thereof (including such water that is purveyed through a public water supply or wastewater system), due to transpiration by vegetation, incorporation into products during their manufacture, evaporation, injection of water or wastewater into a subsurface formation from which it would not reasonably be available for future use in the basin, diversion from the basin, or any other process by which the water is not returned to the waters of the basin undiminished in quantity.

Diversion. The transfer of water into or out of the basin.

Executive Director. The chief executive officer of the Commission appointed pursuant to Article 15, Section 15.5, of the compact.

Facility. Any real or personal property, within or without the basin, and improvements thereof or thereon, and any and all rights of way, water, water rights, plants, structures, machinery, and equipment acquired, constructed, operated, or maintained for the beneficial use of water resources or related land uses or otherwise including, without limiting the generality of the foregoing, any and all things and appurtenances necessary, useful, or convenient for the control, collection, storage, withdrawal, diversion, release, treatment, transmission, sale, or exchange of water; or for navigation thereon, or the development and use of hydroelectric energy and power, and public recreational facilities; of the propagation of fish and wildlife; or to conserve and protect the water resources of the basin or any existing or future water supply source, or to facilitate any other uses of any of them.

Governmental authority. A federal or state government, or any political subdivision, public corporation, public authority, special purpose district, or agency thereof.

Groundwater. Water beneath the surface of the ground within a zone of saturation, whether or not flowing through known and definite channels or percolating through underground geologic formations, and regardless of whether the result of natural or artificial recharge. The term includes water contained in quarries, pits and underground mines having no significant surface water inflow, aquifers, underground water courses and other bodies of water below the surface of the earth. The term also includes a spring in which the water level is sufficiently lowered by pumping to eliminate the surface flow.

Member jurisdiction. The signatory parties as defined in the compact, comprised of the States of Maryland and New York, the Commonwealth of Pennsylvania, and the United States of America.

Member state. The States of Maryland and New York, and the Commonwealth of Pennsylvania.

Person. An individual, corporation, partnership, unincorporated association, and the like and shall have no gender and the singular shall include the plural. The term shall include a governmental authority and any other entity which is recognized by law as the subject of rights and obligations.

Pre-compact consumptive use. The maximum average daily quantity or volume of water consumptively used over any consecutive 30-day period prior to January 23, 1971.

Project. Any work, service, activity, or facility undertaken which is separately planned, financed or identified by the Commission, or any separate facility undertaken or to be undertaken by the Commission or otherwise within a specified area, for the conservation, utilization, control, development, or management of water resources which can be established and utilized independently, or as an addition to an existing facility, and can be considered as a separate entity for purposes of evaluation.

Project sponsor. Any person who owns, operates or proposes to undertake a project. The singular shall include the plural.

Public water supply. A system, including facilities for collection, treatment, storage and distribution, that provides water to the public for human consumption, that:

(1) Serves at least 15 service connections used by year-round residents of the area served by the system; or

(2) Regularly serves at least 25 year-round residents.

Surface water. Water on the surface of the earth, including water in a perennial or intermittent watercourse, lake, reservoir, pond, spring, wetland, estuary, swamp or marsh, or diffused surface water, whether such body of water is natural or artificial.

Water or waters of the basin. Groundwater or surface water, or both, within the basin either before or after withdrawal.

Water resources. Includes all waters and related natural resources within the basin.

Withdrawal. A taking or removal of water from any source within the basin.

§ 803.4 Projects requiring review and approval.

Except for activities relating to site evaluation or as otherwise allowed under § 803.34, no person shall undertake any of the following projects without prior review and approval by the Commission. The project sponsor shall submit an application in accordance with subpart B and shall be subject to the applicable standards in subpart C.

(a) *Consumptive use of water.* The consumptive water use projects described below shall require an application to be submitted in

accordance with § 803.12, and shall be subject to the standards set forth in § 803.22, and, to the extent that it involves a withdrawal from groundwater or surface water, shall also be subject to the standards set forth in § 803.23. Except to the extent that they involve the diversion of the waters of the basin, public water supplies shall be exempt from the requirements of this section regarding consumptive use; provided, however, that nothing in this section shall be construed to exempt individual consumptive users connected to any such public water supply from the requirements of this section.

(1) Except for projects previously approved by the Commission for consumptive use and projects that existed prior to January 23, 1971, any project involving a consumptive water use of an average of 20,000 gallons per day (gpd) or more in any consecutive 30-day period.

(2) With respect to projects previously approved by the Commission for consumptive use, any project that will involve an increase in a consumptive use above that amount which was previously approved.

(3) Any project that will involve an increase in a consumptive use that existed prior to January 23, 1971, by an average of 20,000 gpd or more in any consecutive 30-day period.

(4) Any project that involves a consumptive use that will adversely affect the purposes outlined in § 803.2 of this part.

(5) Any project involving a consumptive use of an average of 20,000 gpd or more in any 30-day period, and undergoing a change of ownership.

(b) *Withdrawals.* The projects described below shall require an application to be submitted in accordance with § 803.12, and shall be subject to the standards set forth in § 803.23. Hydroelectric projects, except to the extent that such projects involve a withdrawal, shall be exempt from the requirements of this section regarding withdrawals; provided, however, that nothing in this paragraph shall be construed as exempting hydroelectric projects from review and approval under any other category of project requiring review and approval as set forth in this section, § 803.23, or 18 CFR part 801.

(1) Except for projects previously approved by the Commission and projects existing prior to the dates specified in paragraph (4) below, any project withdrawing a consecutive 30-day average of 100,000 gpd or more from a groundwater or surface water source, or a combination of such sources.

(2) With respect to projects previously approved by the Commission, any project that increases a withdrawal above that amount which was previously approved and any project that will add a source or increase withdrawals from an existing source which did not require approval prior to _____.

(3) Any project which involves a withdrawal from a groundwater or surface water source and which is subject to the requirements of paragraph (a) of this section regarding consumptive use.

(4) With respect to groundwater projects in existence prior to July 13, 1978, and surface water projects in existence prior to November 11, 1995, any project that will increase its withdrawal from any source or combination of sources, by a consecutive 30-day average of 100,000 gpd or more, above that maximum consecutive 30-day amount which the project was withdrawing prior to the said applicable date.

(5) Any project involving a withdrawal of a consecutive 30-day average of 100,000 gpd or more, from either groundwater or surface water sources, or in combination from both, and undergoing a change of ownership.

(c) *Diversions.* The projects described below shall require an application to be submitted in accordance with § 803.12, and shall be subject to the standards set forth in § 803.24. The project sponsors of out-of-basin diversions shall also comply with all applicable requirements of this part relating to consumptive uses and withdrawals. This requirement shall apply to diversions initiated on or after January 23, 1971.

(1) Any project involving the diversion of water into the basin and any project involving a diversion of an average of 20,000 gallons of water per day or more in any consecutive 30-day period out of the basin.

(2) With respect to diversions previously approved by the Commission, any project that will increase a diversion above that amount which was previously approved.

(3) Any project involving the diversion of water into the basin that existed prior to January 23, 1971, that will increase the diversion by any amount, and any project involving the diversion of water out of the basin that will increase the diversion an average of 20,000 gpd or more in any consecutive 30-day period.

(4) Any project involving the diversion of water into the basin and any project involving a diversion of an average of 20,000 gallons of water per day or more in any consecutive 30-day period out of the basin, and undergoing a change of ownership.

(d) Any project on or crossing the boundary between two member states.

(e) Any project in a member state having a significant effect on water resources in another member state.

(f) Any project which has been or is required to be included by the Commission in its comprehensive plan, or will have a significant effect upon the comprehensive plan.

(g) Any other project so determined by the commissioners or Executive Director pursuant to § 803.5 or 18 CFR part 801. Such project sponsors shall be notified in writing by the Executive Director.

§ 803.5 Projects that may require review and approval.

(a) The following projects, if not otherwise requiring review and approval under § 803.4, may be subject to Commission review and approval as determined by the Commission or the Executive Director:

(1) Projects that may affect interstate water quality.

(2) Projects within a member state that have the potential to affect waters within another member state. This includes, but is not limited to, projects which have the potential to alter the physical, biological, chemical or hydrological characteristics of water resources of interstate streams designated by the Commission under separate resolution.

(3) Projects that may have a significant effect upon the comprehensive plan.

(4) Projects not included in paragraphs (a)(1) through (a)(3) of this section, but which could have an adverse, adverse cumulative, or interstate effect on the water resources of the basin, provided that the project sponsor is notified in writing by the Executive Director.

(b) Determinations by the Executive Director may be appealed to the commissioners by filing an appeal with the Commission within 30 days after receipt of notice of such determination as set forth in § 805.2.

§ 803.6 Transferability of Project Approvals.

(a) Existing Commission approvals of projects undergoing a change in ownership as defined in § 803.3 of this part may not be transferred to the new project sponsor(s). Such project sponsor(s) shall submit an application for approval as required by § 803.4(a)(5), (b)(5) or (c)(4) of this part, and may

operate such project under the terms and conditions of the existing approval, pending action by the Commission on the application, provided such project sponsor satisfies the requirements of § 803.13(b) of this part.

(b) Existing Commission approvals of projects excluded from the definition of change of ownership in § 803.3 of this part may be transferred to the new project sponsor(s), provided such project sponsor(s) notify the Commission in advance of the transfer of such project approval, which notice shall be on a form and in a manner prescribed by the Commission and under which the project sponsor(s) certify their or its intention to comply with all terms and conditions of the transferred approval and assume all other associated obligations.

§ 803.7 Concurrent project review by member jurisdictions.

(a) The Commission recognizes that agencies of the member jurisdictions will exercise their review authority and evaluate many proposed projects in the basin. The Commission will adopt procedures to assure compatibility between jurisdictional review and Commission review.

(b) To avoid duplication of work and to cooperate with other government agencies, the Commission may develop agreements of understanding, in accordance with the procedures outlined in this part, with appropriate agencies of the member jurisdictions regarding joint review of projects. These agreements may provide for joint efforts by staff, delegation of authority by an agency or the Commission, or any other matter to support cooperative review activities. Permits issued by a member jurisdiction agency shall be considered Commission approved if issued pursuant to an agreement of understanding with the Commission specifically providing therefor.

§ 803.8 Waiver/modification.

The Commission may, in its discretion, waive or modify any of the requirements of this or any other part of its regulations if the essential purposes set forth in § 803.2 continue to be served.

Subpart B—Application Procedure

§ 803.10 Purpose of this subpart.

The purpose of this subpart is to set forth procedures governing applications required by §§ 803.4, 803.5, and 18 CFR part 801.

§ 803.11 Preliminary consultations.

(a) Any project sponsor of a project that is or may be subject to the Commission's jurisdiction is encouraged, prior to making application for Commission review, to request a preliminary consultation with the Commission staff for an informal discussion of preliminary plans for the proposed project. To facilitate preliminary consultations, it is suggested that the project sponsor provide a general description of the proposed project, a map showing its location and, to the extent available, data concerning dimensions of any proposed structures, anticipated water needs, and the environmental impacts.

(b) Preliminary consultation shall be optional for the project sponsor (except with respect to aquifer test plans, see § 803.12) and shall not relieve the sponsor from complying with the requirements of the compact or with this part.

§ 803.12 Constant-rate aquifer testing.

(a) A project sponsor submitting an application pursuant to § 803.13 seeking approval to withdraw or increase a withdrawal of groundwater shall perform a constant-rate aquifer test prior to submission of such application.

(b) The project sponsor shall prepare a constant-rate aquifer test plan for prior review and approval by Commission staff before testing is undertaken.

(c) Unless otherwise specified, approval of a test plan is valid for two years from the date of approval.

(d) Approval of a test plan shall not be construed to limit the authority of the Commission to require additional testing or monitoring at any time (both before an approval and after).

§ 803.13 Submission of application.

(a) Project sponsors of projects subject to the review and approval of the Commission under § 803.4 shall, prior to the time the project is undertaken, submit an application to the Commission.

(b) Project sponsors submitting an application for approval due to a change in ownership of a project as required by § 803.4(a)(5), (b)(5) or (c)(4) of this part shall be permitted to continue operation of the project under an existing Commission approval pending action on the application by the Commission, provided that:

(1) On or before the date of transfer under which a change of ownership occurs, such project sponsor(s) certify an intention to comply with the terms and conditions of the existing Commission approval and assume all associated obligations, including the requirements of the Commission and the compact, which certification shall be on a form and in a manner prescribed by the Commission; and

(2) The application(s) required for approval are submitted to the Commission within ninety (90) days of the date of the transfer.

(c) To be deemed administratively complete, the application must include all information required and the applicable fee.

§ 803.14 Contents of application.

(a) Applications shall include, but not be limited to, the following information and, where applicable, shall be submitted on forms and in the manner prescribed by the Commission.

(1) Identification of project sponsor including any and all proprietors, corporate officers or partners, the mailing address of the same, and the name of the individual authorized to act for the sponsor.

(2) Description of project and site in terms of:

(i) Project location.

(ii) Project purpose.

(iii) Proposed quantity of water to be withdrawn.

(iv) Proposed quantity of water to be consumed, if applicable.

(v) Constant-rate aquifer tests. The project sponsor shall provide the results of a constant-rate aquifer test with any application which includes a request for a groundwater withdrawal. The project sponsor shall obtain Commission approval of the test procedures prior to initiation of the constant-rate aquifer test.

(vi) Water use and availability.

(vii) All water sources and the date of initiation of each source.

(viii) Supporting studies, reports, and other information upon which assumptions and assertions have been based.

(ix) Plans for avoiding or mitigating for consumptive use.

(x) Copies of any correspondence with member jurisdiction agencies.

(3) Anticipated impact of the proposed project on:

(i) Surface water characteristics (quality, quantity, flow regimen, other hydrologic characteristics).

(ii) Threatened or endangered species and their habitats.

(iii) Existing water withdrawals.

(4) Project estimated completion date and estimated construction schedule.

(b) The Commission may also require the project sponsor to submit the following information related to the project, in addition to the information required in paragraph (a) of this section, as deemed necessary.

(1) Description of project and site in terms of:

(i) Engineering feasibility.

(ii) Ability of project sponsor to fund the project or action.

(iii) Identification and description of reasonable alternatives, the extent of their economic and technical investigation, and an assessment of their potential environmental impact. In the case of a proposed diversion, the project sponsor should include information that may be required by § 803.25 or any policy of the Commission relating to diversions.

(iv) Compatibility of proposed project with existing and anticipated uses.

(v) Anticipated impact of the proposed project on:

(A) Flood damage potential considering the location of the project with respect to the flood plain and flood hazard zones.

(B) Recreation potential.

(C) Fish and wildlife (habitat quality, kind and number of species).

(D) Natural environment uses (scenic vistas, natural and manmade travel corridors, wild and wilderness areas, wild, scenic and recreation rivers).

(E) Site development considerations (geology, topography, soil characteristics, adjoining and nearby land uses, adequacy of site facilities).

(F) Historical, cultural and archaeological impacts.

(2) Governmental considerations:

(i) Need for governmental services or finances.

(ii) Commitment of government to provide services or finances.

(iii) Status of application with other governmental regulatory bodies.

(3) Any other information deemed necessary by the Commission.

(c) A report about the project prepared for any other purpose, or an application for approval prepared for submission to a member jurisdiction, may be accepted by the Commission provided the said report or application addresses all necessary items on the Commission's form or listed in this section, as appropriate.

§ 803.15 Notice of application.

(a) The project sponsor shall, no later than 10 days after submission of an application to the Commission, notify each municipality in which the project is located, the county planning agency of each county in which the project is located, and each contiguous property owner that an application has been submitted to the Commission. The project sponsor shall also publish at least once in a newspaper of general circulation serving the area in which the project is located, a notice of the submission of the application no later than 10 days after the date of submission. All notices required under this section shall contain a sufficient description of the project, its purpose, requested water withdrawal and consumptive use amounts, location and address, electronic mail address, and phone number of the Commission.

(b) The project sponsor shall provide the Commission with a copy of the United States Postal Service return receipt for the municipal notification under (a) and a proof of publication for the newspaper notice required under (a). The project sponsor shall also provide certification on a form provided by the Commission that it has made such other notifications as required under paragraph (a) of this section, including a list of contiguous property owners notified under paragraph (a). Until these items are provided to the Commission, processing of the application will not proceed.

§ 803.16 Completeness of application.

(a) The Commission's staff shall review the application, and if necessary, request the project sponsor to provide any additional information that is deemed pertinent for proper evaluation of the project.

(b) An application deemed incomplete in accordance with § 803.13(b) will be returned to the project sponsor, who shall have 30 days to cure the administrative deficiencies. An application deemed technically deficient may be returned to the project sponsor, who shall have a period of time prescribed by Commission staff to cure the technical deficiencies. Failure to cure either administrative or technical deficiencies within the prescribed time may result in termination of the application process and forfeiture of any fees submitted.

(c) The project sponsor has a duty to provide information reasonably necessary for the Commission's review of the application. If the project sponsor fails to respond to the Commission's request for additional information, the Commission may terminate the application process, close the file and so notify the project sponsor. The project sponsor may reapply without prejudice by submitting a new application and fee.

Subpart C—Standards for Review and Approval

§ 803.20 Purpose of this subpart.

The purpose of this subpart is to set forth general standards that shall be used by the Commission to evaluate all projects subject to review and approval by the Commission pursuant to §§ 803.4 and 803.5, and to establish special standards applicable to certain water withdrawals, consumptive uses and diversions. This subpart shall not be construed to limit the Commission's authority and scope of review. These standards are authorized under Sections 3.4(2), 3.4(8), 3.4(9), and 3.10 of the compact and are based upon, but not limited to, the goals, objectives, guidelines and criteria of the comprehensive plan.

§ 803.21 General standards.

(a) A project shall not be detrimental to the proper conservation, development, management, or control of the water resources of the basin.

(b) The Commission may modify and approve as modified, or may disapprove, a project if it determines that the project is not in the best interest of the conservation, development, management, or control of the basin's water resources, or is in conflict with the comprehensive plan.

(c) Disapprovals—other governmental jurisdictions.

(1) The Commission may suspend the review of any application under this part if the project is subject to the lawful jurisdiction of any member jurisdiction or any political subdivision thereof, and such member jurisdiction or political subdivision has disapproved or denied the project. Where such disapproval or denial is reversed on appeal, the appeal is final, and the project sponsor provides the Commission with a certified copy of the decision, the Commission shall resume its review of the application. Where, however, an application has been suspended hereunder for a period greater than three years, the Commission may terminate its review. Thereupon, the Commission shall notify the project sponsor of such termination and that the application fee paid by the project sponsor is forfeited. The project sponsor may reactivate the terminated docket by reapplying to the Commission, providing evidence of its receipt of all necessary governmental approvals and, at the discretion of the Commission, submitting new or updated information.

(2) The Commission may modify, suspend or revoke a previously granted approval if the project sponsor fails to obtain or maintain the approval of a member jurisdiction or political subdivision thereof having lawful jurisdiction over the project.

§ 803.22 Standards for consumptive uses of water.

(a) The project sponsors of all consumptive water uses subject to review and approval under § 803.4 of this part shall comply with this section.

(b) *Mitigation.* All project sponsors whose consumptive use of water is subject to review and approval under § 803.4 of this part shall mitigate such consumptive use. Except to the extent that the project involves the diversion of the waters out of the basin, public water supplies shall be exempt from the requirements of this section regarding consumptive use; provided, however, that nothing in this section shall be construed to exempt individual consumptive users connected to any such public water supply from the requirements of this section. Mitigation may be provided by one, or a combination of the following:

(1) During low flow periods as may be designated by the Commission for consumptive use mitigation.

(i) Reduce withdrawal from the approved source(s), in an amount equal to or greater than the project's total consumptive use, and withdraw water from alternative surface water storage or aquifers or other underground storage chambers or facilities approved by the Commission, from which water can be withdrawn for a period of 90 days without impact to surface water flows.

(ii) Release water for flow augmentation, in an amount equal to the project's total consumptive use, from surface water storage or aquifers, or other underground storage chambers or facilities approved by the Commission, from which water can be withdrawn for a period of 90 days without impact to surface water flows.

(iii) Discontinue the project's consumptive use, except that reduction of project sponsor's consumptive use to less than 20,000 gpd during periods of low flow shall not constitute discontinuance.

(2) Use, as a source of consumptive use water, surface storage that is subject to maintenance of a conservation release acceptable to the Commission. In any case of failure to provide the specified conservation release, such project shall provide mitigation in accordance with paragraph (3), below for the calendar year in which such failure occurs, and the Commission will reevaluate the continued acceptability of the conservation release.

(3) Provide monetary payment to the Commission, for annual consumptive use; in an amount and manner prescribed by the Commission.

(4) Provide documentation to the Commission demonstrating that all requirements enumerated in the approval are satisfied within 90 days from the date of Commission action, unless specified otherwise. These items may include, but are not limited to:

(i) Installation of water conservation release structures.

(ii) Evaluation of water loss due to system leakage.

(iii) Installation of measuring devices.

(iv) Operational plans and/or designs.

(5) Implement other alternatives approved by the Commission.

(c) *Determination of manner of mitigation.* The Commission will, in its sole discretion, determine the acceptable manner of mitigation to be provided by project sponsors whose consumptive use of water is subject to review and approval. Such a determination will be made after considering the project's location, source characteristics, anticipated amount of consumptive use, proposed method of mitigation and their effects on the purposes set forth in § 803.2 of this part, and any other pertinent factors. The Commission may modify, as appropriate, the manner of mitigation, including the magnitude and timing of any mitigating releases, required in a project approval.

(d) *Quality of water released for mitigation.* The physical, chemical and biological quality of water released for mitigation shall at all times meet the quality required for the purposes listed in § 803.2, as applicable.

(e) *Approval by rule for consumptive uses.*

(1) Any project whose sole source of water for consumptive use is a public water supply withdrawal, may be approved under this paragraph (e) in accordance with the following, unless the Commission determines that the project cannot be adequately regulated under this approval by rule:

(i) *Notification of Intent:* No fewer than 90 days prior to construction or implementation of a project or increase above a previously approved quantity of consumptive use, the project sponsor shall:

(A) Submit a Notice of Intent (NOI) on forms prescribed by the Commission, and the applicable application fee, along with any required attachments.

(B) Send a copy of the NOI to the appropriate agencies of the member state, and to each municipality and county in which the project is located.

(ii) Within 10 days after submittal of an NOI under (i), submit to the Commission proof of publication in a newspaper of general circulation in the location of the project, a notice of intent to operate under this permit by rule, which contains a sufficient description of the project, its purposes and its location. This notice shall also contain the address, electronic mail address and telephone number of the Commission.

(2) *Metering, daily use monitoring and quarterly reporting.* The project sponsor shall comply with metering, daily use monitoring and quarterly reporting as specified in § 803.30.

(3) *Standard conditions.* The standard conditions set forth in § 803.21 above shall apply to projects approved by rule.

(4) *Mitigation.* The project sponsor shall comply with mitigation in accordance with § 803.22 (b)(2) or (b)(3).

(5) *Compliance with other laws.* The project sponsor shall obtain all necessary permits or approvals required for the project from other federal, state or local government agencies having jurisdiction over the project. The Commission reserves the right to modify, suspend or revoke any approval under this paragraph (e) if the project sponsor fails to obtain or maintain such approvals.

(6) The Commission will grant or deny approval to operate under this approval by rule and will notify the project sponsor of such determination, including the quantity of consumptive use approved.

(7) Approval by rule shall be effective upon written notification from the Commission to the project sponsor, shall expire 15 years from the date of such notification, shall be deemed to rescind any previous consumptive use approvals, and shall be nontransferable.

(8) The Commission may, on a case-by-case basis, revoke or suspend an approval by rule hereunder if it determines that the project sponsor is not in compliance with the approval by rule or to avoid adverse impacts to the water resources of the basin or otherwise protect public health, safety, welfare or water resources.

§ 803.23 Standards for water withdrawals.

(a) The project sponsors of all withdrawals subject to review and approval under § 803.4 of this part shall comply with the following standards, in addition to those required pursuant to § 803.21.

(b) Limitations on withdrawals.

(1) The Commission may limit withdrawals to the amount (quantity and rate) of water that is needed to meet the reasonably foreseeable needs of the project sponsor.

(2) The Commission may deny an application, limit or condition an approval to ensure that the withdrawal will not cause adverse impacts to the water resources of the basin. The Commission may consider, without limitation, the following in its consideration of adverse impacts: Lowering of groundwater or stream flow levels; rendering competing supplies unreliable; affecting other water uses;

causing water quality degradation that may be injurious to any existing or potential water use; affecting fish, wildlife or other living resources or their habitat; causing permanent loss of aquifer storage capacity; or affecting low flow of perennial or intermittent streams.

(3) The Commission may impose limitations or conditions to mitigate impacts, including without limitation:

(i) Limit the quantity, timing or rate of withdrawal or level of drawdown.

(ii) Require the project sponsor to provide, at its own expense, an alternate water supply or other mitigating measures.

(iii) Require the project sponsor to implement and properly maintain special monitoring measures.

(iv) Require the project sponsor to implement and properly maintain stream flow protection measures.

(v) Require the project sponsor to develop and implement an operations plan acceptable to the Commission.

(4) The Commission may require the project sponsor to undertake the following, to ensure its ability to meet its present or reasonably foreseeable water needs from available groundwater or surface water without limitation:

(i) Investigate additional sources or storage options to meet the demand of the project.

(ii) Submit a water resource development plan that shall include, without limitation, sufficient data to address any supply deficiencies, identify alternative water supply options, and support existing and proposed future withdrawals.

§ 803.24 Standards for diversions.

(a) The project sponsors of all diversions subject to review and approval under § 803.4 of this part shall comply with the following standards.

(b) For projects involving out-of-basin diversions, the following requirements shall apply.

(1) Project sponsors shall:

(i) Demonstrate that they have made good faith efforts to develop and conserve sources of water within the importing basin, and have considered other reasonable alternatives to the diversion.

(ii) Adhere to all Commission rules, regulations or orders of any kind issued under the authority of the compact.

(iii) Comply with the general standards set forth in §§ 801.3, 803.21, and 803.22, and the applicable requirements of this part relating to consumptive uses and withdrawals.

(2) In deciding whether to approve a proposed diversion out of the basin, the Commission shall also consider and the project sponsor shall provide information related to the following factors:

(i) Any adverse effects and cumulative adverse effects the project may have on the ability of the Susquehanna River Basin, or any portion thereof, to meet its own present and future water needs.

(ii) The location, amount, timing, purpose and duration of the proposed diversion and how the project will individually and cumulatively affect the flow of any impacted stream or river, and the freshwater inflow of the Chesapeake Bay, including the extent to which any diverted water is being returned to the basin or the bay.

(iii) Whether there is a reasonably foreseeable need for the quantity of water requested by the project sponsor and how that need is measured against reasonably foreseeable needs in the Susquehanna River Basin.

(iv) The amount and location of water being diverted to the Susquehanna River Basin from the importing basin.

(v) The proximity of the project to the Susquehanna River Basin.

(vi) The project sponsor's pre-compact member jurisdiction approvals to withdraw or divert the waters of the basin.

(vii) Historic reliance on sources within the Susquehanna River Basin.

(3) In deciding whether to approve a proposed diversion out of the basin, the Commission may also consider, but is not limited to, the factors set forth in paragraphs (i) through (v) of this paragraph (b)(3). The decision whether to consider the factors in this paragraph (b) and the amount of information required for such consideration, if undertaken, will depend upon the potential for the proposed diversion to have an adverse impact on the ability of the Susquehanna River Basin, or any portion thereof, to meet its own present and future needs.

(i) The impact of the diversion on economic development within the Susquehanna River Basin, the member states or the United States of America.

(ii) The cost and reliability of the diversion versus other alternatives, including certain external costs, such as impacts on the environment or water resources.

(iii) Any policy of the member jurisdictions relating to water resources, growth and development.

(iv) How the project will individually and cumulatively affect other environmental, social and recreational values.

(v) Any land use and natural resource planning being carried out in the importing basin.

(c) For projects involving into-basin diversions, the following requirements shall apply.

(1) Project sponsors shall:

(i) Provide information on the source, amount, and location of the waterbody being diverted to the Susquehanna River Basin from the importing basin.

(ii) Provide information on the water quality classification, if any, of the Susquehanna River Basin stream to which diverted water is being discharged and the discharge location or locations.

(iii) Demonstrate that they have applied for or received all applicable withdrawal or discharge permits or approvals related to the diversion, and must demonstrate that the diversion will not result in water quality degradation that may be injurious to any existing or potential ground or surface water use.

§ 803.25 Water conservation standards.

Any project sponsor whose project is subject to Commission approval under this part proposing to withdraw water either directly or indirectly (through another user) from ground or surface water sources, or both, shall comply with the following requirements:

(a) *Public water supply.* As circumstances warrant, a project sponsor of a public water supply shall:

(1) Reduce distribution system losses to a level not exceeding 20 percent of the gross withdrawal.

(2) Install meters for all users.

(3) Establish a program of water conservation that will:

(i) Require installation of water conservation devices, as applicable, by all classes of users.

(ii) Prepare and distribute literature to customers describing available water conservation techniques.

(iii) Implement a water pricing structure which encourages conservation.

(iv) Encourage water reuse.

(b) *Industrial.* Project sponsors who use water for industrial purposes shall:

(1) Designate a company representative to manage plant water use.

(2) Install meters or other suitable devices or utilize acceptable flow measuring methods for accurate determination of water use by various parts of the company operation.

(3) Install flow control devices which match the needs of the equipment being used for production.

(4) Evaluate and utilize applicable recirculation and reuse practices.

(c) *Irrigation.* Project sponsors who use water for irrigation purposes shall utilize irrigation systems properly

designed for the sponsor's respective soil characteristics, topography and vegetation.

(d) *Effective date.* Notwithstanding the effective date for other portions of this part, this section shall apply to all ground and surface water withdrawals initiated on or after January 11, 1979.

Subpart D—Terms and Conditions of Approval

§ 803.30 Monitoring.

The Commission, as part of the project review, shall evaluate the proposed methodology for monitoring consumptive uses, water withdrawals and mitigating flows, including flow metering devices, stream gages, and other facilities used to measure the withdrawals or consumptive use of the project or the rate of stream flow. If the Commission determines that additional flow measuring, metering or monitoring devices are required, these shall be provided at the expense of the project sponsor, installed in accordance with a schedule set by the Commission, be accurate to within 5 percent, and shall be subject to inspection by the Commission at any time.

(a) Project sponsors of projects that are approved under this part shall:

(1) Measure and record on a daily basis, or such other frequency as may be approved by the Commission, the quantity of all withdrawals, using meters or other methods approved by the Commission.

(2) Certify, at the time of installation and no less frequently than once every 5 years, the accuracy of all measuring devices and methods to within 5 percent of actual flow, unless specified otherwise by the Commission.

(3) Maintain metering or other approved methods so as to provide a continuous, accurate record of the withdrawal or consumptive use.

(4) Measure groundwater levels in all approved production wells, as specified by the Commission.

(5) Measure groundwater levels at additional monitoring locations, as specified by the Commission.

(6) Measure water levels in surface storage facilities, as specified by the Commission.

(7) Measure stream flows, passby flows or conservation releases, as specified by the Commission, using methods and at frequencies approved by the Commission.

(b) Reporting.

(1) Project sponsors whose projects are approved under this section shall report to the Commission on a quarterly basis on forms and in a manner prescribed by the Commission all information recorded under paragraph (a) of this section, unless otherwise specified by the Commission.

(2) Project sponsors whose projects are approved under this section shall report to the Commission:

(i) Violations of withdrawal limits and any conditions of approvals, within 5 days of such violation.

(ii) Loss of measuring or recording capabilities required under paragraph (a)(1) of this section, within 1 day after any such loss continues for 5 consecutive days.

§ 803.31 Duration of approvals and renewals.

(a) After _____, approvals issued under this part shall have a duration equal to the term of any accompanying member jurisdiction license or permit regulating the same subject matter, but not longer than 15 years. If there is no such accompanying license or permit, or if no term is specified in such accompanying license or permit, the duration of a Commission approval issued under this part shall be no longer than 15 years. A project approved by the Commission prior to May 11, 1995, which did not specify a duration, shall have a duration of 30 years commencing on the date of initial approval, except, if there is an accompanying member jurisdiction license or permit regulating the same subject matter and specifying a duration of no more than 25 years, then the duration of the Commission approval shall be equal to the duration of the initial member jurisdiction approval.

(b) Commission approval of a project shall expire 3 years from the date of such approval if the withdrawal, diversion or consumptive use has not been commenced, unless extended in writing by the Commission upon written request from the project sponsor submitted no later than 120 days prior to such expiration. The Commission may grant an extension, for a period not to exceed 2 years, only upon a determination that the delay is due to circumstances beyond the project sponsor's control and that there is a likelihood of project implementation within a reasonable period of time. The Commission may also attach conditions to the granting of such extensions, including modification of any terms of approval that the Commission may deem appropriate.

(c) If a withdrawal, diversion or consumptive use approved by the Commission for a project is discontinued for a period of 5 consecutive years, the approval shall be null and void, unless a waiver is granted in writing by the Commission, upon written request by the project sponsor demonstrating due cause, prior to the expiration of such period.

(d) If the Commission determines that a project has been abandoned, by evidence of nonuse for a period of time and under such circumstances that an abandonment may be inferred, the Commission may rescind the approval for such withdrawal, diversion or consumptive use.

(e) Project sponsors shall apply for renewal of an approval no later than one year prior to the expiration of such approval. Such applications for renewal shall be submitted and reviewed in accordance with the same procedures and standards as for newly proposed projects. If a complete application is submitted in accordance with this requirement, the existing approval will be deemed extended until such time as the Commission renders a decision on the application unless the Commission notifies the project sponsor otherwise in writing.

§ 803.32 Reopening/modification.

(a) Once approved, the Commission, upon its own motion, or upon application of the project sponsor or any interested party, may at any time reopen any project docket and make additional orders that may be necessary to mitigate or avoid adverse impacts or to otherwise protect the public health, safety, and welfare or water resources. Whenever an application for reopening is filed by an interested party, the burden shall be upon that interested party to show, by a preponderance of the evidence, that a substantial adverse impact or a threat to the public health, safety and welfare or water resources exists that warrants reopening of the docket.

(b) If the project sponsor fails to comply with any term or condition of a docket approval, the commissioners may issue an order suspending, modifying or revoking its approval of the docket. The commissioners may also, in their discretion, suspend, modify or revoke a docket approval if the project sponsor fails to obtain or maintain other federal, state or local approvals.

(c) For any previously approved project where interference occurs, the Commission may require a project sponsor to provide a temporary source of potable water at its expense, pending a final determination of causation by the Commission.

(d) The Commission, upon its own motion, may at any time reopen any project docket and make additional corrective modifications that may be necessary.

§ 803.33 Interest on fees.

The Executive Director may establish interest to be paid on all overdue or outstanding fees of any nature that are payable to the Commission.

§ 803.34 Emergencies.

(a) *Emergency certificates.* The other requirements of these regulations notwithstanding, in the event of an emergency requiring immediate action to protect the public health, safety and welfare or to avoid substantial and irreparable injury to any person, property, or water resources when circumstances do not permit a review and determination in the regular course of the regulations in this part, the Executive Director, with the concurrence of the chairperson of the Commission and the commissioner from the affected member state, may issue an emergency certificate authorizing a project sponsor to take such action as the Executive Director may deem necessary and proper in the circumstances, pending review and determination by the Commission as otherwise required by this part.

(b) *Notification and application.* A project sponsor shall notify the Commission, prior to commencement of the project, that an emergency certificate is needed. If immediate action, as defined by this section, is required by a project sponsor and prior notice to the Commission is not possible, then the project sponsor must contact the Commission within one (1) business day of the action. Notification may be by certified mail, facsimile, telegram, mailgram, or other form of written communication. This notification must be followed within one (1) business day by submission of the following information:

(1) An emergency application form or copy of the State or Federal emergency water use application if the project sponsor also is requesting emergency approval from either a state or federal agency.

(2) As a minimum, the application information shall contain:

(i) Contact information.

(ii) Justification for emergency action (purpose).

(iii) Location map and schematic of proposed project.

(iv) Desired term of emergency use.

(v) Source(s) of the water.

(vi) Quantity of water.

(vii) Flow measurement system (such as metering).

(viii) Use restrictions in effect (or planned).

(ix) Description of potential adverse impacts and mitigating measures.

(x) Appropriate fee.

(c) *Emergency certificate issuance.* The Executive Director shall:

(1) Review and act on the emergency request as expeditiously as possible upon receipt of all necessary information stipulated in paragraph (b) (2) of this section.

(2) With the concurrence of the chairperson of the Commission and the commissioner from the affected member state, issue an emergency certificate for a term not to extend beyond the next regular business meeting of the Commission.

(3) Include conditions in the emergency certificate which may include, without limitation, monitoring of withdrawal and/or consumptive use amounts, measurement devices, public notification, and reporting, to assure minimal adverse impacts to the environment and other users.

(d) *Post approval.* Actions following issuance of emergency certificates may include, but are not limited to, the following:

(1) The Commission may, by resolution, extend the term of the emergency certificate, upon presentation of a request from the project sponsor accompanied by appropriate evidence that the conditions causing the emergency persist.

(2) If the condition is expected to persist longer than the specified extended term, the project sponsor must submit an application to the Commission for applicable water withdrawal or consumptive use, or the emergency certificate will terminate as specified. If the project sponsor has a prior Commission approval for the project, the project sponsor must submit an application to modify the existing docket accordingly.

(e) *Early termination.* With the concurrence of the chairperson of the Commission and the commissioner from the affected member state, the Executive Director may terminate an emergency certificate earlier than the specified duration if it is determined that an emergency no longer exists and/or the certificate holder has not complied with one or more special conditions for the emergency withdrawal or consumptive water use.

(f) *Restoration/mitigation.* Project sponsors are responsible for any necessary restoration or mitigation of environmental damage or interference with another user that may occur as a result of the emergency action.

§ 803.35 Fees.

Project sponsors shall have an affirmative duty to pay such fees as established by the Commission.

PART 804—WATER WITHDRAWAL REGISTRATION

Sec.

Authority: Secs. 3.4(2) and (9), 3.8, 3.10 and 15.2, Pub. L. 91–575, 84 Stat. 1509 et seq.

§ 804.1 Requirement.

In addition to any other requirements of Commission regulations, and subject to the consent of the affected member state to this requirement, any person withdrawing or diverting in excess of an average of 10,000 gpd for any consecutive 30-day period, from ground or surface water sources, as defined in part 803 of this chapter, shall register the amount of this withdrawal with the Commission and provide such other information as requested on forms prescribed by the Commission.

§ 804.2 Time limits.

(a) Except for agricultural water use projects, all registration forms shall be submitted within one year after May 11, 1995, or within six months of initiation of the water withdrawal or diversion, whichever is later; provided, however, that nothing in this section shall limit the responsibility of a project sponsor to apply for and obtain an approval as may be required under part 803 of this chapter. All registered withdrawals shall re-register with the Commission within five years of their initial registration, and at five-year intervals thereafter, unless the withdrawal is sooner discontinued. Upon notice by the Executive Director, compliance with a registration or reporting requirement, or both, of a member state, that is substantially equivalent to this requirement shall be considered compliance with this requirement.

(b) Project sponsors whose existing agricultural water use projects (i.e., projects coming into existence prior to March 31, 1997) withdraw or divert in excess of an average of 10,000 gpd for any consecutive 30-day period from a ground or surface water source shall register their use no later than March 31, 1997. Thereafter, project sponsors of new projects proposing to withdraw or divert in excess of 10,000 gpd for any consecutive 30-day period from a ground or surface water source shall be registered prior to project initiation.

§ 804.3 Administrative agreements.

The Commission may complete appropriate administrative agreements or informal arrangements to carry out this registration requirement through

the offices of member jurisdictions. Forms developed by the Commission shall apprise registrants of any such agreements or arrangements, and provide appropriate instructions to complete and submit the form.

§ 804.4 Effective date.

This part shall be effective on May 11, 1995, and shall apply to all present and future withdrawals or diversions irrespective of when such withdrawals or diversions were initiated.

§ 804.5 Definitions.

Terms used in this part shall be defined as set forth in § 803.3 of this chapter.

PART 805—HEARINGS/ ENFORCEMENT ACTIONS

Subpart A—Conduct of Hearings

Subpart B—Compliance and Enforcement

Authority: Secs. 3.5 (9), 3.5 (5), 3.8, 3.10, and 15.2, Pub. L. 91–575, 84 Stat. 1509 *et seq.*

Subpart A—Conduct of Hearings

§ 805.1 Public hearings.

(a) A public hearing shall be conducted in the following instances:

(1) Addition of projects or adoption of amendments to the comprehensive plan, except as otherwise provided by Section 14.1 of the compact.

(2) Rulemaking, except for corrective amendments.

(3) Consideration of projects, except projects approved pursuant to memoranda of understanding with member jurisdictions.

(4) Hearing requested by a member jurisdiction.

(5) As otherwise required by the compact or Commission regulations.

(b) A public hearing may be conducted by the Commission in any form or style chosen by the Commission when in the opinion of the Commission, a hearing is either appropriate or necessary to give adequate consideration to issues relating to public health, safety and welfare, or protection of the environment, or to gather additional information for the record or consider new information, or to decide factual disputes in connection with matters pending before the Commission.

(c) *Notice of public hearing.* At least 20 days before any public hearing required by the compact, notices stating the date, time, place and purpose of the hearing including issues of interest to the Commission shall be published at least once in a newspaper or newspapers of general circulation in the area affected. Occasions when public hearings are required by the compact include, but are not limited to, amendments to the comprehensive plan, drought emergency declarations, and review and approval of diversions. In all other cases, at least 10 days prior to the hearing, notice shall be posted at the office of the Commission (or on the Commission Web site), mailed by first class mail to the parties who, to the Commission's knowledge, will participate in the hearing, and mailed by first class mail to persons, organizations and news media who have made requests to the Commission for notices of hearings or of a particular hearing. In the case of hearings held in connection with rulemaking, notices need only be forwarded to the directors of the New York Register, the Pennsylvania Bulletin, the Maryland Register, and the **Federal Register**, and it is sufficient that this notice appear only in the **Federal Register** at least 20 days prior to the hearing and in each individual state publication at least 10 days prior to any hearing scheduled in that state.

(d) *Standard public hearing procedure.*

(1) Hearings shall be open to the public. Participants to a public hearing shall be the project sponsor and the Commission staff. Participants may also be any person wishing to appear at the hearing and make an oral or written statement. Statements may favor or oppose the project/proposal, or may simply express a position without specifically favoring or opposing the project/proposal. Statements shall be made a part of the record of the hearing, and written statements may be received up to and including the last day on which the hearing is held, or within a reasonable time thereafter as may be specified by the presiding officer, which time shall be not less than 10 days nor more than 30 days, except that a longer time may be specified if requested by a participant.

(2) Participants (except the project sponsor and the Commission staff) are encouraged to file with the Commission at its headquarters written notice of their intention to appear at the hearing. The notice should be filed at least three days prior to the opening of the hearing.

(e) *Representative capacity.* Participants wishing to be heard at a public hearing may appear in person or be represented by an attorney or other representative. A governmental authority may be represented by one of its officers, employees or by a designee of the governmental authority. Any individual intending to appear before the Commission in a representative capacity on behalf of a participant shall give the Commission written notice of the nature and extent of his/her authorization to represent the person on whose behalf he/she intends to appear.

(f) *Description of project.* When notice of a public hearing is issued, there shall be available for inspection at the Commission offices such plans, summaries, maps, statements, orders or other supporting documents which explain, detail, amplify, or otherwise describe the project the Commission is considering. Instructions on where and how the documents may be obtained will be included in the notice.

(g) *Presiding officer.* A public hearing shall be presided over by the Commission chair, the Executive Director, or any member or designee of the Commission. The presiding officer shall have full authority to control the conduct of the hearing and make a record of the same.

(h) *Transcript.* Whenever a project involving a diversion of water is the subject of a public hearing, and at all other times deemed necessary by the Commission or the Executive Director, a written transcript of the hearing shall be made. Other public hearings may be electronically recorded and a transcript made only if deemed necessary by the Executive Director or general counsel. A certified copy of the transcript and exhibits shall be available for review during business hours at the Commission's headquarters to anyone wishing to examine them. Persons wishing to obtain a copy of the transcript of any hearing shall make arrangements to obtain it directly from the recording stenographer at their expense.

(i) The Commission may conduct any public hearings in concert with any other agency of a member jurisdiction.

§ 805.2 Administrative appeals.

(a) A project sponsor or other person aggrieved by any action or decision of the Commission or Executive Director, may file a written appeal requesting a hearing. Such appeal shall be filed with the Commission within 30 days of that action or decision.

(b) The appeal shall identify the specific action or decision for which a hearing is requested, the date of the action or decision, the interest of the person requesting the hearing in the subject matter of the proposed hearing, and a summary statement setting forth the basis for objecting to or seeking review of the action or decision.

(c) Any request filed more than 30 days after an action or decision will be deemed untimely and such request for a hearing shall be considered denied unless upon due cause shown the Commission by unanimous vote otherwise directs. Receipt of requests for hearings, pursuant to this section, whether timely filed or not, shall be submitted by the Executive Director to the commissioners for their information.

(d) Hearings may be conducted by one or more members of the Commission, by the Executive Director, or by such other hearing officer as the Commission may designate.

(1) The petitioner or an intervener may also request a stay of the action or decision giving rise to the appeal pending final disposition of the appeal, which stay may be granted or denied by the Executive Director after consultation with the Commission chair and the member from the affected jurisdiction.

(2) The request for a stay shall include:

(i) Affidavits setting forth facts upon which issuance of the stay may depend.

(ii) An explanation of why affidavits have not accompanied the petition if no supporting affidavits are submitted.

(iii) The citations of applicable legal authority, if any.

(3) In addition to the contents of the request itself, the Executive Director, in granting or denying the request for stay, will consider the following factors:

(i) Irreparable harm to the petitioner or intervener.

(ii) The likelihood that the petitioner or intervener will prevail on the merits.

(iii) The likelihood of injury to the public or other parties.

(e) The Commission shall grant the hearing request pursuant to this section if it determines that an adequate record with regard to the action or decision is not available, the case involves a determination by the Executive Director or staff which requires further action by the Commission, or that the Commission has found that an administrative review is necessary or desirable. If the Commission denies any request for a hearing in a contested case, the party seeking such a hearing shall be limited to such remedies as may be provided by the compact or other applicable law or court rule.

(f) If administrative review is granted, the Commission shall refer the matter for hearing, to be held in accordance with § 805.3, and appoint a hearing officer.

(g) Intervention.

(1) If a hearing is scheduled, a notice of intervention may be filed with the Commission by persons other than the petitioner no later than 10 days before the date of the hearing. The notice of intervention shall state the interest of the person filing such notice, and the specific grounds of objection to the action or decision or other grounds for appearance.

(2) Any person filing a notice of intervention whose legal rights may be affected by the decision rendered hereunder shall be deemed an interested party. Interested parties shall have the right to be represented by counsel, to present evidence and to examine and cross-examine witnesses. In addition to interested parties, any persons having information concerning the subject matter of any hearing scheduled hereunder for inclusion in the record may submit a verified written statement to the Commission. Any interested party may submit a request to examine or cross-examine any person who submits a written statement. In the absence of a request for examination of such person, all verified written statements submitted shall be included with the record and such statements may be relied upon to the extent determined by the Hearing Officer or the Commission.

(h) Notice of any hearing to be conducted pursuant to this section shall comply with the provisions of Section 15.4 (b) of the compact relating to public notice unless otherwise directed by the Commission. In addition, both the petitioner and any interveners shall provide notice of their filings under this section to the list of additional interested parties compiled by the Commission under § 803.14 (a).

(i) Where a request for an appeal is made, the 90-day appeal period set forth in Section 3.10 (6) and Federal reservation (o) of the compact shall not commence until the Commission has either denied the request for or taken final action on an administrative appeal.

§ 805.3 Hearing on administrative appeal.

(a) Unless otherwise agreed to by the Commission and the party requesting an administrative appeal under § 805.2 of this part, the following procedures shall govern the conduct of hearing on an administrative appeal.

(b) *Hearing procedure.*

(1) The hearing officer shall have the power to rule upon offers of proof and the admissibility of evidence, to regulate the course of the hearing, to set the location or venue of the hearing, to hold conferences for the settlement or simplification of issues and the stipulation of facts, to determine the proper parties to the hearing, to determine the scope of any discovery procedures, to delineate the hearing issues to be adjudicated, and to take notice of judicially cognizable facts and general, technical, or scientific facts. The hearing officer may, with the consent of the parties, conduct all or part of the hearing or related proceedings by telephone conference call or other electronic means.

(2) The hearing officer shall cause each witness to be sworn or to make affirmation.

(3) Any party to a hearing shall have the right to present evidence, to examine and cross-examine witnesses, submit rebuttal evidence, and to present summation and argument.

(4) When necessary, in order to prevent undue prolongation of the hearing, the hearing officer may limit the number of times any witness may testify, the repetitious examination or cross-examination of witnesses, or the extent of corroborative or cumulative testimony.

(5) The hearing officer shall exclude irrelevant, immaterial or unduly repetitious evidence, but the parties shall not be bound by technical rules of evidence, and all relevant evidence of reasonably probative value may be received provided it shall be founded upon competent, material evidence which is substantial in view of the entire record.

(6) Any party may appear and be heard in person or be represented by an attorney at law who shall file an appearance with the Commission.

(7) Briefs and oral argument may be required by the hearing officer and may be permitted upon request made prior to the close of the hearing by any party. They shall be part of the record unless otherwise ordered by the presiding officer.

(8) The hearing officer may, as he/she deems appropriate, issue subpoenas in the name of the Commission requiring the appearance of witnesses or the production of books, papers, and other documentary evidence for such hearings.

(9) A record of the proceedings and evidence at each hearing shall be made by a qualified stenographer designated by the Executive Director. Where demanded by the petitioner, or any other person who is a party to the appeal proceedings, or where deemed necessary by the Hearing Officer, the testimony shall be transcribed. In those

instances where a transcript of proceedings is made, two copies shall be delivered to the Commission. The petitioner or other persons who desire copies shall obtain them from the stenographer at such price as may be agreed upon by the stenographer and the person desiring the transcript.

(c) *Staff and other expert testimony.* The Executive Director shall arrange for the presentation of testimony by the Commission's technical staff and other experts, as he/she may deem necessary or desirable, to be incorporated in the record to support the administrative action, determination or decision which is the subject of the hearing.

(d) *Written testimony.* If the direct testimony of an expert witness is expected to be lengthy or of a complex, technical nature, the presiding officer may order that such direct testimony be submitted to the Commission in sworn, written form. Copies of said testimony shall be served upon all parties appearing at the hearing at least 10 days prior to said hearing. Such written testimony, however, shall not be admitted whenever the witness is not present and available for cross-examination at the hearing unless all parties have waived the right of cross-examination.

(e) *Assessment of costs.*

(1) Whenever a hearing is conducted, the costs thereof, as herein defined, shall be assessed by the presiding officer to the petitioner or such other party as the hearing officer deems equitable. For the purposes of this section, costs include all incremental costs incurred by the Commission, including, but not limited to, hearing officer and expert consultants reasonably necessary in the matter, stenographic record, rental of the hall and other related expenses.

(2) Upon the scheduling of a matter for hearing, the hearing officer shall furnish to the petitioner a reasonable estimate of the costs to be incurred under this section. The project sponsor may be required to furnish security for such costs either by cash deposit or by a surety bond of a corporate surety authorized to do business in a member state.

(3) A party to an appeal under this section who desires to proceed *in forma pauperis* shall submit an affidavit to the Commission requesting the same and showing in detail the assets possessed by the party, and other information indicating the reasons why that party is unable to pay costs incurred under this section or to give security for such costs. The Commission may grant or refuse the request based upon the contents of the affidavit or other factors, such as whether it believes the appeal or intervention is taken in good faith.

(f) *Findings and report.* The hearing officer shall prepare a report of his/her findings and recommendations based on the record of the hearing. The report shall be served by personal service or certified mail (return receipt requested) upon each party to the hearing or its counsel. Any party may file objections to the report. Such objections shall be filed with the Commission and served on all parties within 20 days after the service of the report. A brief shall be filed together with objections. Any replies to the objections shall be filed and served on all parties within 10 days of service of the objections. Prior to its decision on such objections, the Commission may grant a request for oral argument upon such filing.

(g) *Action by the Commission.* The Commission will act upon the findings and recommendations of the presiding officer pursuant to law. The determination of the Commission will be in writing and shall be filed in Commission records together with any transcript of the hearing, report of the hearing officer, objections thereto, and all plans, maps, exhibits and other papers, records or documents relating to the hearing.

§ 805.4 Optional joint hearing.

(a) The Commission may order any two or more public hearings involving a common or related question of law or fact to be consolidated for hearing on any or all the matters at issue in such hearings.

(b) Whenever designated by a department, agency or instrumentality of a member jurisdiction, and within any limitations prescribed by the designation, a hearing officer designated pursuant to § 805.2 may also serve as a hearing officer, examiner or agent pursuant to such additional designation and may conduct joint hearings for the Commission and for such other department, agency or instrumentality. Pursuant to the additional designation, a hearing officer shall cause to be filed with the department, agency, or instrumentality making the designation, a certified copy of the transcript of the evidence taken before him and, if requested, of his findings and recommendations. Neither the hearing officer nor the Susquehanna River Basin Commission shall have or exercise any power or duty as a result of such additional designation to decide the merits of any matter arising under the separate laws of a member jurisdiction (other than the compact).

Subpart B—Compliance and Enforcement

§ 805.10 Scope of subpart.

This subpart shall be applicable where there is reason to believe that a person may have violated any provision of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, or any other requirements of the Commission. The said person shall hereinafter be referred to as the alleged violator.

§ 805.11 Duty to comply.

It shall be the duty of any person to comply with any provision of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, or any other requirements of the Commission.

§ 805.12 Investigative powers.

(a) The Commission or its agents or employees, at any reasonable time and upon presentation of appropriate credentials, may inspect or investigate any person or project to determine compliance with any provisions of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, or any other requirements of the Commission. Such employees or agents are authorized to conduct tests or sampling; to take photographs; to perform measurements, surveys, and other tests; to inspect the methods of construction, operation, or maintenance; to inspect all measurement equipment; and to audit, examine, and copy books, papers, and records pertinent to any matter under investigation. Such employees or agents are authorized to take any other action necessary to assure that any project is constructed, operated and maintained in accordance with any provisions of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, or any other requirements of the Commission.

(b) Any person shall allow authorized employees or agents of the Commission, without advance notice or a search warrant, at any reasonable time and upon presentation of appropriate credentials, and without delay, to have access to and to inspect all areas where a project is being constructed, operated, or maintained.

(c) Any person shall provide such information to the Commission as the Commission may deem necessary to determine compliance with any provisions of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, or any other requirements of the Commission. The person submitting information to the Commission shall verify that it is

true and accurate to the best of the knowledge, information, and belief of the person submitting such information. Any person who knowingly submits false information to the Commission shall be subject to civil penalties as provided in the compact and criminal penalties under the laws of the member jurisdictions relating to unsworn falsification to authorities.

§ 805.13 Notice of Violation.

When the Executive Director or his/her designee issues a Notice of Violation (NOV) to an alleged violator, such NOV will:

(a) List the violations that are alleged to have occurred.

(b) State a date by which the alleged violator shall respond to the NOV.

§ 805.14 Orders.

(a) Whether or not an NOV has been issued, where exigent circumstances warrant, the Executive Director may issue an order directing an alleged violator to cease and desist any action or activity to the extent such action or activity constitutes an alleged violation, or may issue any other order related to the prevention of further violations, or the abatement or remediation of harm caused by the action or activity.

(b) If the project sponsor fails to comply with any term or condition of a docket approval, the commissioners may issue an order suspending, modifying or revoking approval of the docket. The commissioners may also, in their discretion, suspend, modify or revoke a docket approval if the project sponsor fails to obtain or maintain other federal, state or local approvals.

(c) The commissioners may issue such other orders as may be necessary to enforce any provision of the compact, the Commission's rules or regulations, orders, approvals, docket conditions, or any other requirements of the Commission.

(d) It shall be the duty of any person to proceed diligently to comply with any order issued pursuant to this section.

§ 805.15 Show cause proceeding.

(a) The Executive Director may issue an order requiring an alleged violator to appear before the Commission and show cause why a penalty should not be assessed in accordance with the provisions of this chapter and Section 15.17 of the compact. The order to the alleged violator shall:

(1) Specify the nature and duration of violation(s) that is alleged to have occurred.

(2) Set forth the date and time on which, and the location where, the alleged violator shall appear before the Commission.

(3) Set forth any information to be submitted or produced by the alleged violator.

(4) Identify the limits of the civil penalty that will be recommended to the Commission.

(5) Name the individual(s) who has been appointed as the enforcement officer(s) in this matter pursuant to paragraph (b) of this section.

(b) Simultaneous with the issuance of the order to show cause, the Executive Director shall designate a staff member(s) to act as prosecuting officer(s).

(c) In the proceeding before the Commission, the prosecuting officer(s) shall present the facts upon which the alleged violation is based and may call any witnesses and present any other supporting evidence.

(d) In the proceeding before the Commission, the alleged violator shall have the opportunity to present both oral and written testimony and information, call such witnesses and present such other evidence as may relate to the alleged violation(s).

(e) The Commission shall require witnesses to be sworn or make affirmation, documents to be certified or otherwise authenticated and statements to be verified. The Commission may also receive written submissions or oral presentations from any other persons as to whether a violation has occurred and any resulting adverse consequences.

(f) The prosecuting officer(s) shall recommend to the Commission the amount of the penalty to be imposed. Based upon the record presented to the Commission, the Commission shall determine whether a violation(s) has occurred that warrants the imposition of a penalty pursuant to Section 15.17 of the compact. If it is found that such a violation(s) has occurred, the Commission shall determine the amount of the penalty to be paid, in accordance with § 805.16.

§ 805.16 Civil penalty criteria.

(a) In determining the amount of any civil penalty or any settlement of a violation, the Commission shall consider:

(1) Previous violations, if any, of any provision of the compact, the Commission's rules or regulations, orders, approvals, docket conditions or any other requirements of the Commission.

(2) The intent of the alleged violator.

(3) The extent to which the violation caused adverse consequences to public health, safety and welfare or to water resources.

(4) The costs incurred by the Commission or any member jurisdiction relating to the failure to comply with any provision of the compact, the Commission's rules or regulations, orders, approvals, docket conditions or any other requirements of the Commission.

(5) The extent to which the violator has cooperated with the Commission in correcting the violation and remediating any adverse consequences or harm that has resulted therefrom.

(6) The extent to which the failure to comply with any provision of the compact, the Commission's rules or regulations, orders, approvals, docket conditions or any other requirements of the Commission was economically beneficial to the violator.

(7) The length of time over which the violation occurred and the amount of water used during that time period.

(b) The Commission retains the right to waive any penalty or reduce the amount of the penalty recommended by the prosecuting officer under § 805.15(f) should it determine, after consideration of the factors in paragraph (a) of this section, that extenuating circumstances justify such action.

§ 805.17 Enforcement of penalties/abatement or remedial orders.

Any penalty imposed or abatement or remedial action ordered by the Commission or the Executive Director shall be paid or completed within such time period as shall be specified in the civil penalty assessment or order. The Executive Director and Commission counsel are authorized to take such additional action as may be necessary to assure compliance with this subpart. If a proceeding before a court becomes necessary, the penalty amount determined in accordance with § 805.15(f) shall constitute the penalty amount recommended by the Commission to be fixed by the court pursuant to Section 15.17 of the compact.

§ 805.18 Settlement by agreement.

(a) An alleged violator may offer to settle an enforcement proceeding by agreement. The Executive Director shall submit to the Commission any offer of settlement proposed by an alleged violator. No settlement will be submitted to the Commission by the Executive Director unless the alleged violator has indicated, in writing, acceptance of the terms of the agreement and the intention to comply with all requirements of the settlement agreement, including advance payment of any settlement amount or completion of any abatement or remedial action

within the time period provided or both. If the Commission determines not to approve a settlement agreement, the Commission may proceed with an enforcement action in accordance with this subpart.

(b) In the event the violator fails to carry out any of the terms of the settlement agreement, the Commission may reinstitute a civil penalty action and any other applicable enforcement action against the alleged violator.

Dated: June 14, 2006.

Paul O. Swartz,

Executive Director.

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Federal Register

Friday,
July 7, 2006

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

Small Takes of Marine Mammals Incidental to Specified Activities; Rim of the Pacific Antisubmarine Warfare Exercise Training Events Within the Hawaiian Islands Operating Area; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

I.D. 062806A

Small Takes of Marine Mammals Incidental to Specified Activities; Rim of the Pacific Antisubmarine Warfare Exercise Training Events Within the Hawaiian Islands Operating Area

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

ACTION: Notice; issuance of IHA.

SUMMARY: In accordance with the provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the U.S. Navy (Navy) to take marine mammals, by incidental Level B harassment only, while conducting Rim of the Pacific (RIMPAC) anti-submarine (ASW) training events, in which submarines, surface ships, and aircraft from the United States and multiple foreign nations participate in ASW training exercises, utilizing mid-frequency sonar (1 kilohertz (kHz) to 10 kHz), in the U.S. Navy's Hawaiian Operating Area (OpArea) during July, 2006.

DATES: Effective June 27, 2006, through August 15, 2006.

ADDRESSES: A copy of the IHA and the application are available by writing to Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Donna Wieting, Office of Protected Resources, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The National Defense Authorization Act of 2004 (NDAA) (Public Law 108–136) removed the "small numbers" limitation and amended the definition of "harassment" as it applies to a "military readiness activity" to read as follows:

> (i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or
>
> (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment]

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On March 16, 2006, NMFS received an application from the Navy for the taking, by harassment, of several species of marine mammals incidental to conducting RIMPAC ASW training events, in which submarines, surface ships, and aircraft from the United States and multiple foreign nations participate in ASW training exercises, in the OpArea, in the summer of 2006. The RIMPAC ASW exercises are considered a military readiness activity.

NMFS may not authorize the take of marine mammals by non-U.S. citizens; however, all foreign vessels participating in RIMPAC 2006 will be under the Operational Control (OPCON) of Commander, U.S. THIRD Fleet in his capacity as Officer Conducting the Exercise (OCE) and Commander, Combined Task Force (CCTF) RIMPAC (i.e., the Navy can require that a foreign vessel cease sonar operations). Additionally, all forces assigned, including foreign vessels, are required to comply with the environmental mitigation measures spelled out in the Navy's Annex L [Environmental], which will include all of the measures in the IHA, as a condition of participating in the exercise. This is part of the description of the activity.

Description of the Activity

RIMPAC 2006 ASW activities are scheduled to take place from June 26, 2006, to about July 28, 2006, with ASW training events planned on 21 days. The OpArea is approximately 210,000 square nautical miles (nm), however, the majority of RIMPAC ASW training would occur in the six areas delineated in Figure 2–1 in the Navy's application (approximate 46,000 square nm). ASW events typically rotate between these six modeled areas. These six areas were used for analysis as being representative of the marine mammal habitats and the bathymetric, seabed, wind speed, and sound velocity profile conditions within the entire OpArea. For purposes of this analysis, all likely RIMPAC ASW events were modeled as occurring in these six areas.

As a combined force during the exercises, submarines, surface ships, and aircraft will conduct ASW against opposition submarine targets. Submarine targets include real submarines, target drones that simulate the operations of an actual submarine, and virtual submarines interjected into the training events by exercise controllers. ASW training events are complex and highly variable. For RIMPAC, the primary event involves a Surface Action Group (SAG), consisting of one to five surface ships equipped with sonar, with one or more helicopters, and a P–3 aircraft searching for one or more submarines. There will be approximately four SAGs for RIMPAC 2006. For the purposes of analysis, each event in which a SAG

participates is counted as an ASW operation. There will be approximately 44 ASW operations during RIMPAC with an average event length of approximately 12 hours.

One or more ASW events may occur simultaneously within the OpArea. Each event was identified and modeled separately. If a break of more than 1 hour in ASW operations occurred, then the subsequent event was modeled as a separate event. Training event durations ranged from 2 hours to 24 hours. A total of 532 training hours were modeled for RIMPAC acoustic exposures. This total includes all potential ASW training that is expected to occur during RIMPAC.

Active Acoustic Sources

Tactical military sonars are designed to search for, detect, localize, classify, and track submarines. There are two types of sonars, passive and active. Passive sonars only listen to incoming sounds and, since they do not emit sound energy in the water, lack the potential to acoustically affect the environment. Active sonars generate and emit acoustic energy specifically for the purpose of obtaining information concerning a distant object from the sound energy reflected back from that object.

Modern sonar technology has developed a multitude of sonar sensor and processing systems. In concept, the simplest active sonars emit omnidirectional pulses ("pings") and time the arrival of the reflected echoes from the target object to determine range. More sophisticated active sonar emits an omnidirectional ping and then rapidly scans a steered receiving beam to provide directional, as well as range, information. More advanced sonars transmit multiple preformed beams, listening to echoes from several directions simultaneously and providing efficient detection of both direction and range.

The tactical military sonars to be deployed in RIMPAC are designed to detect submarines in tactical operational scenarios. This task requires the use of the sonar mid-frequency (MF) range (1 kilohertz [kHz] to 10 kHz) predominantly.

The types of tactical acoustic sources that would be used in training events during RIMPAC are discussed in the following paragraphs. For more information regarding how the Navy's determined which sources should not be included in their analysis, see the Estimates of Take Section later in this document.

Surface Ship Sonars–A variety of surface ships participate in RIMPAC, including guided missile cruisers, destroyers, guided missile destroyers, and frigates. Some ships (e.g., aircraft carriers) do not have any onboard active sonar systems, other than fathometers. Others, like guided missile cruisers, are equipped with active as well as passive sonars for submarine detection and tracking. For purposes of the analysis, all surface ship sonars were modeled as equivalent to SQS–53 having the nominal source level of 235 decibels (dB) re 1mPa^2–s (SEL). Since the SQS–53 hull mounted sonar is the U.S. Navy's most powerful surface ship hull mounted sonar, modeling this source is a conservative assumption tending towards an overestimation of potential effects (although, the conservativeness is offset some by the fact that the Navy did not model for any of the times (though brief and infrequent) that they may use a source level higher than 235 dB). Sonar ping transmission durations were modeled as lasting 1 second per ping and directional with a footprint that was 240 degrees wide, which is a conservative assumption that overestimates potential exposures, since actual ping durations will be less than 1 second. The SQS–53 hull mounted sonar transmits at center frequencies of 2.6 kHz and 3.3 kHz.

Submarine Sonars–Submarine sonars can be used to detect and target enemy submarines and surface ships. However, submarine active sonar use is very rare in the planned RIMPAC exercises, and, when used, very brief. Therefore, use of active sonar by submarines is unlikely to have any effect on marine mammals, and it was not modeled for RIMPAC 2006.

Aircraft Sonar Systems–Aircraft sonar systems that would operate during RIMPAC include sonobuoys and dipping sonar. Sonobuoys may be deployed by P–3 aircraft or helicopters; dipping sonars are used by carrier-based helicopters. A sonobuoy is an expendable device used by aircraft for the detection of underwater acoustic energy and for conducting vertical water column temperature measurements. Most sonobuoys are passive, but some can generate active acoustic signals as well. Dipping sonar is an active or passive sonar device lowered on cable by helicopters to detect or maintain contact with underwater targets. During RIMPAC, these systems active modes are only used briefly for localization of contacts and are not used in primary search capacity. Because active mode dipping sonar use is very brief, it is extremely unlikely its use would have any effect on marine mammals. The AN/AQS 13 (dipping sonar) used by carrier based helicopters was determined in the Environmental Assessment/Overseas Environmental Assessment of the SH–60R Helicopter/ALFS Test Program, October 1999, not to be problematic due to its limited use and very short pulse length. Therefore, the aircraft sonar systems were not modeled for RIMPAC 2006.

Torpedoes–Torpedoes are the primary ASW weapon used by surface ships, aircraft, and submarines. The guidance systems of these weapons can be autonomous or electronically controlled from the launching platform through an attached wire. The autonomous guidance systems are acoustically based. They operate either passively, exploiting the emitted sound energy by the target, or actively, ensonifying the target and using the received echoes for guidance. All torpedoes used for ASW during RIMPAC would be located in the range area managed by Pacific Missile Range Facility (PMRF) and would be non-explosive and recovered after use.

Acoustic Device Countermeasures (ADC)–ADCs are, in effect, submarine simulators that make noise to act as decoys to avert localization and/or torpedo attacks. Previous classified analysis has shown that, based on the operational characteristics (source output level and/or frequency) of these acoustic sources, the potential to affect marine mammals was unlikely, and therefore they were not modeled for RIMPAC 2006.

Training Targets–ASW training targets are used to simulate target submarines. They are equipped with one or a combination of the following devices: (1) acoustic projectors emanating sounds to simulate submarine acoustic signatures; (2) echo repeaters to simulate the characteristics of the echo of a particular sonar signal reflected from a specific type of submarine; and (3) magnetic sources to trigger magnetic detectors. Based on the operational characteristics (source output level and/or frequency) of these acoustic sources, the potential to affect marine mammals is unlikely, and therefore they were not modeled for RIMPAC 2006.

Range Sources–Range pingers are active acoustic devices that allow each of the in-water platforms on the range (e.g., ships, submarines, target simulators, and exercise torpedoes) to be tracked by the range transducer nodes. In addition to passively tracking the pinger signal from each range participant, the range transducer nodes also are capable of transmitting acoustic signals for a limited set of functions. These functions include submarine-warning signals, acoustic commands to submarine target simulators (acoustic command link), and occasional voice or

data communications (received by participating ships and submarines on range). Based on the operational characteristics (source output level and/or frequency) of these acoustic sources, the potential to affect marine mammals is unlikely, and therefore they were not modeled for RIMPAC 2006.

For detailed information regarding the proposed activity, please see the Navy's application and the associated Environmental Assessment (EA) (see **ADDRESSES**).

Description of Marine Mammals Potentially Affected by the Activity

There are 27 marine mammal species with possible or confirmed occurrence in the Navy's OpArea (Table 1): 25 cetacean species (whales, dolphins, and porpoises) and 2 pinnipeds (seals). In addition, five species of sea turtles are known to occur in the OpArea.

The most abundant marine mammals are rough-toothed dolphins, dwarf sperm whales, and Fraser's dolphins. The most abundant large whales are sperm whales. There are three seasonally migrating baleen whale species that winter in Hawaiian waters: minke, fin, and humpback whales. Humpback whales utilize Hawaiian waters as a major breeding ground during winter and spring (November through April), but should not be present during the RIMPAC exercise, which takes place in July. Because definitive information on the other two migrating species is lacking, their possible presence during the July timeframe is assumed, although it is considered unlikely. Seven marine mammal species listed as federally endangered under the Endangered Species Act (ESA) occur in the area: the humpback whale, North Pacific right whale, sei whale, fin whale, blue whale, sperm whale, and Hawaiian monk seal.

The Navy has used data compiled from available sighting records, literature, satellite tracking, and stranding and bycatch data to identify the species of marine mammals present in the OpArea. A combination of inshore survey data (within 25 nm (46 km); Mobley *et al.*, 2000) and offshore data (from 25 nm (46 km) offshore out to the U.S. Exclusive Economic Zone (EEZ) (200 nm (370 km) (, Barlow 2003) was used to estimate the density and abundance of marine mammals within the OpArea (Table 1). Additional information regarding the status and distribution of the 27 marine mammal species that occur in the OpArea may be found in the Navy's application and the associated EA (see **ADDRESSES**) and in NMFS' Stock Assessment Reports, which are available at: *http://www.nmfs.noaa.gov/pr/PR2/Stock__Assessment__Program/individual__sars.html.*

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	Scientific Name	Occurs[1]	Group Size[2]	Overall Abund.	Animals/km2 Offshore	Animals/km2 Inshore	Estimated Takes tts	Estimated Takes sub-tts	Estimated Takes UnID'd	Estimated Takes total
Order Cetacea										
Suborder Mysticeti (baleen whales)										
North Pacific right whale*	*Eubalaena japonica*	Rare			-	-			0	
Humpback whale*	*Megaptera novaeangliae*	Regular			-	-	0	0	0	0
Minke whale	*Balaenoptera acutorostrata*	Rare			-	-	0	0	0	0
Sei whale*	*Balaenoptera borealis*	Rare	3.4	77	0	-	1	27	0	28
Fin whale*	*Balaenoptera physalus*	Rare	2.6	174	0.0001	-	3	61	0	64
Blue whale*	*Balaenoptera musculus*	Rare					0	0	0	0
Bryde's whale	*Balaenoptera edini/brydei**	Regular	1.5	493	0.0002	-	0	96	1	97
Suborder Odontoceti (toothed whales)										
Sperm whale*	*Physeter macrocephalus*	Regular	7.8	7,082	0.0029	0.001	34	1,417	0	1,451
Pygmy sperm whale	*Kogia breviceps*	Regular	1	7,251	0.003	-	14	1,367	1	1,382
Dwarf sperm whale	*Kogia sima*	Regular	2.3	19,172	0.0078	-	48	3,898	1	3,947
Cuvier's beaked whale	*Ziphius cavirostris*	Regular	2	12,728	0.0052	0.0006	29	2,428	61	2,518
Blainville's beaked whale	*Mesoplodon densirostris*	Regular	2.3	2,138	0.0009	0.0009	3	443	11	457
Longman's beaked whale	*Indopacetus pacificus*	Regular	17.8	766	0.0003	-	0	140	5	145
Rough-toothed dolphin	*Steno bredanensis*	Regular	14.8	19,904	0.0081	0.0017	49	3,809	205	4,063
Common bottlenose dolphin	*Tursiops truncatus*	Regular	9.5	3,263	0.0013	0.0103	11	1,137	35	1,183
Pantropical spotted dolphin	*Stenella attenuata*	Regular	60	10,260	0.0042	0.0407	52	4,129	288	4,469
Spinner dolphin	*Stenella longirostris*	Regular	29.5	2,804	0.0011	0.0443	37	2,776	80	2,893
Striped dolphin	*Stenella coeruleoalba*	Regular	37.3	10,385	0.0042	0.0016	26	2,438	292	2,756
Risso's dolphin	*Grampus griseus*	Regular	15.4	2,351	0.001	-	3	443	25	471
Melon-headed whale	*Peponocephala electra*	Regular	89.2	2,947	0.0012	0.0021	4	621	1	626
Fraser's dolphin	*Lagenodelphis hosei*	Rare	286.3	16,836	0.0069	-	41	3,212	174	3,427
Pygmy killer whale	*Feresa attenuata*	Regular	14.4	817	0.0003	-	0	140	1	141
False killer whale	*Pseudorca crassidens*	Regular	10.3	268	0.0001	0.0017	0	137	1	138
Killer whale	*Orcinus orca*	Regular	6.5	430	0.0002	-	0	96	1	97
Short-finned pilot whale	*Globicephala macrorhynchus*	Regular	22.3	8,846	0.0036	0.0237	37	2,938	1	2,976
Order Carnivora										
Suborder Pinnipedia (seals, sea lions, walruses)										
Family Phocidae (true seals)										
Hawaiian monk seal*	*Monachus scauinslandi*	Regular					0	0		0
Northern elephant seal	*Mirounga angustirostris*	Rare								

Table 1. Estimated Abundance and Take of Animals in OpArea During RIMPAC ASW exercises

Potential Effects on Marine Mammals

NMFS has issued an IHA to the Navy for the take, by harassment, of marine mammals incidental to RIMPAC ASW exercises in the OpArea. Section 101(a)(5)(D) of the MMPA, the section pursuant to which IHAs are issued, may not be used to authorize mortality or serious injury leading to mortality. The Navy's analysis of the RIMPAC ASW exercises concluded that no mortality or serious injury leading to mortality would result from the proposed activities. However, NMFS believes, based on our interpretation of the limited available data bearing on this point, that some marine mammals may react to mid-frequency sonar, at received levels lower than those thought to cause direct physical harm, with behaviors that may, in some circumstances, lead to physiological harm, stranding, or, potentially, death. Therefore, NMFS has required additional mitigation and monitoring measures that were not originally proposed in the Navy's application, which are intended to ensure (in addition to the standard statutory requirement to effect the "least practicable adverse impact upon the affected species or stock") that mortality or serious injury leading to mortality does not result from the proposed activities.

Below, NMFS describes the potential effects on marine mammals of exposure to tactical sonar.

Metrics Used in Acoustic Effect Discussions

This section includes a brief explanation of the two sound measurements (sound pressure level (SPL) and sound exposure level (SEL)) frequently used in the discussions of acoustic effects in this document.

SPL

Sound pressure is the sound force per unit area, and is usually measured in micropascals (mPa), where 1 Pa is the pressure resulting from a force of one newton exerted over an area of one square meter.

The sound levels to which most mammals are sensitive extend over many orders of magnitude and, for this reason, it is convenient to use a logarithmic scale (the decibel (dB) scale) when measuring sound. SPL is expressed as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure level in underwater acoustics is 1 mPa, and the units for SPLs are dB re: 1 mPa.

SPL (in dB) = 20 log (pressure / reference pressure)

SPL is an instantaneous measurement and can be expressed as the peak, the peak-peak, or the root mean square (rms). Root mean square, which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates. SPL does not take the duration of a sound into account.

SEL

In this proposed authorization, effect thresholds are expressed in terms of sound exposure level SEL. SEL is an energy metric that integrates the squared instantaneous sound pressure over a stated time interval. The units for SEL are dB re: 1 mPa^2–s.

SEL = SPL + 10log(duration)

As applied to tactical sonar, the SEL includes both the ping SPL and the duration. Longer-duration pings and/or higher-SPL pings will have a higher SEL.

If an animal is exposed to multiple pings, the SEL in each individual ping is summed to calculate the total SEL. Since mammalian threshold shift (TS) data show less effect from intermittent exposures compared to continuous exposures with the same energy (Ward, 1997), basing the effect thresholds on the total received SEL may be a conservative approach for treating multiple pings; as some recovery may occur between pings and lessen the effect of a particular exposure.

The total SEL depends on the SPL, duration, and number of pings received. The acoustic effects on hearing that result in temporary threshold shift (TTS) and permanent threshold shift (PTS), do not imply any specific SPL, duration, or number of pings. The SPL and duration of each received ping are used to calculate the total SEL and determine whether the received SEL meets or exceeds the effect thresholds. For example, the sub-TTS behavioral effects threshold of 173 dB SEL would be reached through any of the following exposures:

A single ping with SPL = 173 dB re 1 mPa and duration = 1 second.A single ping with SPL = 170 dB re 1 mPa and duration = 2 seconds.Two pings with SPL = 170 dB re 1 mPa and duration = 1 second.Two pings with SPL = 167 dB re 1 mPa and duration = 2 seconds.

Potential Physiological Effects

Physiological function is any of a collection of processes ranging from biochemical reactions to mechanical interaction and operation of organs and tissues within an animal. A physiological effect may range from the most significant of impacts (i.e., mortality and serious injury) to lesser effects that would define the lower end of the physiological impact range, such as non-injurious short-term impacts to auditory tissues.

Exposure to some types of noise may cause a variety of physiological effects in mammals. For example, exposure to very high sound levels may affect the function of the visual system, vestibular system, and internal organs (Ward, 1997). Exposure to high-intensity sounds of sufficient duration may cause injury to the lungs and intestines (e.g., Dalecki *et al.*, 2002). Sudden, intense sounds may elicit a "startle" response and may be followed by an orienting reflex (Ward, 1997; Jansen, 1998). The primary physiological effects of sound, however, are on the auditory system (Ward, 1997).

Hearing Threshold Shift

In mammals, high-intensity sound may rupture the eardrum, damage the small bones in the middle ear, or over-stimulate the electromechanical hair cells that convert the fluid motions caused by sound into neural impulses that are sent to the brain. Lower level exposures may cause hearing loss, which is called a threshold shift (TS) (Miller, 1974). Incidence of TS may be either permanent, in which case it is called a permanent threshold shift (PTS), or temporary, in which case it is called a temporary threshold shift (TTS). PTS consists of non-recoverable physical damage to the sound receptors in the ear, which can include total or partial deafness, or an impaired ability to hear sounds in specific frequency ranges. TTS is recoverable and is considered to result from temporary, non-injurious impacts to hearing-related tissues. Hearing loss may affect an animal's ability to react normally to the sounds around it.

The amplitude, duration, frequency, and temporal pattern of sound exposure all affect the amount of associated TS. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS. For continuous sounds, exposures of equal energy will lead to approximately equal effects (Ward, 1997). For intermittent sounds, less TS will occur than from a continuous exposure with the same energy (some recovery will occur between exposures) (Kryter *et al.*, 1966; Ward, 1997). Additionally, though TTS is temporary, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause

PTS, at least in terrestrial mammals (Kryter, 1985).

Additional detailed information regarding threshold shifts may be viewed in the Navy's RIMPAC application and in the USWTR DEIS.

Acoustically Mediated Bubble Growth

One theoretical cause of injury to marine mammals is rectified diffusion (Crum and Mao, 1996), the process of increasing the size of a bubble by exposing it to a sound field. This process could be facilitated if the environment in which the ensonified bubbles exist is supersaturated with gas. Repetitive diving by marine mammals can cause the blood and some tissues to accumulate gas to a greater degree than is supported by the surrounding environmental pressure (Ridgway and Howard, 1979). The deeper and longer dives of some marine mammals (for example, beaked whales) are theoretically predicted to induce greater supersaturation (Houser *et al.*, 2001b). If rectified diffusion were possible in marine mammals exposed to high-level sound, conditions of tissue supersaturation could theoretically speed the rate and increase the size of bubble growth. Subsequent effects due to tissue trauma and emboli would presumably mirror those observed in humans suffering from decompression sickness.

It is unlikely that the short duration of sonar pings would be long enough to drive bubble growth to any substantial size, if such a phenomenon occurs. However, an alternative but related hypothesis has also been suggested: stable bubbles could be destabilized by high-level sound exposures such that bubble growth then occurs through static diffusion of gas out of the tissues. In such a scenario the marine mammal would need to be in a gas-supersaturated state for a long enough period of time for bubbles to become of a problematic size. Yet another hypothesis has speculated that rapid ascent to the surface following exposure to a startling sound might produce tissue gas saturation sufficient for the evolution of nitrogen bubbles (Jepson *et al.*, 2003). In this scenario, the rate of ascent would need to be sufficiently rapid to compromise behavioral or physiological protections against nitrogen bubble formation. Collectively, these hypotheses can be referred to as "hypotheses of acoustically mediated bubble growth."

Although theoretical predictions suggest the possibility for acoustically mediated bubble growth, there is considerable disagreement among scientists as to its likelihood (Piantadosi and Thalmann, 2004; Evans and Miller, 2003). To date, Energy Levels (ELs) predicted to cause *in vivo* bubble formation within diving cetaceans have not been evaluated (NOAA, 2002b). Further, although it has been argued that traumas from some recent beaked whale strandings are consistent with gas emboli and bubble-induced tissue separations (Jepson *et al.*, 2003), there is no conclusive evidence of this. Because evidence supporting the potential for acoustically mediated bubble growth is debatable, this proposed IHA does not give it any special treatment. Additionally, the required mitigation measures, which are designed to avoid behavioral disruptions that could result in abnormal vertical movement by whales through the water column, should also reduce the potential for creating circumstances that theoretically contribute to harmful bubble growth.

Additional information on the physiological effects of sound on marine mammals may be found in the Navy's IHA application and associated Environmental Assessment, the USWTR DEIS, and on the Ocean Acoustic Program section of the NMFS website (see **ADDRESSES**).

Stress Responses

In addition to PTS and TTS, exposure to mid-frequency sonar is likely to result in other physiological changes that have other consequences for the health and ecological fitness of marine mammals. There is mounting evidence that wild animals respond to human disturbance in the same way that they respond to predators (Beale and Monaghan, 2004; Frid, 2003; Frid and Dill, 2002; Gill *et al.*, 2000; Gill and Sutherland, 2001; Harrington and Veitch, 1992; Lima, 1998; Romero, 2004). These responses manifest themselves as interruptions of essential behavioral or physiological events, alteration of an animal's time or energy budget, or stress responses in which an animal perceives human activity as a potential threat and undergoes physiological changes to prepare for a flight or fight response or more serious physiological changes with chronic exposure to stressors (Frid and Dill, 2002; Romero, 2004; Sapolsky *et al.*, 2000; Walker *et al.*, 2005).

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Sapolsky *et al.*, 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it develops a biological response or defense that consists of a combination of the four general biological defense responses: behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune response.

The physiological mechanisms behind stress responses involving the hypothalamus-pituitary-adrenal glands have been well-established through controlled experiment in the laboratory and natural settings (Korte *et al.* 2005; McEwen and Seeman, 2000; Moberg, 1985; 2000; Sapolsky *et al.*, 2005). Relationships between these physiological processes, animal behavior, neuroendocrine responses, immune responses, inhibition of reproduction (by suppression of pre-ovulatory luteinizing hormones), and the costs of stress responses have also been documented through controlled experiment in both laboratory and free-living animals (for examples see, Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005; Reneerkens *et al.*, 2002; Thompson and Hamer, 2000; Tilbrook *et al.*, 2000).

The available evidence suggests that: with the exception of unrelieved pain or extreme environmental conditions, in most animals (including humans) chronic stress results from exposure to a series of acute stressors whose cumulative biotic costs produce a pathological or pre-pathological state in an animal. The biotic costs can result from exposure to an acute stressor or from the accumulation of a series of different stressors acting in concert before the animal has a chance to recover.

Although these responses have not been explicitly identified in marine mammals, they have been identified in other vertebrate animals and every vertebrate mammal that has been studied, including humans. Because of the physiological similarities between marine mammals and other mammal species, NMFS believes that acoustic energy sufficient to trigger onset PTS or TTS is likely to initiate physiological stress responses. More importantly, NMFS believes that marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS.

Potential Behavioral Effects

For a military readiness activity, Level B Harassment is defined as "any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing,

breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered."

As discussed above, TTS consists of temporary, short-term impacts to auditory tissue that alter physiological function, but that are fully recoverable without the requirement for tissue replacement or regeneration. An animal that experiences a temporary reduction in hearing sensitivity suffers no permanent injury to its auditory system, but, for an initial time post-exposure, may not perceive some sounds due to the reduction in sensitivity. As a result, the animal may not respond to sounds that would normally produce a behavioral reaction (such as a predator or the social calls of conspecifics, which play important roles in mother-calf relations, reproduction, foraging, and warning of danger). This lack of response qualifies as a temporary disruption of normal behavioral patterns - the animal is impeded from responding in a normal manner to an acoustic stimulus.

NMFS also considers disruption of the behavior of marine mammals that can result from sound levels lower than those considered necessary for TTS to occur (often referred to as sub-TTS behavioral disruption). Though few studies have specifically documented the effects of tactical mid-frequency sonar on the behavior of marine mammals in the wild, many studies have reported the effects of a wide range of intense anthropogenic acoustic stimuli on specific facets of marine mammal behavior, including migration (Malme *et al.*, 1984; Ljungblad *et al.*, 1988; Richardson *et al.*, 1999), feeding (Malme *et al.*, 1988), and surfacing (Nowachek et al., 2004). Below, NMFS summarizes the results of two studies and one after-the-fact investigation wherein the natural behavior patterns of marine mammals exposed to levels of tactical mid-frequency sonar, or sounds similar to mid-frequency sonar, lower than those thought to induce TTS were disrupted to the point where it was abandoned or significantly altered:

(1) Finneran and Schlundt (2004) analyzed behavioral observations from related TTS studies (Schlundt et al., 2000; Finneran et al., 2001; 2003) to calculate cetacean behavioral reactions as a function of known noise exposure. During the TTS experiments, four dolphins and two white whales were exposed during a total of 224 sessions to 1–s pulses between 160 and 204 dB re 1 mPa (root-mean-square sound pressure level (SPL)), at 0.4, 3, 10, 20, and 75 kHz. Finneran and Schlundt (2004) evaluated the behavioral observations in each session and determined whether a "behavioral alteration" (ranging from modifications of response behavior during hearing sessions to attacking the experimental equipment) occurred. For each frequency, the percentage of sessions in which behavioral alterations occurred was calculated as a function of received noise SPL. By pooling data across individuals and test frequencies, respective SPL levels coincident with responses by 25, 50, and 75 percent behavioral alteration were documented. 190 dB re 1 mPa (SPL) is the point at which 50 percent of the animals exposed to 3, 10, and 20 kHz tones were deemed to respond with some behavioral alteration, and the threshold that the Navy originally proposed for sub-TTS behavioral disturbance.

(2) Nowacek *et al.* (2004) conducted controlled exposure experiments on North Atlantic right whales using ship noise, social sounds of con-specifics, and an alerting stimulus (frequency modulated tonal signals between 500 Hz and 4.5 kHz). Animals were tagged with acoustic sensors (D-tags) that simultaneously measured movement in three dimensions. Whales reacted strongly to alert signals at received levels of 133–148 dB SPL, mildly to conspecific signals, and not at all to ship sounds or actual vessels. The alert stimulus caused whales to immediately cease foraging behavior and swim rapidly to the surface. Although SEL values were not directly reported, based on received exposure durations, approximate received values were on the order of 160 dB re: 1 mPa^2–s.

(3) NMFS (2005) evaluated the acoustic exposures and coincident behavioral reactions of killer whales in the presence of tactical mid-frequency sonar. In this case, none of the animals were directly fitted with acoustic dosimeters. However, based on a Naval Research Laboratory (NRL) analysis that took advantage of the fact that calibrated measurements of the sonar signals were made in situ and using advanced modeling to bound likely received exposures, estimates of received sonar signals by the killer whales were possible. Received SPL values ranged from 121 to 175 dB re: 1 mPa. The most probable SEL values were 169.1 to 187.4 dB re: 1 mPa^2–s; worst-case estimates ranged from 177.7 to 195.8 dB re: 1 mPa^2–s. Researchers observing the animals during the course of sonar exposure reported unusual alterations in swimming, breathing, and diving behavior.

For more detailed information regarding how marine mammals may respond to sound, see the Navy's IHA application, the Navy's associated EA, Richardson's Marine Mammals and Noise (1995), or the references cited on NMFS' Ocean Acoustic Program website (see **ADDRESSES**)

Harassment Thresholds

For the purposes of this IHA, NMFS recognizes three levels of take; Level A Harassment (Injury), Level B Harasssment (Behavioral Disruption), and mortality (or serious injury that may lead to mortality) (Table 2). Mortality, or serious injury leading to mortality, may not be authorized with an IHA.

NMFS has determined that for acoustic effects, acoustic thresholds are the most effective way to consistently both apply measures to avoid or minimize the impacts of an action and to quantitatively estimate the effects of an action. Thresholds are commonly used in two ways: (1) To establish a shut-down or power down zone, i.e., if an animal enters an area calculated to be ensonified above the level of an established threshold, a sound source is powered down or shut down; and (2) to calculate take, for example, if the Level A Harassment threshold is 215 dB, a model may be used to calculate the area around the sound source that will be ensonified to that level or above, then, based on the estimated density of animals and the distance that the sound source moves, NMFS can estimate the number of marine mammals exposed to 215 dB. The rationale behind the acoustic thresholds proposed for this authorization are discussed below.

TABLE 2. THE THREE LEVELS OF TAKE ADDRESSED IN THE MMPA, HOW NMFS MEASURES THEM IN REGARD TO ACOUSTIC EFFECTS, AND THE PROPOSED THRESHOLDS FOR THIS AUTHORIZATION

Levels of Take Pursuant to the MMPA	Basis of Threshold	Proposed Threshold
Level A Harassment (Injury)	Permanent Threshold Shift (PTS)	215 dB (SEL).
Level B Harassment (Behavioral Effects)	Temporary Threshold Shift (TTS)	195 dB (SEL)
	Sub–TTS Behavioral Effects	173 dB (SEL).

TABLE 2. THE THREE LEVELS OF TAKE ADDRESSED IN THE MMPA, HOW NMFS MEASURES THEM IN REGARD TO ACOUSTIC EFFECTS, AND THE PROPOSED THRESHOLDS FOR THIS AUTHORIZATION—Continued

Levels of Take Pursuant to the MMPA	Basis of Threshold	Proposed Threshold
Mortality, or Serious Injury That May Lead to Mortality (Stranding)	Not enough information for quantitative threshold	May not be authorized with an IHA.

TTS

Because it is non-injurious, NMFS considers TTS as Level B harassment (behavioral disruption) that is mediated by physiological effects on the auditory system. The smallest measurable amount of TTS (onset-TTS) is taken as the best indicator for slight temporary sensory impairment. However, as mentioned earlier, NMFS believes that behavioral disruptions may result from received levels of tactical sonar lower than those thought to induce TTS and, therefore, NMFS does not consider onset TTS to be the lowest level at which Level B Harassment may occur. NMFS considers the threshold for Level B Harasment as the received levels from which sub-TTS behavioral disruptions are likely to result (discussed in Sub-TTS sub-section). However, the threshold for Level A Harassment (PTS) is derived from the threshold for TTS and, therefore, it is necessary to describe how the TTS threshold was developed.

The proposed TTS threshold is primarily based on the cetacean TTS data from Schlundt *et al.* (2000). These tests used short-duration tones similar to sonar pings, and they are the most directly relevant data for the establishing TTS criteria. The mean exposure EL required to produce onset-TTS in these tests was 195 dB re 1 mPa^2–s. This result is corroborated by the short-duration tone data of Finneran *et al.* (2000, 2003) and the long-duration noise data from Nachtigall *et al.* (2003a,b). Together, these data demonstrate that TTS in cetaceans is correlated with the received EL and that onset-TTS exposures are fit well by an equal-energy line passing through 195 dB re 1 mPa^2–s.

The justification for establishing the 195 dB acoustic criteria for TTS is described in detail in both the Navy's RIMPAC IHA application and the USWTR DEIS (see **ADDRESSES**).

PTS

PTS consists of non-recoverable physical damage to the sound receptors in the ear and is, therefore, classified as Level A harassment under the MMPA. For acoustic effects, because the tissues of the ear appear to be the most susceptible to the physiological effects of sound, and because threshold shifts (TSs) tend to occur at lower exposures than other more serious auditory effects, NMFS has determined that permanent threshold shift (PTS) is the best indicator for the smallest degree of injury that can be measured. Therefore, the acoustic exposure associated with onset-PTS is used to define the lower limit of the Level A harassment.

PTS data do not currently exist for marine mammals and are unlikely to be obtained due to ethical concerns. However, PTS levels for these animals may be estimated using TTS data and relationships between TTS and PTS. NMFS proposes the use of 215 dB re 1 mPa^2–s as the acoustic threshold for PTS. This threshold is based on a 20 dB increase in exposure EL over that required for onset-TTS (195 dB). Extrapolations from terrestrial mammal data indicate that PTS occurs at 40 dB or more of TS, and that TS growth occurs at a rate of approximately 1.6 dB TS per dB increase in EL. There is a 34–dB TS difference between onset-TTS (6 dB) and onset-PTS (40 dB). Therefore, an animal would require approximately 20dB of additional exposure (34 dB divided by 1.6 dB) above onset-TTS to reach PTS.

The justification for establishing the 215–dB acoustic criteria for PTS is described in detail in both the Navy's RIMPAC IHA application and the Undersea Warfare Training Range USWTR DEIS.

Sub-TTS Behavioral Disruption

NMFS believes that behavioral disruption of marine mammals may result from received levels of mid-frequency sonar lower than those believed necessary to induce TTS, and further, that the lower limit of Level B Harassment may be defined by the received sound levels associated with these sub-TTS behavioral disruptions. As of yet, no controlled exposure experiments have been conducted wherein wild cetaceans are deliberately exposed to tactical mid-frequency sonar and their reactions carefully observed. However, NMFS believes that in the absence of controlled exposure experiments, the following investigations and reports (described previously in the Behavioral Effects section) constitute the best available scientific information for establishing an appropriate acoustic threshold for sub-TTS behavioral disruption: (1) Finneran and Schlundt (2004), in which behavioral observations from TTS studies of captive bottlenose dophins and beluga whales are analyzed as a function of known noise exposure; (2) Nowachek *et al.* (2004), in which controlled exposure experiments were conducted on North Atlantic right whales using ship noise, social sounds of con-specifics, and an alerting stimulus; and (3) NMFS (2005), in which the behavioral reactions of killer whales in the presence of tactical mid-frequency sonar were observed, and analyzed after the fact. Based on these three studies, NMFS has set the sub-TTS behavioral disruption threshold at 173 dB re 1 mPa^2–s (SEL).

The Finneran and Schlundt (2004) analysis is an important piece in the development of an appropriate acoustic threshold for sub-TTS behavioral disruption because: (1) researchers had superior control over and ability to quantify noise exposure conditions; (2) behavioral patterns of exposed marine mammals were readily observable and definable; and, (3) fatiguing noise consisted of tonal noise exposures with frequencies contained in the tactical mid-frequency sonar bandwidth. In Finneran and Schlundt (2004) 190 dB re 1 mPa (SPL) is the point at which 50 percent of the animals exposed to 3, 10, and 20 kHz tones were deemed to respond with some behavioral alteration. This 50 percent behavior alteration level (190 dB SPL) may be converted to an SEL criterion of 190 dB re 1 mPa^2–s (the numerical values are identical because exposure durations were 1–s), which provides consistency with the Level A (PTS) effects threshold, which are also expressed in SEL. The Navy proposed 190 dB (SEL) as the acoustic threshold for sub-TTS behavioral disruption in the first IHA application they submitted to NMFS.

NMFS acknowledges the advantages arising from the use of behavioral observations in controlled laboratory conditions; however, there is considerable uncertainty regarding the

validity of applying data collected from trained captives conditioned to not respond to noise exposure in establishing thresholds for behavioral reactions of naive wild individuals to a sound source that apparently evokes strong reactions in some marine mammals. Although wide-ranging in terms of sound sources, context, and type/extent of observations reported, the large and growing body of literature regarding behavioral reactions of wild, naive marine mammals to anthropogenic exposure generally suggests that wild animals are behaviorally affected at significantly lower levels than those determined for captive animals by Finneran and Schlundt (2004). For instance, some cetaceans exposed to human noise sound sources, such as seismic airgun sounds and low frequency sonar signals, have been shown to exhibit avoidance behavior when the animals are exposed to noise levels of 140–160 dB re: 1 mPa under certain conditions (Malme *et al.*, 1983; 1984; 1988; Ljungblad *et al.*, 1988; Tyack and Clark, 1998). Richardson *et al.* (1995) reviewed the behavioral response data for many marine mammal species and a wide range of human sound sources.

Two specific situations for which exposure conditions and behavioral reactions of free-ranging marine mammals exposed to sounds very similar to those proposed for use in RIMPAC are considered by Nowacek *et al.* (2004) and NMFS (2005) (described previously in Behavioral Effects subsection). In the Nowacek *et al.* (2004) study, North Atlantic right whales reacted strongly to alert signals at received levels of 133–148 dB SPL, which, based on received exposure durations, is approximately equivalent to 160 dB re: 1 mPa^2–s (SEL). In the NMFS (2005) report, unusual alterations in swimming, breathing, and diving behaviors of killer whales observed by researchers in Haro Strait were correlated, after the fact, with the presence of estimated received sound levels between 169.1and 187.4 dB re: 1 mPa^2–s (SEL).

While acknowledging the limitations of all three of these studies and noting that they may not necessarily be predictive of how wild cetaceans might react to mid-frequency sonar signals in the OpArea, NMFS believes that these three studies are the best available science to support the selection of an acoustic sub-TTS behavioral disturbance threshold at this time. Taking into account all three studies, NMFS has established 173 dB re: 1 mPa^2 (SEL) as the threshold for sub-TTS behavioral disturbance.

Stranding and Mortality

Over the past 10 years, there have been four stranding events coincident with military mid-frequency sonar use that are believed to most likely have been caused by exposure to the sonar. These occurred in Greece (1996), the Bahamas (2000), Madeira (2000) and Canary Islands (2002). In 2004, during the RIMPAC exercises, between 150–200 usually pelagic melon-headed whales occupied the shallow waters of the Hanalei Bay, Kaua'i, Hawaii for over 28 hours. NMFS determined that the mid-frequency sonar was, a plausible, if not likely, contributing factor in what may have been a confluence of events that led to the Hanalei Bay stranding. A number of other stranding events coincident with the operation of mid-frequency sonar and resulting in the death of beaked whales or other species (minke whales, dwarf sperm whales, pilot whales) have been reported, though the majority have not been investigated to the level of the Bahamas stranding and, therefore, other causes cannot be ruled out.

Greece, Madeira, and Canary Islands

Twelve Cuvier's beaked whales stranded along the western coast of Greece in 1996. The test of a low- and mid-frequency active sonar system conducted by NATO was correlated with the strandings by an analysis published in Nature. A subsequent NATO investigation found the strandings to be closely related, in time, to the movements of the sonar vessel, and ruled out other physical factors as a cause.

In 2000, four beaked whales stranded in Madeira while several NATO ships were conducting an exercise near shore. Scientists investigating the stranding found that the injuries, which included blood in and around the eyes, kidney lesions, and pleural hemorrhage, as well as the pattern of the stranding suggested that a similar pressure event precipitated or contributed to strandings in both Madeira and Bahamas (see Bahamas sub-section).

In 2002, at least 14 beaked whales of three different species stranded in the Canary Islands while a naval exercise including Spanish vessels, U.S. vessels, and at least one vessel equipped with mid-frequency sonar was conducted in the vicinity. Four more beaked whales stranded over the next several days. The subsequent investigation, which was reported in both Nature and Veterinary Pathology, revealed a variety of traumas, including emboli and lesions suggestive of decompression sickness.

Bahamas

NMFS and the Navy prepared a joint report addressing the multi-species stranding in the Bahamas in 2000, which took place within 24 hours of U.S. Navy ships using active mid-frequency sonar as they passed through the Northeast and Northwest Providence Channels. Of the 17 cetaceans that stranded (Cuvier's beaked whales, Blainsville's beaked whales, Minke whales, and a spotted dolphin), seven animals died on the beach (5 Cuvier's beaked whales, 1 Blainsville's beaked whale, and the spotted dolphin) and the other 10 were returned to the water alive (though their fate is unknown). A comprehensive investigation was conducted and all possible causes of the stranding event were considered, whether they seemed likely at the outset or not. The only possible contributory cause to the strandings and cause of the lesions that could not be ruled out was intense acoustic signals (the dolphin necropsy revealed a disease and the death is considered unrelated to the others).

Based on the way in which the strandings coincided with ongoing naval activity involving tactical mid-frequency sonar use, in terms of both time and geography, the nature of the physiological effects experienced by the dead animals, and the absence of any other acoustic sources, the investigation team concluded that mid-frequency sonars aboard U.S. Navy ships that were in use during the sonar exercise in question were the most plausible source of this acoustic or impulse trauma. This sound source was active in a complex environment that included the presence of a surface duct, unusual and steep bathymentry, a constricted channel with limited egress, intensive use of multiple, active sonar units over an extended period of time, and the presence of beaked whales that appear to be sensitive to the frequencies produced by these sonars. The investigation team concluded that the cause of this stranding event was the confluence of the Navy mid-frequency sonar and these contributory factors working together, and further recommended that the Navy avoid operating mid-frequency sonar in situations where these five factors would be likely to occur. This report does not conclude that all five of these factors must be present for a stranding to occur, nor that beaked whales are the only species that could potentially be affected by the confluence of the other factors. Based on this, NMFS believes that the presence of surface ducts, steep bathymetry, and/or constricted channels added to the operation of mid-frequency

sonar in the presence of cetaceans (especially beaked whales and, potentially, deep divers) may increase the likelihood of producing a sound field with the potential to cause cetaceans to strand, and therefore, necessitates caution.

Hanalei Bay

On July 3–4, 2004, between 150–200 melon-headed whales occupied the shallow waters of the Hanalei Bay, Kaua'i, Hawaii for over 28 hours. Attendees of a canoe blessing observed the animals entering the Bay in a single wave formation at 7 a.m. on July 3, 2004. The animals were observed moving back into the shore from the mouth of the Bay at 9 a.m. The usually pelagic animals milled in the shallow bay and were returned to deeper water with human assistance beginning at 9:30 a.m. on July 4, 2004, and were out of sight by 10:30 a.m.

Only one animal, a calf, was known to have died (on July 5, 2004) following this event. The animal was noted alive and alone in the Bay on the afternoon of July 4, 2004 and was found dead in the Bay the morning of July 5, 2004. On July 7, 2004, a full necropsy, magnetic resonance imaging, and computerized tomography examination were performed on the calf to determine the manner and cause of death. The combination of imaging, necropsy and histological analyses found no evidence of infectious, internal traumatic, congenital, or toxic factors. Although cause of death could not be definitively determined, it is likely that maternal separation, poor nutritional condition, and dehydration contributed to the final demise of the animal. Although we do not know when the calf was separated from its mother, the movement into the Bay, the milling and re-grouping may have contributed to the separation or lack of nursing especially if the maternal bond was weak or this was a primiparous calf.

Environmental factors, abiotic and biotic, were analyzed for any anomalous occurrences that would have contributed to the animals entering and remaining in Hanalei Bay. The Bay's bathymetry is similar to many other sites within the Hawaiian Island chain and dissimilar to sites that have been associated with mass strandings in other parts of the United States. The weather conditions appeared to be normal for that time of year with no fronts or other significant features noted. There was no evidence of unusual distribution or occurrence of predator or prey species, or unusual harmful algal blooms. Weather patterns and bathymetry that have been associated with mass strandings elsewhere were not found to occur in this instance.

This event was spatially and temporally correlated with RIMPAC. Official sonar training and tracking exercises in the Pacific Missile Range Facility (PMRF) warning area did not commence until approximately 8 a.m. on July 3 and were thus ruled out as a possible trigger for the initial movement into the Bay.

However, the six naval surface vessels transiting to the operational area on July 2 intermittently transmitted active sonar (for approximately 9 hours total from 1:15 p.m. to 12:30 a.m.) as they approached from the south. The potential for these transmissions to have triggered the whales' movement into Hanalei Bay was investigated. Analyses with the information available indicated that animals to the south and east of Kaua'i could have detected active sonar transmissions on July 2, and reached Hanalei Bay on or before 7 a.m. on July 3, 2004. However, data limitations regarding the position of the whales prior to their arrival in the Bay, the magnitude of sonar exposure, behavioral responses of melon-headed whales to acoustic stimuli, and other possible relevant factors preclude a conclusive finding regarding the role of sonar in triggering this event. Propagation modeling suggest that transmissions from sonar use during the July 3 exercise in the PMRF warning area may have been detectable at the mouth of the Bay. If the animals responded negatively to these signals, it may have contributed to their continued presence in the Bay. The U.S. Navy ceased all active sonar transmissions during exercises in this range on the afternoon of July 3, 2004. Subsequent to the cessation of sonar use, the animals were herded out of the Bay.

While causation of this stranding event may never be unequivocally determined, we consider the active sonar transmissions of July 2–3, 2004, a plausible, if not likely, contributing factor in what may have been a confluence of events. This conclusion is based on: (1) the evidently anomalous nature of the stranding; (2) its close spatiotemporal correlation with wide-scale, sustained use of sonar systems previously associated with stranding of deep-diving marine mammals; (3) the directed movement of two groups of transmitting vessels toward the southeast and southwest coast of Kaua'i; (4) the results of acoustic propagation modeling and an analysis of possible animal transit times to the Bay; and (5) the absence of any other compelling causative explanation. The initiation and persistence of this event may have resulted from an interaction of biological and physical factors. The biological factors may have included the presence of an apparently uncommon, deep-diving cetacean species (and possibly an offshore, non-resident group), social interactions among the animals before or after they entered the Bay, and/or unknown predator or prey conditions. The physical factors may have included the presence of nearby deep water, multiple vessels transiting in a directed manner while transmitting active sonar over a sustained period, the presence of surface sound ducting conditions, and/or intermittent and random human interactions while the animals were in the Bay.

Beaked Whales

Recent beaked whale strandings have prompted inquiry into the relationship between mid-frequency active sonar and the cause of those strandings. A review of world-wide cetacean mass stranding data reveals that beaked whales have been the most common taxa involved in stranding events (approximately 67 percent of all strandings include beaked whales), with Cuvier's beaked whales accounting for about 90 percent of the individual beaked whales. Although the confluence of Navy mid-frequency active tactical sonar with the other contributory factors noted in the report was identified as the cause of the 2000 Bahamas stranding event, the specific mechanisms that led to that stranding are not understood, and there is uncertainty regarding the ordering of effects that led to the stranding. It is uncertain whether beaked whales were directly injured by sound (a physiological effect) prior to stranding or whether a behavioral response to sound occurred that ultimately caused the beaked whales to strand and be injured.

Several potential physiological outcomes caused by behavioral responses to high-intensity sounds have been suggested by Cox *et al.* (in press). These include: gas bubble formation caused by excessively fast surfacing; remaining at the surface too long when tissues are supersaturated with nitrogen; or diving prematurely when extended time at the surface is necessary to eliminate excess nitrogen. Baird *et al.* (2005) found that slow ascent rates from deep dives and long periods of time spent within 50 m of the surface were typical for both Cuvier's and Blainsville's beaked whales, the two species involved in mass strandings related to naval sonar. These two behavioral mechanisms may be necessary to purge excessive dissolved nitrogen concentrated in their tissues

during their frequent long dives (Baird *et al.*, 2005). Baird *et al.* (2005) further suggests that abnormally rapid ascents or premature dives in response to high-intensity sonar could indirectly result in physical harm to the beaked whales, through the mechanisms described above (gas bubble formation or non-elimination of excess nitrogen).

During the RIMPAC exercise there will be use of multiple sonar units in an area where three beaked whale species may be present. A surface duct may be present in a limited area for a limited period of time. Although most of the ASW training events will take place in the deep ocean, some will occur in areas of high bathymetric relief. However, none of the training events will take place in a location having a constricted channel with limited egress similar to the Bahamas. Consequently, not all five of the environmental factors believed to contribute to the Bahamas stranding (mid-frequency sonar, beaked whale presence, surface ducts, steep bathymetry, and constricted channels with limited egress) will be present during RIMPAC ASW exercises. However, as mentioned previously, NMFS believes caution should be used anytime either steep bathymetry, surface ducting conditions, or a constricted channel is present in addition to the operation of mid-frequency tactical sonar and the presence of cetaceans (especially beaked whales).

Estimated Take by Incidental Harassment

In order to estimate acoustic exposures from the RIMPAC ASW operations, acoustic sources to be used were examined with regard to their operational characteristics. Systems with acoustic source levels below 205 dB re 1 mPa were not included in the analysis given that at this source level (205 dB re 1 mPa) or below, a 1-second ping would attenuate below the Level B Harassment behavioral disturbance threshold of 173 dB at a distance of about 100 meters, which is well within the required shutdown zone. Also, animals are expected to avoid the exercises by a distance greater than that and their detectibility is higher at that distance. In addition, systems with an operating frequency greater than 100 kHz were not analyzed in the detailed modeling, as these signals attenuate rapidly, resulting in very short propagation distances. Acoustic countermeasures were previously examined and found not to be problematic. The AN/AQS 13 (dipping sonar) used by carrier based helicopters was determined in the Environmental Assessment/Overseas Environmental Assessment of the SH–60R Helicopter/ALFS Test Program, October 1999, not to be problematic due to its limited use and very short pulse length (2 to 5 pulses of 3.5 to 700 msec). Since 1999, during the time of the test program, there have been over 500 hours of operation, with no environmental effects observed. The Directional Command Activated Sonobuoy System (DICASS) sonobuoy was determined not to be problematic, having a source level of 201 dB re 1 mPa. These acoustic sources, therefore, did not require further examination in this analysis.

Based on the information above, only hull mounted mid-frequency active tactical sonar was determined to have the potential to affect marine mammals during RIMPAC ASW training events.

Model

An analysis was conducted for RIMPAC 2006, modeling the potential interaction of hull mounted mid-frequency active tactical sonar with marine mammals in the OpArea. The model incorporates site-specific bathymetric data, time-of-year-specific sound speed information, the sound source's frequency and vertical beam pattern, and multipath pressure information as a function of range, depth and bearing. Results were calculated based on the typical ASW activities planned for RIMPAC 2006. Acoustic propagation and mammal population and density data were analyzed for the July timeframe since RIMPAC occurs in July. The modeling occurred in five broad steps, listed below.

Step 1. Perform a propagation analysis for the area ensonified using spherical spreading loss and the Navy's CASS/GRAB program, respectively.

Step 2. Convert the propagation data into a two-dimensional acoustic footprint for the acoustic sources engaged in each training event as they move through the six acoustic exposure model areas.

Step 3. Calculate the total energy flux density level for each ensonified area summing the accumulated energy of all received pings.

Step 4. Compare the total energy flux density to the thresholds and determine the area at or above the threshold to arrive at a predicted marine mammal exposure area.

Step 5. Multiply the exposure areas by the corresponding mammal population density estimates. Sum the products to produce species sound exposure rate. Analyze this rate based on the annual number of events for each exercise scenario to produce annual acoustic exposure estimates.

Based on the modeled estimate, NMFS anticipates take of 21 cetaceans and no pinnipeds. The results of the model (estimated Level B Harassment takes) are presented in Table 1. The model actually estimated potential take of 1 Hawaiian monk seal, however, because of the anticipated effectiveness of the mitigation measures and distance of the majority of the exercises from land, NMFS does not anticipate any take of monk seals, and it is not authorized.

When analyzing the results of the acoustic exposure modeling to provide an estimate of effects, it is important to understand that there are limitations to the ecological data used in the model, and that the model results must be interpreted within the context of a given species' ecology and biology.

NMFS believes that the model take estimates may be overestimates for the following reasons:

(1) The implementation of the extensive mitigation and monitoring that will be required by the IHA (Including large power-down/shut-down zones, geographic restrictions, and monitors that will almost certainly sight groups of animals, if not individuals, in time to avoid/minimize impacts) have not been taken into account.

(2) In the model the Navy used to estimate take, marine mammals remain stationary as the sound source passes by and their immediate area is ensonified. NMFS believes that some, if not the majority of animals, will move away from the sound to some degree, thus receiving a lower level of energy than estimated by the model.

(3) In the Navy's model, sound levels were calculated for every 5 m (16 ft) wide by 5 m (16 ft) long by 2 m (7 ft) deep section within the ensonified area. Then, for each 5 m (16 ft) by 5 m (16 ft) column of the ocean, the sound level through that entire water column was assumed to be whatever the sound level was in the loudest 2 m (7 ft) deep section of that water column.

(4) NMFS interprets the results of the Navy's model as the number of times marine mammals might be exposed to particular received levels of sound. However, NMFS believes it would be unrealistic, considering the fast-paced, multi-vessel nature of the exercise and the fact that the exercise continues over the course of a month in an area with resident populations of cetaceans, to assume that each exposure involves a different whale; some whales are likely to be exposed once, while others are likely to be exposed more than once.Some elements of the Navy's modeling, such as its calculation of received levels without regard to where

animals occur in the water column, are conservative. Other elements, such as its evaluation of some but not all acoustic sources that would be used during the exercise, may not be conservative. It is NMFS view that an extensive set of mitigation and monitoring requirements like those set forth in this notice would ensure that impacts on species and stocks are negligible. This conclusion would not necessarily apply to other naval acoustic activities whose operational and environmental parameters may differ.

Potential Effects on Habitat

The primary source of marine mammal habitat impact is acoustic exposures resulting from ASW activities. However, the exposures do not constitute a long term physical alteration of the water column or bottom topography, as the occurrences are of limited duration and are intermittent in time. Surface vessels associated with the activities are present in limited duration and are intermittent as well.

Potential Effects on Subsistence Harvest of Marine Mammals

There is no known legal subsistence hunting for marine mammals in or near the survey area, so the proposed activities will not have any impact on the availability of the species or stocks for subsistence users.

Comments and Responses

On April 24, 2006 (71 FR 20987), NMFS published a notice of a proposed IHA for the Navy's request to take marine mammals incidental to the RIMPAC ASW exercises and requested comments, information and suggestions concerning the request. During the 30-day public comment period, NMFS received approximately 125 comments from private citizens and several sets of comments from non-governmental organizations, including the Marine Mammal Commission (MMC), the Natural Resources Defense Council (which commented on behalf of the International Fund for Animal Welfare, Cetacean Society International, the League for Coastal Protection, Ocean Futures Society, Jean-Michel Cousteau, the Humane Society of the United States, the Center for Biological Diversity, and Oceana) (NRDC *et al.*), the Cascadia Research Collective (CRC), Seaflow, the Animal Welfare Institute (AWI), the Pacific Whale Foundation (PWF), the Whale and Dolphin Conservation Society (WDCS), and the Center for Regulatory Effectiveness (CRE). The comments have been sorted into general topic areas and are addressed below.

Mitigation Measures

Comment 1: The coastal exclusion zone recommended in the proposed IHA (25 km (13.5 nm) is not large enough to adequately protect island associated populations of odontocetes from significant impacts, as aerial surveys indicate that short-finned pilot whales, spotted dolphins, spinner dolphins, and bottlenose dolphins occur in greater densities within 25 nm (46 km) of shore. Additionally, the comments point out, during the Hanalei stranding in 2004, signals from ships in the PMRF, some 40–50 km (21–26 nm) away, peaked above 150 dB re 1 miPa at the mouth of Hanalei Bay.

Response: The main reasons behind requiring the Navy to maintain a 25 km coastal exclusion zone around the 200 m (656 ft) isobath were to avoid the confluence of the factors that we know contributed to the stranding in the Bahamas (see Strandings section), to avoid driving deep-diving animals up onto the shelf-break where they might become disoriented, and to minimize impacts to island associated animals. In an effort to reduce the possibility of a repeat of the circumstances present during the Hanalei event (and to generally better avoid the confluence of the five Bahamas factors), NMFS did propose an additional mitigation measure that would require a 25–nm (46–km) (plus 2–nm (3.7–buffer) coastal exclusion zone. Following is an explanation from the Navy explaining why the 25–nm (46–km) buffer is impracticable:

Littoral waterspace is where the enemy will operate. The littoral waterspace is also the most challenging area to operate in due to a diverse acoustic environment found there. It is not realistic to refrain from training in the areas that are the most challenging and operationally unavoidable. The [25 nm (46 km) buffer] would remove realism from precursor operations and tactical development culminating in choke point transits. The proposal would remove ASW operations from the AMPHIB phase of the training, which is arguably the highest period of risk for our forces.

NMFS must balance protective measures with practicability and we believe that the 25 km (13.5 nm) buffer effectively reduces the effects to island associated cetaceans while allowing the Navy to effectively carry out their mission.

Comment 2: Two commenters recommended that NMFS implement a sonar exclusion zone around sea mounts, where species associated with steep, sloping areas may be exposed, and cyclonic eddies, which can result in significant increases in primary productivity and have been linked to significant increases in higher trophic species.

Response: In regard to cyclonic eddies, NMFS believes that the impracticability to the Navy of avoiding these features outweighs the potential conservation gain. Though many species may congregate near cyclonic eddies, cyclonic eddies are very large, and, so restricting access to the full extent of these features to avoid animals that may congregate in a small subset of the total areas is not practicable. NMFS proposed a mitigation measure that would require the Navy to avoid seamounts, however, the Navy informed NMFS that this restriction would be impracticable because of the following operational impacts of having to steer clear of seamounts:

Submarine tracking is a long and complicated tactical procedure. The training value of these procedures would be lost if operations were terminated when nearing seamounts prior to reaching the training objectives. Seamounts impact the way sound travels in water as well as our ability to search and track submarines. If we do not train near seamounts and understand how they affect our ability to search and track a submarine, we will be unable to do so when required against an actual threat. Submarine search planning is a detailed process that requires flexibility and large operating areas. If we avoided searching or tracking submarines near sea mounts, ASW operators will be severely limited in their ability to execute effective plans.

Comment 3: One commenter points out that pursuant to Executive Order (E.O.) 13158, NMFS must consider and "to the maximum extent practicable" avoid harm to the protected natural and cultural resources of all Federal and State-designated protected areas (Marine Protected Areas (MPAs)) including, but not limited to, the Hawaiian Islands Humpback Whale National Marine Sanctuary.

Response: Both the Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS) and the newly designated Northwestern Hawaiian Islands Marine National Monument fall within in the Navy's Hawaiian Islands OpArea, and at times during RIMPAC exercises portions of their waters may be ensonified. Though the HIHWNMS is an important breeding area for Humpback whales during the winter and spring, the exercises will be

conducted in July when no humpback whales are expected to be present.

The Northwestern Hawaiian Islands Marine National Monument proclamation contains the following language "The prohibitions required by this proclamation shall not apply to activities and exercises of the Armed Forces (including those carried out by the United States Coast Guard) that are consistent with applicable laws."

As mentioned above, the effects of this action are temporary and acoustic in nature, and NMFS does not expect them to result in harm to the protected natural and cultural resources of these areas.

Comment 4: One commenter suggested NMFS should not authorize sonar use during ship transits between exercises, as this is the same activity (same levels, same area), according to the NMFS Hanalei Bay Stranding Report, that was a "plausible, if not likely" contributor to the 2004 mass stranding event of melon-headed whales in Hanalei Bay.

Response: According to the Navy, the sonar use that occurred prior to the Hanalei event was part of a designated exercise, not sonar use while in transit between exercises. Though the Navy could potentially operate sonar in the same place and manner it did during RIMPAC 2004, it does not necessarily mean that the other contributing factors to the stranding would be in place again. Also, unlike 2004, NMFS has included in the IHA a specific set of shutdown criteria that require the Navy cease operating sonar as soon as a "milling out of habitat" event involving a group of ten or more animals (such as in Hanalei) is verified.

Comment 5: Several commenters noted that the Navy plans not to operate sonar over 235 dB except for occasional, short periods of time. These commenters further assert that the Navy did not model marine mammal take at levels above 235 dB and, therefore, NMFS has failed to assess all reasonably foreseeable impacts as required by National Environmental Policy Act (NEPA) and the MMPA. One commenter thought that the Navy should define what "occasional short periods" are and identify the higher source level while another commenter recommended limiting sonar output to 235 dB throughout the exercise.

Response: NMFS proposed an additional mitigation measure that would have required the Navy not operate sonar over 235 dB, however, the Navy informed us that they could not implement the measure because it is impracticable for the following reasons:

This measure limits tactical options and the specific reasons that it should not be agreed to are classified. Generally, however, realistic training requires flexibility to operate sonar as fits the tactical scenario and environment encountered. Sonar configuration and operation is dependent upon the environment. These conditions cannot be predicted a month in advance and a ship may find it necessary to transmit at power levels above 235 dB to address a situation as they would during a real world ASW event. To place an artificial requirement as requested decreases the training value and does not allow our sailors to train as we expect them to fight.

In a "classified" document, the Navy provided information to the appropriate recipients at NMFS that discusses when and under what circumstances the source level above 235 dB is used. After reviewing the document, NMFS determined that the occasional operation of sonar above 235 dB does not affect our conclusions pursuant to NEPA, ESA, or MMPA.

NMFS proposed an additional mitigation measure that would have required the Navy not operate sonar over 235 dB, however, the Navy informed us that they could not implement the measure because it is impracticable for the following reasons:

This measure limits tactical options and the specific reasons that it should not be agreed to are classified. Generally, however, realistic training requires flexibility to operate sonar as fits the tactical scenario and environment encountered. Sonar configuration and operation is dependent upon the environment. These conditions cannot be predicted a month in advance and a ship may find it necessary to transmit at power levels above 235 dB to address a situation as they would during a real world ASW event. To place an artificial requirement as requested decreases the training value and does not allow our sailors to train as we expect them to fight.

Comment 6: One commenter suggests that because of the considerable reduction in the range of effects gained by a reduction in source level, NMFS must consider requiring the Navy to operate at source levels below 235 dB throughout the exercise or at least in some circumstances.Response: NMFS is requiring the Navy to operate sonar at lower levels under some circumstances through monitoring of safety zones, and with larger safety zones in surface duct conditions and low visibility situations.

Comment 7: NMFS received several comments regarding the proposed safety zones. One commenter suggested that the proposed outer safety zones (1000 m (3280 ft), or 2000 m (6561 ft) in special circumstances) are inadequate because they are inconsistent with NMFS 173 dB threshold. They further suggested that the distances are arbitrary and capricious.

Response: NMFS marine mammal incidental take authorizations typically require a shutdown zone that corresponds to the isopleth associated with the Level A harassment threshold. NMFS does not require shutdown at the threshold associated with the onset of Level B Harassment (173 dB in this case), as that would effectively be an avoidance of take, which would render a take authorization unnecessary. In the case of RIMPAC, the 1000 m safety zone (at which powerdown begins) is estimated as corresponding to the more conservative (than typical PTS shutdown threshold) TTS threshold (195 SEL), and as such, is neither arbitrary nor inadequate.

Comment 8: One commenter suggested that the proposed safety zones fail to meet the "least practicable impact" standard because the Australian Navy uses a 4000–m (2.2 nm) safety zone for sonar systems operating below 235 dB

Response: NMFS has implemented a 1000–m (3280 ft) safety zone under normal conditions, a 2000 m (6561 ft) safety zone in low visibility conditions and surface-ducting conditions, and a 2000 m (6561 ft) "clear zone" prior to startup in a chokepoint exercise. NMFS believes that these zones will effectively minimize take of marine mammals to the maximum extent practicable through this type of measure. Once the safety zones are enlarged past this point, NMFS believes detectability decreases notably and impracticability increases notably. The Navy observers will still be looking beyond the safety zone and will use the information to help implement the current safety zone measures.

Comment 9: One commenter suggested that NMFS require sonar shutdown at 1000 m (3280 ft), instead of powerdown, and that the Navy not be authorized to operate sonar at all in strong surface-ducting conditions.

Response: Powering down when an animal enters the 1000–m (3280 ft) safety zone ensures that a marine mammal will not be exposed to levels of sound above approximately 195 dB, the threshold established for TTS. Because the next powerdown is at 500 m (1640 ft), the animal would again not be exposed to levels above approximately 195 dB. If the animal were then to approach to 200 m (656 ft), it might be exposed to levels slightly above 195, but then sonar will shut down at 200 m (656 ft). NMFS believes that these shutdown zones are protective enough, especially when balanced against the impracticability of shutting down at 1000 m (3280 ft).

Comment 10: One commenter notes that the 6 dB powerdown requirement if

animals enter the 1000–m (3280–ft) safety zone still only lowers the sound produced to 229 dB, which is still significantly higher than the 145–150 dB level that caused the Bahamas and Hanalei Bay strandings.

Response: The 229 dB in this comment refers to the sound level at 1 m (3.3 ft) from the actual sound source, whereas the 145–150 dB level refers to a sound level that was modeled for a particular location where animals may have been, based on the known locations of the implicated sound sources. NMFS does not expected marine mammals to approach within several hundred meters, much less 1 m of the sonar dome. Additionally, neither of the reports concluded that the listed sound levels 'caused'' the stranding, in Hanalei, NMFS concluded that sonar was a plausible, if not likely, contributor to the event. In the Bahamas, the Department of Defense and Department of Commerce found that sonar was the only possible contributory cause that could not be ruled out.

Comment 11: One commenter recommended that after a shutdown the Navy wait 45 minutes, instead of 30, before reinitiating sonar operations to account for deep-diving animals.

Response: NMFS believes that because of the fast-moving nature of the exercise, the vessel will have moved a significant distance from where the animal was seen, and, therefore, we did not include that measure.

Comment 12: One commenter notes that shutdown is required by NMFS, in normal conditions, at 200 m. The commenter further suggests that within that distance of the sonar dome, the animal would have likely received noise levels of such intensity that mortality is almost certain. Additionally, the commenter notes, if the animal has gotten that close, the observation mitigation has obviously failed.

Response: As noted in an above comment, if an animal were to approach and be detected (visually or otherwise) successive powerdowns would precede the shutdown, and this would prevent exposure to levels above those thought to potentially cause TTS. If an animal were first detected right at 200 m, it could potentially be exposed to levels approaching those thought capable of causing PTS. NMFS does not believe that detection of marine mammals will be 100 percent in the RIMPAC exercises, however because most animals will avoid the noise and activities surrounding the exercises, we do not anticipate animals approaching within 200 m of any hull-mounted sonar.

Comment 13: One commenter recommends a mitigation measure wherein the Navy would be required to shut down or relocate if they detected beaked whales or aggregations anywhere within their sight (not just within the safety zone zone). They noted that NMFS recently required the U.S. Air Force to relocate its ordnance exercises offshore the Eglin Air Force Base should its fixed-wing aircraft spot any marine mammals or sea turtles within its orbit cycle (9.3 km).

Response: A measure that is practicable for one activity is not necessarily practicable or appropriate for another. First, NMFS does not believe that observers will be able to recognize beaked whales versus another species beyond the distance of the safety zone. Second, NMFS believes that the required safety zones are adequate for minimizing take and the Navy will easily be able to implement the appropriate powerdowns (or avoid the animals, if preferable) in the presence of aggregations. RIMPAC is a highly complex and coordinated exercise, and shutting down or relocating in response to animals detected outside the safety zones is impracticable.

Comment 14: Several commenters recommended that the Navy not operate sonar at night-time because animals cannot be detected as far out as the safety zone.

Response: NMFS proposed a mitigation measure that would have required the Navy to refrain from conducting chokepoint exercises at night. The Navy informed NMFS that it would be unable to comply with that measure for the following reasons:

Operating at night is a warfighting requirement. Night time conduct of ASW events is required for at least the following reasons:

-Exercise realism: ASW is as much an art as a technical application. Commanders must learn how best to effectively employ the assets available. There is not a universal solution applicable across the board. ASW is very much dependent upon the geography, water conditions, available assets, time available for mission accomplishment and many other factors. Training for this complicated warfighting skill must be conducted in a variety of locations, situations and environmental conditions. ASW can occur at any time of day or night and requires that ships and aircraft be adept at operating in close proximity to each other in darkness and low visibility.

-ASW is a lengthy and involved process. It can take many hours for the tactical situation to develop. It is impractical to halt a complicated scenario at sunset.

-Exercise safety of other major events. Other events (e.g. gunnery and missile exercises) requiring more stringent safety measures are conducted in daylight, affording the best visibility for range observance. Scheduling within a relatively short exercise period requires ASW to take place in twilight or night conditions.

-Darkness provides the enemy one of his greatest tactical advantages and therefore the need to train 24 hours a day is a necessary requirement to prepare U.S. forces to defend our country. There may be an additional risk to mammals at night, only insofar as there are no aerial surveys available, but that is a necessary risk in support of national defense.

Comment 15: Several commenters made recommendations regarding the limitation of sonar activities during low visibility conditions, surface-ducting conditions, or chokepoint exercises including operating sonar at 6 dB down or shutting down sonar.

Response: NMFS proposed a mitigation measure in which the Navy would be required to cease operating sonar during strong surface-ducting conditions during the chokepoint exercises. However, the Navy was unable to accept that measure for the following reason:

We already have mitigations imposed for significant surface ducting conditions. Our Sailors need to practice warfighting in all conditions. The enemy uses choke points to his tactical advantage, and this is the reason we need to train in a restricted water environment. The confluence of currents and sea state conditions in the Hawaiian channels make it less likely that these conditions will be present in the channels.

NMFS' IHA requires the Navy to powerdown sonar by 6 dB if they cannot detect marine mammals out to the prescribed safety zone and in strong surface-ducting conditions.

Monitoring

Comment 16: The monitoring for non-choke-point exercises is inadequate, in that it consists of nothing more than a single, non-dedicated observer, watching for marine mammals while performing other duties on deck. It is well-established that single, non-dedicated observers-even if well-trained-spot only a fraction of the marine mammals that multiple, dedicated observers do. Additionally, another commenter notes that observations should be made from all platforms, day and night.

Response: Though the observers on Navy vessels are not dedicated marine mammal observers, they are dedicated observers and do not have other duties on the deck. Additionally, people on all of the vessels, aircraft, etc. involved in the exercise have been briefed on marine mammals and instructed to alert the commanding officer if one is spotted.

Comment 17: One commenter suggests that monitors should be specifically trained in marine mammal observation, extensive theoretical training (underwater acoustics, etc.),

and should have vision tests and be well rested. Another commenter added that observers should be independent non-Navy personnel.

Response: At least one watchstander who has recieved training from a NMFS-approved instructor will be on duty at all times during the operation of hull-mounted tactical sonar, and all RIMPAC participants will be briefed on marine mammals, see an associated training video, and be instructed to alert the commanding officer if a marine mammal is sighted. Watchstanders are professional observers, and NMFS will assume that, due to the importance of their job, the Navy ensures that watchstanders are well-rested and cared for as it relates to their vision. NMFS does not believe that instruction in the fundamentals of underwater acoustics is necessary to be an effective observer, and therefore does not require it of observers.

Comment 18: Several commenters note that effectiveness of vessel-based marine mammal monitoring is low (Navy document indicates approximately 5 percent) and that the chance of a trained observer seeing a beaked whale on an ideal day for observations is approximately 2 percent. Additionally, some commenters believe that cetaceans cannot be reliably detected out to the extent of the 2000–m (6561–ft) safety zone, especially in low visibility conditions.

Response: NMFS acknowledges the limitations of vessel-based monitoring and has instituted other methods of detection in low visibility conditions and during chokepoint exercises. NMFS also requires a powerdown in low visibility conditions.

Comment 19: Some commenters pointed out the fact that passive acoustic monitoring is not very effective (Navy estimates 5 percent) and has significant drawbacks such as the fact that it cannot detect non-vocalizing animals and cannot detect the distance or location of the animals. Another commenter suggested that passive acoustic monitoring should be used throughout the exercise, not just before, that the technology should be further developed to increase localization and range-finding abilities, and that specific Passive Acoustic Monitoring guidelines should be established.

Response: NMFS acknowledges that passive acoustics has limitations, however it also adds a dimension of detection to the monitoring and NMFS believes that it adds value to the monitoring. Though some standard passive acoustic systems cannot localize or determine the distance to a source, NMFS notes that with towed arrays, instrumented ranges, active sonar, or other passive acoustic systems, better detection and localization of marine mammals is possible. NMFS proposed a mitigation measure that required the Navy to implement additional passive (or active) acoustic measures to use to improve detection rates during the RIMPAC exercises, however, the Navy was unable to comply for the following reasons:

The Navy has no additional measures for detection of marine mammals. Passive detection will only serve to cue lookouts to more vigilance since localization via passive detection is not possible. We will use all measures available to us, including passive monitoring, but passive monitoring would be difficult while actively transmitting as the outgoing signal blanks some receive capability.

The High Frequency Marine Mammal Monitoring System (HF/M3) measure is drawn from SURTASS LFA mitigation measures. SURTASS is very slow moving, is a very different design, and is deployed very differently from surface combatant vessels. The SURTASS LFA and Mid-Frequency Antisubmarine Sonar (MFAS) are two different systems, deployed and operated differently with very different capabilities.

Comment 20: Several odontocetes (beaked whales, Kogia sp., and others) will have a very low probability of being detected through aerial overflights due to their long dive times. The commenter cites "the effective search width for beaked whales is typically only 250–500 m (820–1640 ft) on each side of the aircraft for aerial observers searching by naked eye in good to excellent sighting conditions". The high winds typically present in the channels in which the chokepoint exercises will be conducted will reduce detection rates further.

Response: NMFS acknowledges the limitations in detecting cryptic species by aerial reconnaissance and have taken them into consideration in our conclusions.

Comment 21: Land-based monitoring in the Alenuihaha Channel during the chokepoint exercise is not adequate (monitoring will occur along 2 km (1.1 nm) of shore, but the border of chokepoint exercise is 28 km (15 nm) long). Additionally, the area is gently sloping and less than 200–m (656 ft) deep, and the animals that are thought to be more susceptible to high-intensity sound are not found in these areas.

Response: Though the entire border of the exercise will not be monitored, NMFS believes that this mitigation adds to the detectability of injured or dead animals and even though it is not an area where the species susceptible to strandings would usually be present, if they were responding to sonar in the way we are concerned about, they could potentially go into areas we do not usually see them (milling out of habitat). NMFS does not believe that it would be practicable to ask the Navy to monitor 28 km (15 nm) of shore.

Comment 22: The Navy should establish a public hotline for strandings during RIMPAC.

Response: NMFS has established stranding response procedures, including a hotline, and does not want the Navy to establish another line, as it could only confound the response.

Comment 23: Longterm monitoring should be conducted to assess the affects of RIMPAC on resident populations.

Response: The Navy is currently coordinating long monitoring of the marine mammal populations within the OpArea (see Conservation Measures (Research), in Mitigation section, below)

Comment 24: No information is presented on the statistical power of the monitoring and mitigation plan. Based on the level of monitoring outlined, the density of marine mammals in Hawaii, and the low likelihood of detecting long diving and cryptic species, the commenter concludes that the power to assess the presence of animals (especially beaked whales) to reduce impacts is low and the power to detect impacts if they occur is low. In addition, the prevailing direction of currents in Hawaii and the large number of sharks that scavenge carcasses makes the likelihood of dead animals stranding low.

Response: NMFS acknowledges the challenges in detecting animals in order to implement mitigation measures and in detecting injured or dead animals in order to assess effects. NMFS has implemented several measures intended to increase the detectability of impacts. Aerial or vessel surveys will be conducted 1–2 days after an exercise to look for dead or injured animals. NMFS has also implemented shutdown protocols to use in the event of a verified stranding during RIMPAC (see Mitigation).

Comment 25: One commenter recommended that NMFS require the Navy to conduct fewer ASW exercises to lessen the impacts.

Response: The Navy's purpose and need for the activity (for the EA) is to "implement a selected set of exercises that is combined into a sea control/power projection fleet training exercise in a multi-threat environment". NMFS interprets the action put forth in the IHA application as the "selected set" and did not discuss an alteration of the proposed action with the Navy. Instead, NMFS endeavored to minimize impacts by limiting exercises near features

associated with strandings, limiting sonar output during strong surface-ducting conditions, requiring additional monitoring during chokepoint exercises, and instituting specific shutdown criteria.

Comment 26: One commenter states that NMFS must clearly define the circumstances under which both the exercise and RIMPAC 2006 will be shut down. This commenter adds that it is particularly important that clear non-discretionary triggers are set for the suspension of RIMPAC.

Response: NMFS has developed and implemented within the IHA a set of shutdown criteria that include specific triggers for temporary sonar shutdown subsequent to the verification of an uncommon stranding event, and indicate the framework within which NMFS will make a determination regarding modification, suspension, or revocation of the Navy's IHA. The shutdown criteria are included in the Mitigation section of this document.

Impact Assessment

Comment 27: Much of the abundance data for the inshore populations (within 25 nm (46 km) of shore) of the main Hawaiian Islands marine mammals is based on the Mobley *et al.* (2000) aerial survey data, which underestimate the abundance of deep-diving/cryptic species. Mobley notes that the abundance estimates presented in the proposed IHA notice for beaked and sperm whales probably underestimate the true abundance by a factor of at least two to five. The commenter is concerned that this underestimate of abundance will be reflected in the take estimate.

Response: If the abundance of some of these species has been underestimated then NMFS also may have underestimated the number of animals taken; accordingly, within this mathematical adjustment the percent of the population affected would remain the same. Since the increase in numbers taken is not related to a biologically important area, this information does not affect NMFS' negligible impact determination.

Comment 28: In the case of spinner dolphins and bottlenose dolphins, there appears to be additional population structure within the main Hawaiian Islands, with genetic differentiation and no evidence of movements of individuals among the four main groups of islands. Response: The study cited for genetic differentiation of spinner dolphins discusses two different social systems of spinner dolphins, one in the main Hawaiian Islands and one in the northwestern atolls. The study further suggests that low diversity at a particular mDNA microsatellite is likely caused by geographic isolation of small populations that might experience some inbreeding. The study does not suggest different sub-populations within the main Hawaiian Islands or, therefore, within the Hawaiian OpArea. The cited bottlenose dolphin study revealed that there may be genetically differentiated populations stratified by both site fidelity to a particular island, and in one case, depth. Because the RIMPAC exercises are distributed throughout the islands and 2–24 hours in duration each, because the potentially genetically differentiated populations are not known to be limited to an area smaller than a whole island, and because of the high detectability of bottlenose dolphins (which increases mitigation effectiveness), NMFS does not expect this additional information to affect our negligible impact determination.

Comment 29: One commenter notes that several species are genetically differentiated between the Hawaiian Islands population and the tropical Pacific population

Response: As described, the Hawaiian populations extend to an unknown distance beyond the EEZ, so this observation does not affect the negligible effect determination.

Comment 30: The additional mitigation measures do not take into account the cumulative and synergistic effects of multiple noise sources being employed at any one time or over time. Such effects should be addressed before any authorization is issued.

Response: The Navy's model sums the received energy from multiple sources and calculates the SEL around the sonar sources. This SEL, which is an energy metric, does take into account the effects of multiple sources over time. The Navy's model does incorporate synergism to some degree, as conditions in the model are based on nominal conditions calculated from a generalized digitalized monthly average, which includes surface-ducting conditions. Though synergistic possibilities exist that are not addressed by the model, the Navy has incorporated several conservative features into the model that help balance other inadequacies of the model (such as the fact that animals are assumed to remain stationary in the presence of the ASW activities and the fact that animals are assumed to be located at the loudest depth within the water column).

Comment 31: Most of the papers cited to support the evaluation of the Level B harassment behavioral threshold involved either sinusoidal tones or impulses. When developing thresholds for mid-frequency sonar, NMFS should use studies that employ complex, sonar-like signals.

Response: In this regard, NMFS is constrained by the available science. The one known incident (Haro Strait, see Sub-TTS Behavioral Threshold section) in which cetaceans were actually exposed to mid-frequency tactical sonar signals from naval vessels, and scientists, having some information about exposure conditions (including duration) were able to estimate their received level in terms of sound exposure level has been included in our development of the 173–dB threshold.

Comment 32: Regarding the estimation of PTS onset relative to TTS levels used in the development of the Level A Harassment threshold, the Navy incorporates the maximum recoverable TTS that humans (and cats, in one study) can recover from without permanently damaging their hearing. The commenter points out that both humans and cats are highly visually adapted species (though cats less so than humans), and from the relationship between their different recoverable TTS levels he deduces that animals that are more dependent on sound cues are less able to recover from extreme TTS. The commenter further asserts that it might easily follow that cetaceans that rely almost exclusively on acoustical cues would be even less likely to recover from extreme TTS. Through further alternative interpretations of the data that the Navy used to estimate the onset of PTS, the commenter suggests that PTS onset could be estimated at 210 dB or as low as 200 dB.

Response: The extrapolation that the Navy uses to estimate PTS onset from known TTS levels consists of several discrete steps, and in each of these separate calculations the Navy has built in conservative approximations to help offset the lack of taxa-specific data and other data gaps, such as that which the commenter highlights. Additionally, Navy researchers have exposed captive dolphins to sound levels in certain conditions to exposures exceeding 220 dB peak and 200 dB SEL and been unable to elicit TTS, much less PTS.

Comment 33: Several commenters note different sound levels (145–165 SPL, 174 SEL) cited in the Bahamas and Hanalei Bay Stranding reports and assert that NMFS should base our Level B Harassment behavioral threshold on these numbers.

Response: The sound levels cited in these reports are, for the most part, the modeled received sound at a particular location, based on the known locations of different sound sources present near the time of the stranding event and the

best guess of the sound speed profile in the area based on available environmental data. While this information is valuable for many reasons, we do not know where any of the animals were actually located in relation to the known sound sources when the behavioral or physiological response that led to either of these strandings was triggered. The Level B Harassment behavioral threshold that NMFS has chosen is based primarily on two studies and one incident in which actual received levels were measured and/or we know the source level and the approximate distance of the animal from the sound source leading to relatively precise modeling estimates.

Comment 34: NMFS has not considered the full breadth of available information on bubble growth in its potential effects analysis. For example, some researchers suggest that gas bubbles could be activated in supersaturated marine mammal tissue on brief exposure to sounds of 150 dB (rms) re 1 miPa or lower and then grow significantly, causing injury as the animal rises to the surface. Further, the commenter mentions the investigation of the 2002 Canary Islands strandings, whose findings concerning fat and gas emboli were recently published, but not mentioned in our analysis.

Response: Though NMFS did not mention the specific results cited above in the discussion of bubble growth in the proposed IHA, adequate coverage of the topic was provided through a summary discussion of acoustically mediated bubble growth, which discussed the destabilization of stable bubbles by high-level sound exposures such that bubble growth occurs through static diffusion of gas out of the tissues, the evolution of nitrogen bubbles through rapid ascent to the surface, and rectified diffusion. Additionally, based on the available science, the exact mechanisms for bubble growth are unknown, and the predicted received levels to induce bubble growth are estimated to exceed those required to induce TTS. NMFS believes that the mitigation measures designed to avoid serious injury or mortality and effect the least practicable adverse impact also function to minimize the chances of bubble growth.

Comment 35: NMFS' injury threshold does not reflect non-auditory physiological impacts, as from stress and from chronic exposure during development.

Response: NMFS acknowledges the importance of potential physiological effects of mid-frequency tactical sonar on marine mammals and they are addressed in this document. However, information regarding the sound levels, frequencies, and duration/repetition conditions these types of effects result in is unavailable and, therefore, cannot contribute to the development of the injury threshold.

Comment 36: NMFS should use a dual threshold (SPL and SEL, not just SEL) for injury, as a 2003 Office of Naval Research report suggests that peak power may have more to do with the way beaked whales respond to sound (and potentially strand).

Response: Because of the equal energy line applied by Finneran (2002) to the TTS data of several researchers, NMFS believes that SEL can be effectively used to predict when TTS and PTS (from extrapolation) will occur in marine mammals. There is little data relating to mid-frequency tactical sonar in particular, however, the larger body of data related to high-intensity sound in general suggests that context and SPL are also important in how animals behaviorally react to sound. While SEL may not be the only metric important in predicting the response of marine mammals to sound, NMFS chose the behavioral threshold for this authorization based on three studies/events thought to be most closely representative of how mid-frequency sonar affects marine mammals for which SEL exposures are available. Additionally, the pulse length and signal types produced by RIMPAC are known (vs. explosions) and NMFS believes that in this particular case, SEL is an appropriate metric for the behavioral harassment threshold. NMFS is currently developing acoustic criteria, which may include dual critieria, but the wide-ranging evidence regarding at what levels marine mammals behaviorally respond to high-intensity sound has made the behavioral threshold part of that process difficult both in terms of metrics and absolute numbers.

Comment 37: For the SURTASS LFA sonar authorization, the Navy used a study that showed resonance damage to small mammals (submerged) at 205 dB to establish their proposed Level A injury threshold. Why was that threshold not used in this authorization?

Response: NMFS believes that extrapolation to PTS from the specific marine mammal TTS onset data is the more appropriate way to establish the threshold. The size and nature of the air spaces within small mammal ears may affect the way sound affects the tissues of the ear such that these results are not as applicable to marine mammals.

Comment 38: TTS is physiological damage that can last from minutes to days, and can increase the chances of being injured or killed. TTS should be considered Level A Harassment.

Response: TTS may be considered to be an adaptive process (analogous to the dark adaptation in visual systems) wherein sensory cells change their response patterns to sound. Tissues are not irreparably damaged with the onset of TTS, the effects are temporary (particularly for onset-TTS), and NMFS does not believe that this effect qualifies as an injury. Therefore TTS-onset is treated as the upper bound of Level B Harassment.

Comment 39: For the development of the TTS threshold, the Navy's extrapolation of data from bottlenose dolphins and belugas to all cetaceans is not justifiable because they do not have the most sensitive hearing of all cetaceans and some studies suggest that hearing sensitivity may be variable as a function of signal production and/or other parameters.

Response: The absolute hearing sensitivity at the frequency of tactical, mid-frequency sonar is similar for most odontocetes that have been tested. Additionally, onset-TTS values used for the calculation of PTS onset represent the most sensitive of the animals tested. Presumably, any modulation of sensitivity that served to protect the cetacean auditory system from overexposure to noise would be activated by intense noise exposure. It would be expected to operate, if it in fact exists, in captive marine mammals involved in the TTS studies as well as animals exposed to loud noise in the wild. There is no empirical comparative data on these phenomena with which to modify/adjust the TTS onset or growth estimates. Comment 40: The Finneran equal energy line applied to multiple TTS datasets was used to justify the 195 dB TTS threshold (and by extrapolation, the 215 PTS threshold) in this authorization. This line could have justifiably been drawn at 190 dB (without giving such weight to the single Natchtigall point), and would have been more conservative.

Response: While acknowledging the limitations of current data and the existing criticisms of an equal energy approach in the terrestrial mammalian literature at this time, NMFS believes that the 195–SEL equal energy line is a reasonable interpretation of the current data at this time. Both TTS onset and the estimation of PTS onset as a demarcation of physical injury have several precautions built into the assumptions. The equal-energy line through the existing cetacean TTS data is not a least-squares regression of the data but rather an expression of pressure

magnitude of exposure as a function of duration. That the long duration exposures from Nachtigall *et al.* fall so close to this line (they are not used to derive it) is one of a number of arguments in favor of the use of SEL as a means of comparing TTS-onset across extremely variable exposure conditions. Finally, the 195–dB SEL line was selected based on the empirical measures of TTS-onset for 195 dBrms 1–s exposures and extrapolated to other exposures of variable sound pressure magnitude and duration using the equal energy relationship.

Comment 41: Several commenters suggest that the animals used in the studies the Navy used to develop their proposed TTS threshold were old and test-habituated, and that studies involving younger, less test-habituated animals should be given more weight. Another commenter noted that the animals used in the TTS study may not adequately represent the range of variation within their own species.

Response: NMFS acknowledges that the test-animals may not fully represent the range of hearing responses across multiple taxa, within their own species, or in some cases even within individuals whose sensitivity may change over time however, we have used the best science available to develop these thresholds. Also, though NMFS believes that habituation to exposure may affect how animals respond to noises in a behavioral context, but that from a sensorineural point of view there is likely less dependence on exposure history. NMFS is aware of some data on terrestrial mammals indicating a "toughening" of auditory systems repeatedly exposed to noise, but notes that such data are generally unavailable for marine mammals but not indicated in the exposure sequences of subjects that have been tested. In fact, some data exist indicating a slight apparent improvement in the hearing sensitivity (lower thresholds over time) of marine mammals at a particular sound frequency for which TTS is tested, likely as a result of the increased relevance of those particular signals to the animals in the context of food-reward tasks.

Comment 42: Pinniped data should have been used in the development of the threshold.

Response: NMFS does not anticipate take of pinnipeds as a result of this action and, therefore, did not consider the incorporation of pinniped data into the thresholds (or the development of separate pinniped thresholds) necessary.

Comment 43: A recent study of threshold shift in pinnipeds found that the amount of hearing loss an animal experiences does not increase linearly with the energy it receives. As the energy intensifies, its rate of hearing loss increases, to such a degree that projections of permanent threshold shift according to traditional, linear models are likely to result in underestimates of harm. The Navy should lower its threshold.

Response: Kastak et al (2005) note the non-linear growth of TTS for relatively small magnitude shifts (< 6dB) and the innadequacy of a linear model using only these data in predicting the growth of TTS with exposure level for a wider range of exposures. It is well known that the TTS growth function is sigmoidal and thus it is misleading to describe it solely based on exposures that generate only small-magnitude TTS (where the slope of the growth function is relatively shallow). For a wide range of exposures, however, there is a steeper, linear portion of the sigmoidal function and a fairly consistent relationship between exposure magnitude and growth of TTS. The slope of this relationship is relatively well-known for humans (on the order of 1.6 dB TTS/dB noise (Ward *et al.*, 1958; 1959)). While it is not well-understood for marine mammals (because studies to date have yet to induce sufficiently large TTS values to properly assess it), the slope of this portion of the function predicted by the Kastak et al (2005) data fit with the curvilinear approximation (based on Maslen, 1981) was found to be comparable. Therefore, estimations of PTS from TTS onset that use a linear growth function with the steepest slope from a curvilinear function are very likely appropriate and in fact a conservative approximation, based on the information available at this time.

Comment 44: The 173–dB behavioral threshold is not supportable, as significant behavioral changes have been demonstrated in a controlled exposure experiment (Nowacek *et al.*, 2004) at 154 dB SEL. It is not appropriate to use the 25th percentile results of the Finneran study (173 dB), as the captive animals in that study cannot adequately represent the responses of wild animals. Alternatively, NMFS received one comment in support of the issuance of the IHA, but that commenter believed that the 190–dB behavioral threshold was supported, not the 190–dB threshold.

Response: As discussed in the text, NMFS used the three examples (Finneran and Schlundt, 2004, Nowacek *et al.*, 2004; and NMFS Haro Strait analysis) of cetacean responses to high intensity sound that we believe are the most predictive for marine mammal responses to tactical sonar to develop the threshold. Generally, NMFS interprets the received SELs in these studies as approximately 50 percent disturbance = 190 dB SEL (Finneran), approximately maximum SEL:160 dB (Nowacek), and approximately 165–175 dB SEL (Haro Strait). Where using a single threshold, instead of the likely more appropriate but currently unknown dose-response sigmoidal relationship, NMFS acknowledges that some animals exposed above the threshold may not be harassed by the sound and, conversely, some animals exposed to a sound below the threshold may be harassed. Therefore, NMFS believes that an appropriate threshold is a number somewhere between the lowest and highest mid-frequency signal exposure levels to which animals have demonstrated profound behavioral disturbance, which is why we chose 173 dB SEL for this authorization.

Comment 45: NMFS' analysis of effects should include more information on the avoidance behavior and behavioral response data of mysticetes to high-intensity sound.

Response: The majority of data addressing mysticete avoidance and behavioral responses to sound relates to low frequency sound. Because of differences in how animals react to these two different types of sound and differences in how these sounds propagate, the Navy and NMFS limited the analysis to primarily mid-frequency/tactical sonar-type data. However, one of three datum used to develop the behavioral harassment threshold was derived from right whale responses (Nowachek).

Comment 46: The model the Navy uses to calculate take is flawed because it does not take into consideration reverberation, surface-ducting, or sources above 205 dB.

Response: The model does indirectly incorporate surface-ducting, as conditions in the model are based on nominal conditions calculated from a generalized digitalized monthly average. Though the model does not consider reverberations, these effects are generally at received levels many orders of magnitude below those of direct exposures (as demonstrated in the Haro Strait analysis) and thus contribute essentially nothing to the cumulative SEL exposure. The Navy did not include sources below 205 dB in its model because sound is expected to attenuate to below 173 dB within 100 m (328 ft) around these sources (animals are expected to avoid the dynamic exercise

at that distance and/or monitors are largely expected to detect and shut down sonar (within 200 m (656 ft))) and because larger sources will usually be operating in the vicinity, adding to the likelihood of avoidance.

NEPA Compliance

Comment 47: The Navy should revise the EA based on the findings of the final Hanalei Bay report to reflect "significant new information".

Response: Though the final Hanalei report was not published when the Navy issued the April draft of its EA and the event was not discussed in the necessary detail in that draft, NMFS considered the event in more detail, as demonstrated in both this final IHA notice and the associated Finding of No Significant Impact (FONSI) .

Comment 48: The Navy suggests at points in the EA that its analysis of extraterritorial activities, those activities that would take place outside U.S. territorial waters, was prepared under the authority of Executive Order 12114 rather than under NEPA. The Navy's position on the scope of the review is inconsistent with the statute. For NMFS, adopting such a position is clearly insupportable, given that the Federal action to which its NEPA review applies, the decision to authorize RIMPAC, takes place entirely within the territory of the U.S. NMFS should indicate its derogation from the Navy's EA on this point.

Response: Pursuant to NOAA Administrative Order 216–6, NMFS applies NEPA in the EEZ, and has complied with NEPA for this action.

Comment 49: One commenter believes that the Navy's purpose and need is too narrow.

Response: The Navy's stated purpose is to "implement a selected set of exercises that is combined into a sea control/power projection fleet training exercise in a multi-threat environment". NMFS does not believe that this stated purpose is inherently too narrow.

Comment 50: The Navy does not do an adequate alternatives analysis. The alternatives consist of the preferred alternative, the no action alternative, and previously considered alternatives. The Navy does not consider alternate geographical locations or any other alternatives. NMFS should not adopt the EA.

Response: For the purposes of NMFS' federal action--the issuance of an MMPA authorization--the alternatives are adequate: no action, preferred action (ASW with added mitigation), and the previously considered alternative (ASW with no added mitigation).

Comment 51: An overarching concern is the blanket exclusion of fish and invertebrates from consideration [in the EA] in terms of acoustic impacts.

Response: The Navy provided a supplemental analysis of the effects of mid-frequency sonar on fish and NMFS has included it in the FONSI.

Comment 52: The Navy's EA did not adequately consider cumulative effects. NMFS must assess the potential for synergistic adverse effects, as from noise in combination with ship stripes, properly assess the cumulative impacts of holding biannual RIMPAC exercises in the same areas off Hawaii, and consider whether individual naval exercises in the Hawaiian Islands Operating Area and other activities could combine with RIMPAC to produce a significant effect.

Response: NMFS acknowledges the need for additional analysis of cumulative effects in the NEPA analysis and has addressed cumulative effects in the FONSI.

Comment 53: With regard to noise-producing activities the Navy must describe source levels, frequency ranges, duty cycles, and other technical paramenters relevant to determining potential impacts on marine life.

Response: NMFS requested this information early in the process and the Navy informed NMFS that the majority of the information was "classified".

Comment 54: For Data Quality Act compliance, the models used in this analysis need to be available to the public.

Response: MatLab is a commercially available program. CASSGRAB is available to the public from the Federal Government through leasing arrangements. The other components of the Navy's model are not published and can be discussed with the Navy.

Comment 55: Several commenters were concerned that NMFS could not satisfy the criteria necessary to issue a Finding of No Significant Impact.

Response: NMFS issued a FONSI on June 27, 2006, addressing all the required criteria.

MMPA Compliance

Comment 56: Pursuant to the MMPA (16 U.S.C. 1371(a)(5)(D)(i)), an IHA can only be granted for harassment, not serious injury or mortality. NMFS cannot say with confidence that serious injury or mortality will not occur incidental to this action, especially during the chokepoint exercises, which present four of five conditions for heightened risk: (1) the use of tactical sonar, (2) in places where as many as three species of beaked whale may occur, (3) areas with steep bathymetry, and (4) areas that offer surface-ducting conditions.

Response: NMFS has required a suite of mitigation measures in the IHA that reduces the likelihood of a stranding resulting from the RIMPAC ASW activities. However, several points that were emphasized in the public comments (i.e., the difficulty (in ideal conditions) of detecting beaked whales, which have been among the species in most of the strandings associated with sonar, and the fact that choke-point exercises will be conducted both at night and in surface-ducting conditions) and the published conclusions of the Hanalei Bay melon-headed whale report do not allow NMFS to rule out the possibility of a stranding resulting from the RIMPAC ASW activities. Consequently, NMFS has included specific shutdown criteria (see Mitigation and Monitoring, above), which are intended to ensure MMPA compliance. These criteria require the Navy to temporarily cease operating sonar in a designated area when a stranding is verified during the RIMPAC ASW exercise. NMFS will then conduct an investigation, and if NMFS finds that the Navy's activities may have contributed to the stranding, NMFS will modify, revoke, or suspend the IHA.

Comment 57: NMFS can not reach a negligible impact determination for beaked whales as the activity is projected to affect over 16 percent of each population of beaked whales and the mitigation measures are know to be ineffective due to the low detectability of beaked whales.

Response: As discussed in more detail in the Negligible Impact Determination section, NMFS does not believe that over 16 percent of each beaked whale species will be harassed by these activities. NMFS believes that the initial take numbers generated by the Navy's model are overestimates, that the mitigation measures will reduce that percent somewhat (especially through measures that don't depend on detection, such as exclusion zones and circumstantial powerdowns), and that the beaked whale populations extend past the EEZ (make sure spelled out first time in document), which means that a smaller percent of the population will be affected by the activities within the EEZ that what was modeled. This, coupled with the temporary nature of the exercise and the implementation of the new shutdown criteria, leads NMFS to believe the activity will have a negligible impact on beaked whale populations.

Comment 58: NMFS cannot make negligible impact determinations for species other than beaked whales

because the portions of the populations affected by the activity are too high.

Response: As mentioned in the prior response and in the Negligible Impact Determination section, NMFS believes that the actual portion of the populations affected by the RIMPAC exercises is significantly smaller than modeled number of individuals taken divided by the estimated abundance in the EEZ. In addition to the reasons stated in the previous response, the percent of the population affected is even smaller for animals with significantly larger densities inshore than offshore (due to the 25–km (13.5–nm) exclusion zone) and for animals with large average group sizes or large body size (far more detectable through monitoring). Tables 3 and 4 discuss what factors were considered in the negligible impact determination.

Comment 59: NMFS must also consider other RIMPAC exercises that might impact marine mammals that are intertwined with anti-submarine warfare exercises, such as air-to-surface gunnery exercises, mine countermeasures, etc.

Response: The Navy applied for an authorization for take of marine mammals incidental to ASW exercises. As described in the application, the ASW exercises are discrete exercises.

Comment 60: NMFS' notice states that RIMPAC will not have an unmitigable adverse impact on the availability of the species or stocks for subsistence uses. The notice should clarify that only the subsistence hunting of marine mammals by Alaska natives is considered in the findings under either 101(a)(5)(A) or 101(a)(5)(D) of the MMPA.

Response: After reviewing the statute, NMFS believes the commenter is correct and has removed the reference to that finding from the appropriate documents.Other Comments

Comment 61: Foreign vessels and crews cannot avail themselves of an IHA for the harassment of marine mammals in the U.S. Exclusive Economic Zone because section 101(a)(5)(D) of the MMPA is available only to "citizens of the United States."

Response: This doesn't have an associated comment-think it belongs one or two pages up where there's no response to a comment on this issue. The U.S. Navy is the applicant for purposes of this IHA for RIMPAC 2006 exercises and qualifies as a U.S. citizen under NMFS regulations. NMFS has issued the IHA to the Navy, which is hosting the exercises. As the holder of the IHA, the Navy is responsible for implementing the terms and conditions of the IHA, which requires that all participants in RIMPAC ASW activities abide by the IHA's mitigation and monitoring requirements. The Navy has indicated that all foreign vessels participating in RIMPAC 2006 will be under the Operational Control (OPCON) of Commander, U.S. THIRD Fleet in his capacity as Officer Conducting the Exercise (OCE) and Commander, Combined Task Force (CCTF) RIMPAC. As such, all forces assigned, including foreign vessels and aircraft operating under CCTF RIMPAC OPCON, are required to comply with the environmental mitigation measures spelled out in Annex L to the RIMPAC 2006 OPORDER as a condition of participating in the exercise. Under Annex L and two other annexes, all vessels, including foreign ships, are required to make sonar use reports in the daily operational summary.

Comment 62: NMFS sets the injury threshold at 215 dB (for PTS); yet we say that "some marine mammals may react to mid-frequency sonar, at received levels lower than those thought to cause direct physical harm, with behaviors that may, in some circumstances, lead to physiological harm, stranding, or, potentially, death". If this is the case, the Level A harassment threshold should be lower.

Response: Thresholds represent sound levels at which NMFS predicts marine mammals are likely to be harassed in a certain way or to a certain level. The behavioral Level B harassment threshold represents the level at which NMFS believes marine mammals are likely behaviorally harassed. Within the range of potential behavioral responses rising to the level of harassment, a small subset of the animals exposed may respond behaviorally or physiologically in a way that leads to a stranding. Such an extreme reaction by some animals does not necessarily justify the establishment of a general threshold, but instead an awareness of the possibility of this response and implementation of mitigation measures to address it, such as those contained in this IHA (e.g., 25–km (13.5 nm) exclusion zone, extra monitoring, etc.). Additionally, the exact mechanisms that lead to a stranding are not well understood, and it is believed that there are often other (unknown) contributing factors involved. NMFS does not believe it is appropriate to use sound levels that represent the onset of the behavioral disturbance to also represent the onset of injury when other contributing factors may be necessary to get to injury from the initial behavioral disturbance.

Comment 63: The Navy should keep, and make available to NMFS if a stranding occurs, a detailed log of sonar use. The detailed report required to NMFS should be made available to NMFS within a given amount of time after RIMPAC is completed.

Response: The Navy keeps very specific records of when and where sonar is operated. The Navy will make both classified "secret' and unclassified reports to NMFS after RIMPAC. In the event of a stranding, the Navy will coordinate with NMFS to provide the needed information regarding the positioning of the operating sonar within the OpArea. Unclassified reports from the Navy are immediately available to the public. Classified reports will be made available as they are unclassified.

Comment 64: The commenter is concerned that the RIMPAC proposal is using the Navy's draft EIS for the USWTR proposal even while the assumptions, methodologies, and substantiating information are still in draft and are still under review.

Response: Some of the information in the Navy's draft EIS for USWTR constitutes the best available science, even if it is still in review.

Comment 65: The commenter is troubled that conservation organizations need to continually expend their resources and energies attempting to stem the destruction of marine habitat by the U.S. Navy. The commenter states that the "burden of proof" falls upon those who are attempting to conserve marine mammal habitat, and not the U.S. Navy, who are proposing assaults and compromises to the environment.

Response: NMFS cannot address this issue.

Comment 66: NMFS received approximately 120 general comments of opposition within the comment period, and approximately 100 additional comments of general opposition after the comment period closed. Many of the commenters did not think that NMFS should authorize the Navy to injure or kill the animals and many expressed the thought that we should avoid impacts to marine mammals.

Response: NMFS appreciates the outpouring of concern for the well-being of the marine mammals around the Hawaiian Islands. As a clarification, NMFS has not authorized the injury or mortality of marine mammals and has including mitigation and monitoring measures to reduce the potential for injury or mortality, as well as instituting stranding shutdown protocols for use in the event of any stranding. Further, though NMFS does not ask for protective measures meant to entirely avoid disturbance of marine mammals, which would preclude the need for an authorization, we have included measures intended to affect the least

practicable adverse impact on the species.

Mitigation, Monitoring, and Reporting

The Navy has requested an IHA from NMFS for the take, by harassment, of marine mammals incidental to RIMPAC ASW exercises in the OpArea. Section 101(a)(5)(D) of the MMPA, the section pursuant to which IHAs are issued, may not be used to authorize mortality or serious injury leading to mortality. The Navy's analysis of the RIMPAC ASW exercises concluded that no mortality or serious injury leading to mortality would result from the proposed activities. However, NMFS believes that some marine mammals may react to mid-frequency sonar, at received levels lower than those thought to cause direct physical harm, with behaviors that may lead to physiological harm, stranding, or, potentially, death. Therefore, in processing the Navy's IHA request, NMFS has required additional mitigation and monitoring than originally proposed in the Navy's application, which is intended to ensure that mortality or serious injury leading to mortality does not result from the proposed activities.

In any IHA issued there is the requirement to supply the "means of effecting the least practicable [adverse] impact upon the affected species." NMFS' determination of "the least practicable adverse impact on the affected species" includes consideration of personnel safety, practicality of implementation, and impact on the effectiveness of military readiness activities. While NMFS' proposed mitigation and monitoring requirements discussed below are intended to effect the "least practicable adverse impact", they are also designed to ensure that no mortality or serious injury leading to mortality occurs, so that an IHA may be legally issued under the MMPA.

Changes Made in the IHA Since the Proposed IHA was published in the FR

Three changes have occurred in the authorization since the proposed IHA was published in the **Federal Register**: (1) a mitigation measure was added wherein during chokepoint exercises the Navy must ensure that a 2000 m (6561 ft) (vs. 1000 m (3280 ft) in non-chokepoint exercises) radius is clear of marine mammals prior to startup of sonar; (2) stranding shutdown protocols were included in the IHA; and (3) the Navy requested they be allowed to conduct 6.5 hours of sonar operations within the part of the PMRF that falls within 25 km (13.5 nm) of the 200–m (656–ft) isobath, and NMFS subsequently made the requested modification to the IHA and added a mitigation measure that requires the Navy abide by the applicable existing chokepoint mitigation measures when conducting these activities. These changes are addressed in more detail in the "Additional Mitigation, Monitoring, and Reporting Measures Required by NMFS" section below.

Standard Operating Procedures Proposed in Navy Application

Navy shipboard lookout(s) are highly qualified and experienced observers of the marine environment. Their duties require that they report all objects sighted in the water to the Officer of the Deck (e.g., trash, a periscope, a marine mammal) and all disturbances (e.g., surface disturbance, discoloration) that may be indicative of a threat to the vessel and its crew. There are personnel serving as lookouts on station at all times (day and night) when a ship or surfaced submarine is moving through the water.

Navy lookouts undergo extensive training in order to qualify as a watchstander. This training includes on-the-job instruction under the supervision of an experienced watchstander, followed by completion of the Personal Qualification Standard program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects). In addition to these requirements, many Fleet lookouts periodically undergo a 2-day refresher training course.

The Navy includes marine species awareness as part of its training for its bridge lookout personnel on ships and submarines. Marine species awareness training was updated in 2005 and the additional training materials are now included as required training for Navy lookouts. This training addresses the lookout's role in environmental protection, laws governing the protection of marine species, Navy stewardship commitments, and general observation information to aid in avoiding interactions with marine species. Marine species awareness and training is reemphasized by the following means:

Bridge personnel on ships and submarines–Personnel utilize marine species awareness training techniques as standard operating procedure, they have available the "whale wheel" identification aid when marine mammals are sighted, and they receive updates to the current marine species awareness training as appropriate.

Aviation units–All pilots and aircrew personnel, whose airborne duties during ASW operations include searching for submarine periscopes, report the presence of marine species in the vicinity of exercise participants.

Sonar personnel on ships, submarines, and ASW aircraft–Both passive and active sonar operators on ships, submarines, and aircraft utilize protective measures relative to their platform.

The Environmental Annex to the RIMPAC Operational Order mandates specific actions to be taken if a marine mammal is detected and these actions are standard operating procedure throughout the exercise.

Implementation of these protective measures is a requirement and involves the chain of command with supervision of the activities and consequences for failing to follow orders. Activities undertaken on a Navy vessel or aircraft are highly controlled. Very few actions are undertaken on a Navy vessel or aircraft without oversight by and knowledge of the chain of command. Failure to follow the orders of one's superior in the chain of command can result in disciplinary action.

Operating Procedures

The following procedures are implemented to maximize the ability of operators to recognize instances when marine mammals are close aboard and avoid adverse effects to listed species:

Visual detection/ships and submarines–Ships and surfaced submarines have personnel on lookout with binoculars at all times when the vessel is moving through the water. Standard operating procedure requires these lookouts maintain surveillance of the area visible around their vessel and to report the sighting of any marine species, disturbance to the water's surface, or object (unknown or otherwise) to the Officer in Command.

Visual detection/aircraft–Aircraft participating in RIMPAC ASW events will conduct and maintain, whenever possible, surveillance for marine species prior to and during the event. The ability to effectively perform visual searches by participating aircraft crew will be heavily dependent upon the primary duties assigned as well as weather, visibility, and sea conditions. Sightings would be immediately reported to ships in the vicinity of the event as appropriate.

Passive detection for submarines - Submarine sonar operators will review detection indicators of close-aboard marine mammals prior to the commencement of ASW operations involving active mid-frequency sonar.

When marine mammals are detected close aboard, all ships, submarines, and aircraft engaged in ASW would reduce

mid-frequency active sonar power levels in accordance with the following specific actions:

(1) Helicopters shall observe/survey the vicinity of an event location for 10 minutes before deploying active (dipping) sonar in the water. Helicopters shall not dip their sonar within 200 yards of a marine mammal and shall secure pinging if a marine mammal closes within 200 yards after pinging has begun.

(2) Note: Safety radii, power-down, and shut-down zones proposed by the Navy have been replaced with more conservative measures required by NMFS and are discussed in the next section.

The RIMPAC Operational Order Environmental includes specific measures, including the measures required by NMFS' IHA, that are to be followed by all exercise participants, including non-U.S. participants.

The Navy proposes that training be provided to exercise participants and NOAA officials before and during the in port phase of RIMPAC (26–30 Jun 06). This will consist of exercise participants (CO/XO/Ops) reviewing the C3F Marine Mammal Brief, available OPNAV N45 video presentations, and a NOAA brief presented by C3F on marine mammal issues in the Hawaiian Islands. The Navy will also provide the following training for RIMPAC participants:

(1) NUWC will train observers on marine mammal identification observation techniques

(2) Third fleet will brief all participants on marine mammal mitigation requirements

(3) Participants will receive video training on marine mammal awareness

(4) Navy offers NOAA/NMFS opportunity to send a representative to the ashore portion of the exercise to address participants and/or observe training.

Conservation Measures (Research)

The Navy will continue to fund ongoing marine mammal research in the Hawaiian Islands. Results of conservation efforts by the Navy in other locations will also be used to support efforts in the Hawaiian Islands. The Navy is coordinating long term monitoring/ studies of marine mammals on various established ranges and operating areas:

(1) Coordinating with NMFS to conduct surveys within the selected Hawaiian Islands Operating Area as part of a baseline monitoring program.

(2) Implementing a long-term monitoring program of marine mammal populations in the OpArea, including evaluation of trends.

(3) Continuing Navy research and Navy contribution to university/external research to improve the state of the science regarding marine species biology and acoustic effects.

(4) Sharing data with NMFS and the public, via the literature, for research and development efforts.

The Navy has contracted with a consortium of researchers from Duke University, University of North Carolina at Wilmington, University of St. Andrews, and the NMFS Northeast Fisheries Science Center to conduct a pilot study analysis and develop a survey and monitoring plan that lays out the recommended approach for surveys (aerial/shipboard, frequency, spatial extent, etc.) and data analysis (standard line-transect, spatial modeling, etc.) necessary to establish a baseline of protected species distribution and abundance and monitor for changes that might be attributed to ASW operations on the Atlantic Fleet Undersea Warfare Training Range. The Research Design for the project will be utilized in evaluating the potential for implementing similar programs in the Hawaiian Islands ASW operations areas. In addition, a Statement of Interest has been promulgated to initiate a similar research and monitoring project in the Hawaiian Islands and the remainder of the Pacific Fleet OPAREAs. The execution of funding to begin the resultant monitoring is planned for the fall of 2006.

Reporting

The RIMPAC Operational Order Environmental Annex (see example in Appendix A of the application) includes specific reporting requirements related to marine mammals.

Additional Proposed Mitigation, Monitoring, and Reporting Measures Required by NMFS

The following protective mitigation and monitoring measures will be implemented in addition to the standard operating procedures discussed in the previous section:

(1) The Navy will operate sonar at the lowest practicable level, not to exceed 235 dB, except for occasional short periods of time to meet tactical training objectives.

(2) Safety Zones - When marine mammals are detected by any means (aircraft, lookout, or acoustically) within 1000 m (3280 ft) of the sonar dome (the bow), the ship or submarine will limit active transmission levels to at least 6 dB below normal operating levels. Ships and submarines will continue to limit maximum ping levels by this 6–dB factor until the animal has been seen to leave the area, has not been seen for 30 minutes, or the vessel has transited more than 2000 m beyond the location of the sighting.

Should a marine mammal be detected within or closing to inside 500 m (1640 ft) of the sonar dome, active sonar transmissions will be limited to at least 10 dB below the equipment's normal operating level. Ships and submarines will continue to limit maximum ping levels by this 10–dB factor until the animal has been seen to leave the area, has not been seen for 30 minutes, or the vessel has transited more than 1500 m (4920 ft) beyond the location of the sighting.

Should the marine mammal be detected within or closing to inside 200 m (656 ft) of the sonar dome, active sonar transmissions will cease. Sonar will not resume until the animal has been seen to leave the area, has not been seen for 30 minutes, or the vessel has transited more than 1200 m beyond the location of the sighting.

If the Navy is operating sonar above 235 dB and any of the conditions necessitating a powerdown arise ((f), (g), or (h)), the Navy shall follow the requirements as though they were operating at 235 dB - the normal operating level (i.e., the first powerdown will be to 229 dB, regardless of at what level above 235 sonar was being operated).

(3) In strong surface ducting conditions, the Navy will enlarge the safety zones such that a 6–dB power-down will occur if a marine mammal enters the zone within a 2000 m (6561 ft) radius around the source, a 10–dB power-down will occur if an animal enters the 1000 m (3280 ft) zone, and shut down will occur when an animal closes within 500 m (1640 ft) of the sound source.

(4) In low visibility conditions (i.e., whenever the entire safety zone cannot be effectively monitored due to nighttime, high sea state, or other factors), the Navy will use additional detection measures, such as infrared (IR) or enhanced passive acoustic detection. If detection of marine mammals is not possible out to the prescribed safety zone, the Navy will power down sonar (per the safety zone criteria above) as if marine mammals are present immediately beyond the extent of detection. (For example, if detection of marine mammals is only possible out to 700 m (2296 ft), the Navy must implement a 6–dB powerdown, as though an animal is present at 701 m (2299 ft), which is inside the 1000–m (3280–ft) safety zone)

(5) With the exception of three specific choke-point exercises (special

measures outlined in item 8), the Navy will not conduct sonar activities in constricted channels or canyon-like areas.

(6) With the exception of three specific "choke-point" exercises (special measures outlined in item 8), and events occurring on range areas managed by PMRF, the Navy will not operate mid-frequency sonar within 25 km (13.5 nm) of the 200 m (656 ft) isobath.

(7) Navy watchstanders, the individuals responsible for detecting marine mammals in the Navy's standard operating procedures, will participate in marine mammal observer training by a NMFS-approved instructor (NMFS will work with Navy to develop appropriate format, potentially to be presented to Navy personnel during the port phase of RIMPAC, June 26–30). Training will focus on identification cues and behaviors that will assist in the detection of marine mammals and the recognition of behaviors potentially indicative of injury or stranding. Training will also include information aiding in the avoidance of marine mammals and the safe navigation of the vessel, as well as species identification review (with a focus on beaked whales and other species likely to strand). At least one individual who has received this training will be present, and on watch, at all times during operation of tactical mid-frequency sonar, on each vessel operating mid-frequency sonar.

(8) The Navy will conduct no more than three "choke-point" exercises. These exercises will occur in the Kaulakahi Channel (between Kauai and Niihau) and the Alenuihaha Channel (between Maui and Hawaii). These exercises fall outside of the requirements listed above in 5 and 6, i.e., to avoid canyon-like areas and to operate sonar farther than 25 km (13.5 nm) from the 200 m (656 ft) isobath. The additional measures required for these three choke-point exercises are as follows:

(a) The Navy will provide NMFS (Stranding Coordinator and Protected Resources, Headquarters) and the Hawaii marine patrol with information regarding the time and place for the choke-point exercises 24 hours in advance of the exercises.

(b) The Navy will have at least one dedicated Navy marine mammal observer who has received the NMFS-approved training mentioned above in 7, on board each ship and conducting observations during the operation of mid-frequency tactical sonar during the choke-point exercises. The Navy has also authorized the presence of two experienced marine mammal observers (non-Navy personnel) to embark on Navy ships for observation during the exercise.

(c) Prior to start up or restart of sonar, the Navy will ensure that a 2000–m (6561–ft) radius around the sound source is clear of marine mammals.

(d) The Navy will coordinate a focused monitoring effort around the choke-point exercises, to include pre-exercise monitoring (2 hours), during-exercise monitoring, and post-exercise monitoring (1–2 days). This monitoring effort will include at least one dedicated aircraft or one dedicated vessel for realtime monitoring from the pre- through post-monitoring time period, except at night. The vessel or airplane may be operated by either dedicated Navy personnel, or non-Navy scientists contracted by the Navy, who will be in regular communication with a Tactical Officer with the authority to shut-down, power-down, or delay the start-up of sonar operations. These monitors will communicate with this Officer to ensure the 2000–m (6561–ft) safety zone is clear prior to sonar start-up, to recommend power-down and shut-down during the exercise, and to extensively search for potentially injured or stranding animals in the area and down-current of the area post-exercise.

(e) The Navy will further contract an experienced cetacean researcher to conduct systematic aerial reconnaissance surveys and observations before, during, and after the choke-point exercises with the intent of closely examining local populations of marine mammals during the RIMPAC exercise.

(f) Along the Kaulakahi Channel (between Kauai and Niihau), shoreline reconnaissance and nearshore observations will be undertaken by a team of observers located at Kekaha (the approximate mid point of the Channel). Additional observations will be made on a daily basis by range vessels while enroute from Port Allen to the range at PMRF (a distance of approximately 16 nm (30 km) and upon their return at the end of each day's activities. Finally, surveillance of the beach shoreline and nearshore waters bounding PMRF will occur randomly around the clock a minimum four times in each 24 hour period.

(g) In the Alenuihaha Channel (between Maui and Hawaii), the Navy will conduct shoreline reconnaissance and nearshore observations by a team of observers rotating between Mahukona and Lapakahi before, during, and after the exercise.

(9) The Navy will conduct five exercises in the Pacific Missile Range Facilities that fall within 25 km (13.5 nm) of the 200–m (656–ft) isobath. The live sonar component of these 5 exercises will total approximately 6.5 hours. During these exercises, the Navy will conduct the monitoring described in (8)(b), (c), and (d).

(10) NMFS and the Navy will continue coordination on the "Communications and Response Protocol for Stranded Marine Mammal Events During Navy Operations in the Pacific Islands Region" that is currently under preparation by NMFS PIRO to facilitate communication during RIMPAC. The Navy will coordinate with the NMFS Stranding Coordinator for any unusual marine mammal behavior, including stranding, beached live or dead cetacean(s), floating marine mammals, or out-of-habitat/milling live cetaceans that may occur at any time during or shortly after RIMPAC activities. After RIMPAC, NMFS and the Navy (CPF) will prepare a coordinated report on the practicality and effectiveness of the protocol that will be provided to Navy/NMFS leadership.

(11)The Navy will provide a report to NMFS after the completion of RIMPAC that includes:

(a) An estimate of the number of marine mammals affected by the RIMPAC ASW exercises and a discussion of the nature of the effects, if observed, based on both modeled results of real-time exercises and sightings of marine mammals.

(b) An assessment of the effectiveness of the mitigation and monitoring measures with recommendations of how to improve them.

(c) Results of all of the marine species monitoring (real-time Navy monitoring from all platforms, independent aerial monitoring, shore-based monitoring at chokepoints, etc.) before, during, and after the RIMPAC exercises.

(d) As much information (unclassified and, to appropriate recipients, classified "secret") as the Navy can provide including, but not limited to, where and when sonar was used (including sources not considered in take estimates, such as submarine and aircraft sonars) in relation to any measured received levels (such as at sonobuoys or on PMRF range), source levels, numbers of sources, and frequencies, so it can be coordinated with observed cetacean behaviors.

The mitigation and monitoring proposed in this IHA are intended to function adaptively, and NMFS fully expects to refine them for future authorizations based on the reporting input from the Navy.

Shutdown Criteria

Pursuant to section101(a)(5)(D)(iv) of the MMPA, The Secretary of Commerce shall modify, suspend, or revoke an authorization if the Secretary finds that the provisions of clauses (i) or (ii) of section 101(a)(5)(D) are not being met. Marine mammal strandings are a common event in Hawaii and over the course of the 22 days of ASW exercises, NMFS expects that 1 or 2 single-animal strandings may occur that are not related to RIMPAC. To distinguish these strandings from a stranding that NMFS believes may occur as a result of exposure to the hull-mounted Mid-Frequency Active Sonar (MFAS) activities covered in this authorization, NMFS and the U.S. Navy have established this "shutdown criteria" to provide the necessary time for the Secretary to investigate the cause of uncommon marine mammal stranding events and determine whether the IHA should be modified, suspended, or revoked. The established protocols in place between NMFS Stranding Coordinator Pacific and COMPACFLT Environmental Coordinator are the basis for this document.

Definitions

Shutdown area–An area within 50 km (27 nm) of the half of the island centered on the place where the animal was found.

Limited Chokepoint Shutdown–Temporary suspension of the hull-mounted MFAS during the choke point exercises.

Uncommon Stranding Event–An event involving any one of the following:

- Two or more individuals of a commonly stranded species found dead or live beached within a two day period (not including mother/calf pairs), or
- A single uncommonly stranded whale found dead or live beached, or
- A group of 10 or more animals milling out of habitat (e.g. such as occurred with melon headed whales in Hanalei Bay in 2004)

Commonly Stranded Odontocete Species–spinner dolphin, striped dolphin, Kogia sp, Tursiops sp, melon-headed whale, pilot whale, and sperm whales.

Investigation–consists of the following components and can be conducted within 3 days of notification of a stranding event

(1) NMFS will undertake a survey around stranding site to search for other stranded/out of habitat animals

(2) Physical Exam of animal (and blood work if live animals) to investigate and verify presence or absences

(a) Of impacts on the hearing of live stranded mammals. If feasible and if medical condition of the animal allows, Acoustic Brainstem Response (ABR) and Auditory Evoke Potential (AEP) will be conducted to rapidly assess whether the hearing of a live stranded animal has been affected.

(b) Of long term illness (based on body condition), life threatening infection, blunt force traumas or fishery interaction that would indicate the likely cause of death

(c) Of gross lesions or CT/MRI findings that have been documented in previous sonar related strandings (i.e., gas emboli or fat emboli, hemorrhages in organs, hemorrhage in ears). Note: Care must be taken to control and document the conditions under which the carcass is handled. The investigation of microscopic histology can be compromised by the decomposition, freeze/thaw, transport conditions and subsequent necropsy of the mammal.

(3) Evaluation of environmental conditions (through remote sensing, modeling and direct observations) preceding and during the stranding or out of habitat event to determine if environmental factors that are known to contribute to such events were in place, such as fronts, swells, particular currents, Kona winds, prey abundance, seismic events, lunar phase, toxins or predators in area. Navy will assist in providing environmental data that is otherwise collected for tactical purposes.

- Strong evidence of environmental factors that might contribute to stranding event were present
- Weak to no evidence of environmental factors that might contribute to stranding were present

(4) Within 72 hours of notification of an Uncommon Stranding Event, Navy will provide information regarding where and what (or where not) the Navy was operating sonar leading up to the stranding.

Shutdown Protocol:

1. NMFS will respond to all reports of marine mammal strandings during the exercise. If a stranding is suspected to be an Uncommon Stranding Event, the NMFS Stranding Coordinator Pacific will immediately notify the COMPACFLT Environmental Coordinator. The Coordinators will utilize existing protocols as amplified by this document to verify whether or not an event constitutes an Uncommon Stranding Event.

2. If an Uncommon Stranding Event is verified, NMFS will inform the Navy and will identify the shutdown area. NMFS will also confirm with Navy the start time and duration of any recent choke-point exercises.

3. The Navy will cease hull-mounted MFAS activities in the shutdown area. Additionally, if the uncommon stranding event occurred during or within 48 hours of the end of a choke point exercise the Navy will invoke the limited choke point shutdown for up to 4 days.

4. NMFS will conduct its investigation and inform the Navy of its findings as soon as possible, but no later than 4 days from the date the Uncommon Stranding Event was verified.

5. If the results of the investigation indicate that the stranding resulted from causes other than activities covered by this authorization NMFS will inform the Navy that exercises authorized by this IHA may resume.

6. If NMFS determines that the Navy's activities authorized under the IHA may have contributed to the uncommon marine mammal stranding event NMFS will advise the Navy whether the IHA should be modified, suspended, or revoked.

Communication

Effective communication is critical to the successful implementation of this protocol.

- NMFS will provide Navy with a list of NMFS staff, empowered to inform the Navy to implement the appropriate shutdown protocol as described above. These individuals will be reachable 24 hours/day for 22 consecutive days (a pre-identified group will be on call in shifts to make these decisions and a phone tree will be available). Week-end on call will be designated for HQ staff by noon on Friday.
- Navy will provide NMFS a list of people empowered to implement the shut down protocol, at least one of whom will be reachable at any hour during the 22 days of ASW exercises prior to the initiation of the exercise

Negligible Impact Determination and Avoidance of Mortality of Marine Mammals

Negligible Impact

Negligible impact is defined as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." Because NMFS does not authorize or expect any mortality or injury to result from these activities, NMFS believes the authorized takings, by harassment, can be reasonably expected not to adversely

affect the species or stock through effects on annual rates of survival. NMFS acknowledges that Level B Harassment to large enough portions of a species or stock or over a long enough time could potentially adversely affect survival rates, however, due to the required mitigation and monitoring during this proposed activity (which reduce the numbers of animals exposed and the levels they are exposed to), as well as the duration and nature of the activities, NMFS does not believe the RIMPAC ASW exercises will adversely affect survival of any of the affected species.

As discussed earlier (see Stress Responses), some portion of the animals exposed to SELs greater than 173 dB during the RIMPAC exercises will undergo a physiological stress response. Relationships between stress responses and inhibition of reproduction (by suppression of pre-ovulatory luteinizing hormones, for example) have been well-documented. However, NMFS believes the manner in which individual animals respond to different stressors varies across a continuum that is normally distributed with hyper-sensitive and hypo-sensitive animals being on the tails of the curve. Therefore, NMFS does not believe that much more than a small portion of animals exposed to sound levels above 173 dB would respond in a manner that physiologically inhibits reproduction. Additionally, suppression of pre-ovulatory luteinizing hormones would only be of a concern to species whose period of reproductive activity overlaps in time and space with RIMPAC. NMFS also believes that due to the enhanced nature of the monitoring required in this authorization, combined with the shutdown zones, the likelihood of seeing and avoiding mother/calf pairs or animals engaged in social reproductive behaviors is high. Consequently, NMFS believes it is unlikely the authorized takings will adversely affect the species or stocks through effects on annual rates of recruitment.

Table 3 summarizes the reasoning behind NMFS' negligible impact determination, in terms of how mitigation measures contribute towards it and what other factors were considered. Several of the measures addressed have a visual monitoring component, which NMFS recognizes is most effective in reducing impacts to larger animals and species that travel in larger groups. However, NMFS has also included coastal and steep bathymetry restrictions, and extended power-down/shut-down zones, which will significantly reduce the numbers of animals taken, regardless of whether they are cryptic or easily seen, and will effectively reduce the likelihood of mortality, or serious injury, of marine mammals.

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Qualitative Assessment of Negligible Impact and Minimization of Mortality and Serious Injury	
Measures that make the chances of a stranding less likely	**Mechanisms**
1) No sonar operation in areas of steep bathymetry or constricted channels (except for 3 chokepoint exercises)	Measures 1, 2, and 3 all reduce the chances of a confluence of 3 or more of the five factors believed to have contributed to the Bahamas stranding
2) Expanded power-/shut-down zone in strong surface-ducting conditions (2 km power-down, 500m shutdown)	Measure 3 also gives beaked whales (or other deep divers) that may potentially have been driven by sonar into a constricted channel or shallow disorienting circumstances, a wider berth around the sound source to escape to deeper water through
3) No sonar operation within 25 km of 200 m isobath (except for three chokepoint exercises)	Measure 4 (because of wider view and ability to cover larger area) specifically decreases the chances that animals will enter the safety zone without being seen and increases the chances that injured animals or animals exibiting abnormal behaviors (indicative of a potential stranding) are sighted, and sonar shut down
4) During chokepoint exercises, real-time aerial monitoring linked to sonar operation (to advise shut-down, etc.)	*All Measures in this section also reduce #s animals exposed and levels exposed to
Measures that further contribute to a negligible impact	
5) Standard (not during strong surface ducts) expanded, power-down zones	In Measure 5 (versus the power-/shutdown at injury threshold required in previous authorizations), power-down will occur if an animal gets within 1000 m (which NMFS believes will typically be at a distance ensonified to a lower level than that thought to induce injury) and again at 500 m, which will both reduce the numbers of animals exposed and the levels to which they are exposed.
6) NMFS-trained lookouts will visually monitor around all ships operating mid-frequency sonar	
7) Though most are not dedicated observers, all RIMPAC participants (many with good opportunity) are required to report marine mammal sightings to the Officer in Command (lookouts, pilots, passive acoustic monitors)	In Measures 4, 6, and 7, real-time monitoring, in combination with power- and shut-down zones, decreases both the number of animals potentially exposed to sound, and the sound level to which they are exposed
Further considerations in the negligble impact determination for this specific activity	
A) Because this IHA does not authorize injury or mortality, the chance of adversely affecting the affected species through annual survival rates is low.	
B) The number of individuals harassed, in relation to the abundance of the species or stock, factors into the negligible impact determination. The numbers produced by the model do not take into account that the above measures reduce the the number, as well as the severity, of exposures significantly.	
C) NMFS believes the Navy's model overestimated the number marine mammals taken by assuming that animals remain stationary throughout their overlap with the ensonified area, that an animal is always located in the loudest point in any column of ensonified water, and that every exposure is a different animal .	
D) Additionally, the majority of the populations of the marine mammals around Hawaii extend out beyond the EEZ, and so the percentages of the animals in the EEZ affected are higher than the percentage of the biological populations.	

Table 3. A summary of the Measures that reduce the chance of a stranding and contribute to the negligible impact determination.

As mentioned in Table 3, the number of individuals estimated to be harassed, in relation to the abundance of the species or stock, factors into the

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negligible impact determination. In Table 4, NMFS shows the raw percent of the Navy's modeled exposures for each species divided by the estimated abundance of each species within the Hawaiian EEZ. Though NMFS uses these numbers as a starting point for assessing approximately what portion of any affected population may be affected by Level B Harassment through this activity, these numbers suggest impacts to a far greater portion of the populations than NMFS believes will actually occur because they do not take into account several important factors discussed below. Though no particular numeric reduction of the raw modeled percentages can be justified, they are semi-quantitatively addressed in Table 4, which illustrates how certain factors and protective measures reduce the percent of population affected by these activities for each species. Below are the reasons NMFS believes that the percentages of each stock affected are lower:

(1) The effectiveness of mitigation measures has not been taken into account. The following measures will reduce the numbers of individuals harassed:

(a) The 25 km (13.5 nm) coastal exclusion area - For species that have significantly higher densities inshore (10 - 40 times greater within 25 nm (46 km) of the shore), the Navy is excluded from operating sonar within 25 km (13.5 nm) of shore, which significantly reduces the numbers of individuals exposed to sonar. This an especially important point for the spinner dolphin, which has an inshore density of 40 times that of the offshore density.

(b) Monitoring and implementation of powerdowns, shutdowns, and avoidance maneuvers - Species of large body size and large average group size are significantly more likely to be detected by monitoring (active submarine sonar prior to startup, and visual monitoring during the exercise) than those animals that are deep divers or cryptic and the surface, and, therefore, powerdowns and shutdowns are expected to be especially effective in reducing the numbers of these species affected.

(2) The estimated percentage of the portion of the population or stock harassed was calculated by dividing the modeled Level B harassment takes by the estimated abundance in the Hawaiian EEZ. NMFS beleives that the modeled number of takes is an overestimate of the actual number for the following reasons:

(a) As discussed in more detail in the sub-section entitled "Model" in the "Estimated Number of Takes" section previously, NMFS believes that the model overestimates the take of marine mammals significantly by assuming that animals remain stationary throughout their overlap with the ensonified area and by assuming that an animal is always located in the loudest point in any column of ensonified water.

(b) Additionally, when further analyzing the effects of these takes on the affected species and stocks, NMFS believes it would be unrealistic, considering the fast-paced, multi-vessel nature of the exercise and the fact that the exercise continues over the course of a month in an area with resident populations of cetaceans, to assume that each exposure involves a different whale. Some whales are likely to be exposed once, while others are likely to be exposed more than once. One way to numerically address this concept is to assume that the exposure events would be distributed normally, with the exposures that each affect a different whale falling within one standard deviation (68.26 percent), the exposures assumed to affect different whales each twice within 2 standard deviations (27.18 percent), the exposures assumed to affect different whales each 3 times within 3 standard deviations (4.28 percent), and so on, if the populations are larger. If this relationship is applied to estimated numbers of exposures produced by the Navy's model, the calculated number of affected animals is approximately 16 percent less than the estimated number of exposures for any given species. NMFS acknowledges the lack of specific sonar/marine mammal data to support this approach, however, NMFS believes that this approach will help us more closely approximate the number of animals potentially taken than an assumption that each sonar ping affects a different cetacean.

(3) As mentioned in number 2, the estimated percentage of the portion of the population or stock harassed was calculated by dividing the modeled Level B harassment takes by the estimated abundance in the Hawaiian EEZ. However, almost all of the biological populations extend past the boundary of the Hawaiian EEZ, some to an unknown distance, some pantropically, some to the northern Pacific, and some farther. This means that the percentages of populations effected are further lower than the percentages reported in Table. This point may be less applicable to spinner dolphins and bottlenose dolphins as there may be additional population sub-division within the Hawaiian Islands.

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		Percentage of Actual Stock Taken is Generally Lower		Mitigation Measures Especially Effective To Decrease % of Population				
				25 km Coastal Exclusion	Monitoring Especially Effective for Minimizing Take		Monitoring Less Effective For Minimizing Take	
Species	From Model % Taken of Extimated Abundance in EEZ	Rare in Hawaii	Popul. Beyond EEZ	Inshore Density Signif. >> OffshoreDensity*	Large Group Size**	Large Body	Cryptic at Surface	Deep Divers
Sei whale	38	X	X			X		
Fin whale	37	X	X			X		
Bryde's whale	20		X			X		
Sperm whale*	21		X			X		O
Pygmy sperm whale	19		X				O	O
Dwarf sperm whale	21		X				O	O
Cuvier's beaked whale	20		X				O	O
Blainville's beaked whale	21		X				O	O
Longman's beaked whale	19		X		X			
Rough-toothed dolphin	20		X		X			
dolphin	36			X	X			
Pantropical spotted dolphin	44		X	X	X			
Spinner dolphin	103			X X	X			
Striped dolphin	27		X		X			
Risso's dolphin	20		X		X			
Melon-headed whale	21		X		X X			
Fraser's dolphin	20	X	X		X X X			
Pygmy killer whale	17		X		X			
False killer whale	51		X	X	X			
Killer whale	23		X			X		
Short-finned pilot whale	34		X	X	X			

* For "Inshore Density Signif >> Offshore Density", X = 10 times greater, XX = 40 times greater

** For Large Group Size", X = 10 to 40, XX = 89, XXX = 286

Table 4. Based on the Navy model, the second column shows the the percent of the estimated abundance in the EEZ, by species, that could be taken by Level B Harassment by the RIMPAC activities. The middle columns indicate, by Xs, when there is a clear reason to believe that these percentages will be lower for the given reason.

Subsequent to the proposed IHA NMFS published the Final Report being published in the **Federal Register**, addressing the melon-headed whale

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event that occurred in Hanalei Bay during the RIMPAC exercises last year. This report concluded that mid-frequency sonar operation in the area was a plausible, if not likely, contributor to the event. NMFS recognizes that the deaths of these animals could potentially have resulted measurable effects on the population. To minimize that possibility in the future, NMFS will implement Shutdown Critieria during RIMPAC that require the Navy to cease sonar operations if an uncommon stranding event (such as the Hanalei event) is verified (see Mitigation, Monitoring, and Reporting above).

NMFS has determined that, based on the nature and duration of the proposed activities, and dependent upon the full implementation of the required mitigation and monitoring measures, which will reduce both the severity of effects on animals that may be potentially exposed and the numbers of animals potentially exposed, the RIMPAC ASW exercises will result in the Level B Harassment of the species addressed here, consisting primarily of temporary behavioral modifications, in the form of temporary displacement from feeding or sheltering areas, low-level physiological stress responses, and, to a lesser extent, TTS. NMFS has further determined that these takings, by harassment, will result in a negligible impact to the affected species or stocks.

Avoidance of Serious Injury or Mortality

NMFS has required a suite of mitigation measures in the IHA that reduces the likelihood of a stranding resulting from the RIMPAC ASW activities. However, several points that were emphasized in the public comments (i.e., the difficulty (even in ideal conditions) of detecting beaked whales, which have been among the species stranded in most of the strandings associated with sonar, and the fact that choke-point exercises will be conducted both at night and in surface-ducting conditions) and the published conclusions of the melon-headed whale stranding report do not allow NMFS to rule out the possibility of a stranding resulting from the RIMPAC ASW activities. Consequently, NMFS has included specific shutdown criteria (see Mitigation and Monitoring, above), which are intended to ensure MMPA compliance. These criteria require the Navy to temporarily cease operating sonar in a designated area when a stranding is verified during the RIMPAC ASW exercise. NMFS will then conduct an investigation, and if NMFS finds that the Navy's activities may have contributed to the stranding, NMFS will modify, revoke, or suspend the IHA.

Endangered Species Act (ESA)

There are seven marine mammal species and five sea turtle species that are listed as endangered or threatened under the ESA with confirmed or possible occurrence in the RIMPAC ASW area: humpback whale, North Pacific right whale, sei whale, fin whale, blue whale, sperm whale, and Hawaiian monk seal, loggerhead sea turtle, the green sea turtle, hawksbill sea turtle, leatherback sea turtle, and olive ridley sea turtle.

Under section 7 of the ESA, the Navy consulted with NMFS on the proposed RIMPAC ASW exercises. NMFS also consulted internally on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. The Endangered Species Division, NMFS, issued a Biological Opinion (BiOp) that concluded that the proposed action is not likely to result in jeopardy to the species or in the destruction or adverse modification of critical habitat..

The BiOp includes an incidental take statement for harassment of sperm whales, fin whales, and sei whales, which also contains the same required terms and conditions (mitigation, monitoring, and reporting) as those contained in the IHA.

National Environmental Policy Act (NEPA)

In April, 2006, the Navy prepared a revised 2006 Supplement on the 2002 Programmatic Environmental Assessment (EA) on RIMPAC. NMFS has adopted the Navy's EA and issued an associated Finding of No Significant Impact (FONSI).

Conclusions

A determination of negligible impact is required for NMFS to authorize incidental take of marine mammals. By regulation, an activity has a "negligible impact" on a species or stock when it is determined that the total taking is not likely to reduce annual rates of adult survival or recruitment (i.e., offspring survival, birth rates). Based on each species' life history information, the expected behavioral patterns of the animals in the RIMPAC locations, the duration of the activity, the anticipated implementation of the required mitigation and monitoring measures, and an analysis of the behavioral disturbance levels in comparison to the overall populations, an analysis of the potential impacts of the Proposed Action on species recruitment or survival support the conclusion that proposed RIMPAC ASW training events would have a negligible impact on the affected species or stocks. NMFS has also determined that the issuance of the IHA would not have an unmitigable adverse impact on the availability of the affected species or stocks for subsistence use. Additionally, NMFS has set forth in its IHA the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings.

Authorization

NMFS has issued an IHA to the Navy for conducting ASW exercises, using tactical mid-frequency sonar, in the Hawaiian Islands OpArea, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: June 29, 2006.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 06–6050 Filed 7–6–06; 8:45 am]

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Federal Register

Friday,
July 7, 2006

Part IV

Commodity Futures Trading Commission

17 CFR Part 38

Conflict of Interest in Self-Regulation and Self-Regulatory Organizations; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 38

RIN 3038–AC28

Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations

AGENCY: Commodity Futures Trading Commission ("Commission").

ACTION: Proposed Acceptable Practices for compliance with section 5(d)(15) of the Commodity Exchange Act ("CEA" or "Act").[1]

SUMMARY: The Commission hereby proposes Acceptable Practices for section 5(d)(15) of the Act ("Core Principle 15").[2] The proposed Acceptable Practices would provide designated contract markets ("DCMs") with a safe harbor for compliance with selected aspects of Core Principle 15's requirement that they minimize conflicts of interest in their decisionmaking. The proposed Acceptable Practices are summarized as follows.

First, the Board Composition Acceptable Practice proposes that exchanges minimize potential conflicts of interest by maintaining governing boards composed of at least fifty percent "public" directors, as defined below. Second, the proposed Regulatory Oversight Committee Acceptable Practice calls upon exchanges to establish a board-level Regulatory Oversight Committee, composed solely of public directors, to oversee regulatory functions. Third, the Disciplinary Panel Acceptable Practice proposes that each disciplinary panel at all exchanges include at least one public participant, and that no panel be dominated by any group or class of exchange members.[3] Finally, the proposed Acceptable Practices provide a definition of "public" for exchange directors and for members of disciplinary panels.

Collectively, the proposed Acceptable Practices promote independence in decisionmaking by self-regulatory organizations ("SROs"),[4] and constitute a proactive yet measured step toward ensuring that SROs maintain fair, vigorous, and effective self-regulation in a rapidly evolving futures industry. The Commission welcomes comment on the proposed Acceptable Practices.[5]

DATES: Comments should be submitted on or before August 7, 2006.

ADDRESSES: Comments should be sent to Eileen Donovan, Acting Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be submitted via e-mail at *secretary@cftc.gov*. "Regulatory Governance" must be in the subject field of responses submitted via e-mail, and clearly indicated in written submissions. Comments may also be submitted at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Rachel F. Berdansky, Acting Deputy Director for Market Compliance, (202) 418–5429; or Sebastian Pujol Schott, Special Counsel, (202) 418–5641, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

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I. Introduction

Exchanges are "affected with a national public interest" in that they "provid[e] a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair, and financially secure trading facilities."[6] Exchanges are also the front-line regulators in the U.S. futures industry.[7] There are potential conflicts of interest inherent in an exchange's responsibilities as a regulator of its market and members, and the commercial interests embedded in its market operation. Nevertheless, with proper checks and balances to address such conflicts, coupled with vigilant Commission oversight, self-regulation can continue to serve as an effective and efficient means of promoting market integrity.

Increasing competition,[8] changing ownership structures,[9] and evolving

[1] Acceptable Practices for the Core Principles reside in Appendix B to Part 38 of the Commission's Regulations, 17 CFR part 38, App. B.

[2] Core Principle 15 for designated contract markets provides as follows: "CONFLICTS OF INTEREST—The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the contract market and establish a process for resolving such conflicts of interest." CEA § 5(d)(15), 7 U.S.C. § 7(d)(15).

[3] *See* CEA Section 1a(24), 7 U.S.C. 1a(24) (defining the term "member" to include both exchange members and non-member market participants with trading privileges); *see also* 17 CFR 1.3(q).

[4] For purposes of these Acceptable Practices, the term "SROs" refers to DCMs and is used interchangeably with the terms "exchanges," "boards of trade" and "contract markets." As part of its SRO study, the CFTC considered whether the current level of "public" representation on boards of registered futures associations ("RFAs") is still sufficient. That question and related issues concerning RFAs remain under review and will be addressed separately.

[5] This Release is the latest development in the Commission's SRO review that commenced in May 2003. The Acceptable Practices proposed herein are based on comments received in response to prior requests for comments published in the **Federal Register**, interviews with industry participants, testimony given at a February 15, 2006 public hearing before the Commission, and other sources identified herein as part of the basis for the instant proposals. Prior **Federal Register** releases, responses thereto, the hearing transcript, and a summary of interview comments, described with greater specificity elsewhere herein, are available on the Commission's Web site at *www.cftc.gov*, or are available through the Acting Secretary of the Commission, whose name and address are listed above.

[6] CEA Section 3(a), 7 U.S.C. § 5(a).

[7] CEA Section 3(b), 7 U.S.C. § 5(b).

[8] Increasing competition exists between U.S. and foreign exchanges, and between domestic exchanges. The New York Mercantile Exchange ("NYMEX") and the IntercontinentalExchange offer competing contracts in Brent and WTI crude futures. Euronext.liffe, a subsidiary of Euronext, and the Chicago Mercantile Exchange ("CME") offer competing Eurodollar contracts. Within the U.S., the Chicago Board of Trade ("CBOT") and NYMEX offer several competing gold and silver contracts.

New exchanges comprise a further source of new competition. Since 2002, the Commission has designated six new contract markets, all of which entered the marketplace as non-mutual, for-profit entities. There is also competition between trading formats—open outcry and electronic. NYMEX gold and silver contracts, for example, trade primarily on the floor of the exchange, while CBOT offers its gold and silver contracts only electronically. In addition, the new contract markets referred to above trade only electronically, and electronic trading now accounts for over 60% of all trading volume on U.S. futures exchanges.

Finally, enhanced competition is evident between exchanges and their large, institutional futures commission merchant ("FCM") members. They may compete directly, with FCMs internalizing order flow or exchanges disintermediating FCMs. They may also compete indirectly, as occurs, for example, when FCMs establish or invest in new exchanges offering substitutable contracts. Examples include the Cantor Financial Futures Exchange (no longer trading), designated in 1998; BrokerTec Futures Exchange, designated in 2001; and U.S. Futures Exchange, designated in 2004. The FCM-owners of new exchanges may both compete against, and be subject to the regulation of, the established SROs of which they are members.

[9] The principal change in ownership structure is the demutualization of member-owned exchanges and their conversion to publicly traded stock corporations. In December 2002, CME became the

business models are dramatically transforming the U.S. futures industry. Today U.S. futures exchanges must compete vigorously with other exchanges, electronic trading facilities and foreign markets to attract order flow, and also must meet customer demand for twenty-four hour trading, immediate order execution, lower transaction costs, and access to global markets. This heightened competition places strain on exchanges' dual roles as regulators and as markets, and raises questions about their ability to deal with pressures to subordinate regulatory responsibilities to commercial imperatives. The trend towards demutualization represents an additional challenge to exchanges' performance of self-regulatory duties. Traditional SRO conflicts have been joined by the possibility that self-regulatory functions may be marginalized by potentially conflicting commercial interests.[10]

In view of these developments, the Commission conducted a review of self-regulation in the futures industry to consider whether, and how, SROs can continue to fulfill their statutorily-mandated responsibilities as regulators.[11] Three key principles emerged from this review. First, self-regulation continues to be the most effective and efficient regulatory model available to the futures industry; the self-regulatory system nevertheless must be updated and enhanced, as appropriate and necessary, to keep pace with the changing marketplace. Second, market forces, driven by global competition and changing ownership structures, pose a heightened risk that SROs may fail to fairly and vigorously carry out their regulatory responsibilities; such conflicts, whether actual or perceived, must be addressed proactively in the first instance by the SROs themselves. Third, the current market environment mandates enhanced and transparent governance as an essential business practice for maintaining market integrity and the public trust.[12]

The Acceptable Practices proposed today constitute the Commission's considered view of best practices relating to SRO governance and administration in order to address the concerns raised by SROs' dual roles in light of increasing competition and demutualization. The Acceptable Practices promote an optimal SRO governance structure, which would minimize the potential for conflicts with the SRO's regulatory duties. Specifically, the Acceptable Practices would ensure that there is adequate independence within the SRO's board to insulate regulatory functions from the interests of the exchange's management, members, and other business interests of the market itself. An SRO is not simply a corporation, but a corporation charged with the public trust. As such, the board—the governing body of the SRO—must be structured in a way that best fosters public confidence in the integrity of its organization, and further, ensures that SRO functions take no less preeminence than that accorded to the exchange's commercial interests.

The Acceptable Practices also would enhance the role of outside impartiality in other key SRO functions, including a board-level Regulatory Oversight Committee ("ROC") and disciplinary panels, to further enhance the transparency and accountability of SRO decisions impacting self-regulation. Finally, the proposed Acceptable Practices carefully define "public" directors to identify those who can help ensure that SRO regulatory programs remain effective, yet unburdened by potential conflicts or pressures from the exchange's commercial or member interests.

In summary, the Acceptable Practices proposed today are measured steps—in the form of carefully-tailored internal safeguards and checks and balances—to promote the independence of SRO functions. At the same time, they ensure that industry expertise, experience, and

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first U.S. futures exchange to transform from a membership mutual organization to a publicly traded, for-profit entity. Class A shares of its parent company, CME Holdings, Inc., are now listed on the New York Stock Exchange ("NYSE"). In October 2005, after undergoing a similar restructuring, the CBOT became the second U.S. futures exchange to demutualize and offer its parent's stock for trading on the NYSE.

While demutualization has been an important development for the largest and most well-established futures exchanges, the advent of exchanges structured as for-profit limited liability companies ("LLCs") is another significant trend.

[10] Five domestic and international studies reviewed by the Commission address this issue, and are noteworthy for the extent to which they parallel concerns raised by futures industry participants. Although the studies focus primarily on the securities industry, some include futures markets as well, and the Commission believes that the concerns raised by demutualization and competition may be similar for both the futures and securities industries and exchanges.

The Securities Industry Association's ("SIA") *White Paper on Reinventing Self-Regulation*, (Jan. 5, 2000, updated Oct. 14, 2003), observed, "the combined roles of SROs as market overseers and as competitors may affect SROs" ability and willingness to perform all their regulatory functions adequately, fairly, and efficiently" (SIA 2003 at 3).

The International Organization of Securities Commissions" ("IOSCO") *Issues Paper on Exchange Demutualization*, (June 2001), determined that although many concerns with respect to self-regulation are not new, "demutualization and increased competition may exacerbate them" (IOSCO at 5).

A U.S. Government Accountability Office's ("GAO") report to Congress entitled "*Securities Markets: Competition and Multiple Regulators Heighten Concerns about Self-Regulation* (May 2002) found that some securities SRO members were "concerned that SROs could adopt rules that unfairly impeded the ability of members to compete against the SROs." Others were concerned that "an SRO, in its regulatory capacity, could obtain proprietary information from a member and, in its capacity as a market operator, inappropriately use the information" (GAO at 7). Some securities SRO members also expressed concern that "a demutualized, for-profit market operator might be more likely to misuse its regulatory authority or be less diligent in fulfilling its regulatory responsibilities in a desire to increase profits" (GAO at 8). Abuse of authority could be manifested, for example, through "rules that unfairly disadvantage members or other markets or inappropriately sanction or otherwise discipline members against which the SROs compete." (*Id.*)

A discussion paper prepared for the World Bank's ("WB") Financial Sector Strategy Department by an independent consultant, Implications of *Demutualization for the Self-Regulatory and Public Interest Roles of Securities Exchanges* (John W. Carson, January 2003) (not necessarily representing the views or policies of the World Bank), identified four "widely accepted" propositions with respect to conflicts of interest and demutualization: (1) Conflicts of interest in self-regulation have always existed; (2) demutualization may increase the degree of those conflicts; (3) demutualization introduces new conflicts of interest; and (4) demutualization may reduce old conflicts (WB at 8). The World Bank Study offered several recommendations with respect to self-regulation: (1) "At a minimum, the threat of increased conflict in exercising regulatory authority demands that new safeguards be put in place to reduce the possibility of either the business units or customers attempting to influence regulatory decisions;" (2) it is imperative that decisions on opening investigations, when to expand or close investigations, when to pursue disciplinary action, and what penalty to seek are all made in an independent and unbiased manner, without regard to business considerations and impact on important customer relationships;" and (3) "strong measures are required to ensure that the integrity of an exchange's regulatory program is maintained and that it handles regulatory issues and decisions in a neutral and unbiased mnaner" (WB at 42–43).

Finally, an International Monetary Fund ("IMF") Working Paper, *Demutualization of Securities Exchanges: A Regulatory Perspective* (Jennifer Elliott, September 2002) (not necessarily representing the views of the IMF) identified two broad conflicts of interest associated with demutualization. According to the Working Paper, "the forces that have generated pressure on exchanges to demutualize have also created new conflicts of interest and forced regulators and exchanges to reconsider what and how regulatory functions are delivered by the exchanges" (IMF at 7). One new conflict of interest is that "shareholders, who are interested in profit, may under fund the exchange's regulatory function. While in theory, the exchange should only benefit from an adequate regulatory standards [sic], exchanges may succumb to competitive pressure." (IMF at 16). "The second conflict of interest is the disincentive to regulate market participants (who represent order flow and are a direct source of revenue for the exchange)" (Id).

[11] *See* Section II.A., *infra*.

[12] In recent years, the U.S. financial industry has undertaken major initiatives to strengthen corporate governance structures. These initiatives respond, for the most part, to a perceived lack of effective board oversight and emphasize board independence and accountability. *See* Section II.B., *infra*.

knowledge continue to play a vital role in SRO governance and administration and thus, preserve the "self" in self-regulation. In this manner, these proposed Acceptable Practices keep pace with changing market dynamics and proactively ensure that the self-regulatory model remains as vigorous, as fair, and as effective as required to protect the integrity of U.S. futures markets and the public confidence in them for years to come.

II. The SRO Review

A. Procedural History of the SRO Review

The Commission's Acceptable Practices are based on a comprehensive review of self-regulation and SROs in the U.S. futures industry ("SRO Review"). Phase I of the SRO Review explored the roles, responsibilities, and capabilities of SROs in the context of industry changes. Staff examined the designated self-regulatory organization ("DSRO") system of financial surveillance, the treatment of confidential information, the composition of exchanges' disciplinary committees and panels, and other aspects of the self-regulatory process. At the conclusion of Phase I, the Commission identified two issues for immediate attention: (1) An examination of the cooperative regulatory agreement by which DSROs coordinate compliance examinations of FCMs; and (2) ensuring the confidentiality of certain information obtained by SROs and DSROs in the course of their regulatory activities. Measures with respect to both issues were announced by the Commission in February 2004. These issues are not addressed in this release.[13]

After detailed interviews with an array of industry participants, the Commission initiated Phase II of the SRO Review and broadened its inquiry to address SRO governance and the interplay between exchanges' self-regulatory responsibilities and their commercial interests.

In June 2004, the Commission issued a **Federal Register** Request for Comments ("Request") on the governance of futures industry SROs.[14] The Request sought input on the proper composition of exchange boards, optimal regulatory structures, the impact of different business and ownership models on self-regulation, the proper composition of exchange disciplinary committees and panels, and other issues.

In November 2005, the Commission updated its previous findings through a second **Federal Register** Request for Comments ("Second Request") that focused on the most recent industry developments.[15] The Second Request examined the board-level ROCs recently established at some SROs in the futures and securities industries. It considered the impact of the listing standards of the New York Stock Exchange ("NYSE") on publicly-traded futures exchanges; whether the standards were relevant to self-regulation; and how the standards might inform the Commission's own regulations. The Second Request also explored the role of outside regulatory service providers, including RFAs, and SRO governance and the composition of boards and disciplinary committees.

Phase II of the SRO Review concluded with a public Commission hearing on "Self-Regulation and Self-Regulatory Organizations in the U.S. Futures Industry" ("Hearing"). The day-long Hearing, held at Commission headquarters in Washington, DC on February 15, 2006, included senior executives and compliance officials from a wide range of U.S. futures exchanges, representatives of small and large FCMs, academics and other outside experts, and an industry trade group. The Hearing afforded the Commission an opportunity to question panelists on four broad subject areas: (1) board composition; (2) alternative regulatory structures, including ROCs and third-party regulatory service providers; (3) transparency and disclosure; and (4) disciplinary committees.[16]

B. Issues Raised by the SRO Review

The SRO Review provided the Commission staff and industry participants and observers a unique opportunity to comment on the present state of self-regulation in the U.S. futures industry. Through interviews with over 100 industry participants and observers, comments received in response to **Federal Register** notices, and the Hearing, the Commission gathered a wide range of views on the successes and challenges facing self-regulation now and into the future.

In general, commenters and interview participants saw continuing vitality in the central premise of self-regulation: that regulation works best when conducted close to the markets by individuals with market-specific expertise. At the same time, though, throughout the course of the SRO Review and in the surrounding public debate on the merits of self-regulation in the financial sector generally, many identified increased competition, evolving business models, and new ownership structures as critical changes capable of adversely impacting exchanges' regulatory behavior.[17]

Specifically, some interview and Hearing participants and commenters expressed concern that for-profit, publicly traded exchanges may under-invest in regulatory personnel or technology to control costs and thereby meet the short-term expectations of stock holders and analysts.[18] The

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[13] The most recent amendments to the DSROs' cooperative agreement were submitted to the Commission and published for comment. Futures Market Self-Regulation, 69 FR 19166 (Apr. 12, 2004). *See also* Press Release, Commodity Futures Trading Commission, Commission Progresses with Study of Self-Regulation (Feb. 6, 2004), available at: *http://www.cftc.gov/apa/press04/opa4890-04.htm.*

[14] Governance of Self-Regulatory Organizations, 69 FR 32326 (June 9, 2004). In this release, comment letters ("CLs") in response to the SRO Governance Request for Comments are referred to by the name of the party submitting the letter and page number. These letters are available at: *http://www.cftc.gov/faia/camment04/fai04-005_1.htm.* A summary of interview comments (with names of persons interviewed redacted) also is available at this Web site.

[15] Self-Regulation and Self-Regulatory Organizations in the Futures Industry, 70 FR 71090 (Nov. 25, 2005). Comment letters received in response to this release are available at *http://www.cftc.gov/faia/camments05/fai05-007_1.htm.*

[16] The Hearing Transcript ("Hearing Tr.") is available at *http://www.cftc.gov/files/apa/apapublichearing021506.final.pdf.*

[17] *See e.g.*, Futures Industry Association ("FIA"), CL at 2 (Jan. 23, 2006); Comments of Professor Roberta S. Karmel, Centennial Professor of Law, Brooklyn Law School ("Karmel"), Hearing Tr. at 32 ("[T]echnology and competition are creating more serious conflicts and, in fact, it is these forces that propel demutualization in the first place"); Comments of Christopher K. Hehmeyer, Co-Chairman, Goldenberg Hehmeyer & Co., *id.* at 151 ("[E]xchanges have done very well. But it would only take a couple of bad quarters, God forbid, on the part of the exchanges, for there to be pressures on some of the conflicts that haven't revealed themselves in the past."); Comments of Susan M. Phillips, Dean, George Washington University School of Business ("Phillips"), *id.* at 116 ("Obviously, the whole exchange environment is changing dramatically, probably more so now than at any time in history. There are a lot of pressures on exchanges.").

See also IOSCO at 4. ("[A]s competition increases and exchanges move from mutual or cooperative entities to for-profit enterprises, new elements enter the environment. The commercial nature of the exchange becomes more evident: maximizing profits becomes an explicit objective."). Others have noted that, even absent demutualization or for-profit exchanges, "intense competition alone will * * * increase conflicts due to the need to reduce costs, be more responsive to customers, and ensure that competing markets do not gain advantage by imposing a lighter regulatory burden." WB at 31.

[18] *See, e.g.*, FIA CL (Jan. 23, 2006) at 1 (observing that SROs may use their regulatory authority for anti-competitive purposes or to adopt rules that benefit parochial interests at the expense of the public interest); and Citigroup CL (Jan. 23, 2006) at 1–2 (echoing support for the views expressed in FIA's comment letter); *see also* Comments of Jeffrey Jennings, Managing Director and Global Head of Futures, Lehman Brothers ("Jennings"), Hearing Tr. at 53 ("[A]s the exchanges become for-profit * * * we have to recognize the issues that that raises, and

exchanges' growing conflicts may also manifest themselves in under-regulation of those market participants who generate significant income or liquidity for the exchange—for example, FCMs that bring significant customer volume, market makers that provide significant liquidity, or high-volume locals. Conversely, concerns were raised that exchange participants who are not favored by, or compete with, the exchange may suffer from discriminatory or over-regulation.[19]

Exchanges, in turn, have argued that increased competition, demutualization, and other industry developments will strengthen self-regulation, not weaken it.[20] They stated that their competitive advantage rests in offering fair and transparent markets that are free from fraud, manipulation, and other abusive practices. Exchanges also noted that demutualization and public listing create a new class of exchange owners whose long-term interests are aligned with effective self-regulation and fair markets.

Against this backdrop of market changes raising implications for the SROs" performance of their regulatory functions, the U.S. financial industry has seen the emergence of governance "best practices" and standards designed to enhance corporate responsibility. These best practices and standards are found in a wide spectrum of the U.S. business community, ranging from securities self-regulatory organizations to major corporations and financial participants. All of these initiatives emphasize corporate governance as the key tool for the fulfillment of corporate responsibilities.[21]

The cumulative impact of an evolving industry, operating in an ever more competitive, global environment, and the growing attention to the need for enhanced corporate governance, provide the basis for the Commission's review of self-regulation in the futures industry and the Acceptable Practices proposed herein.[22]

III. Description of Proposed Acceptable Practices

Section 5(d)(15) of the CEA ("Core Principle 15") requires that exchanges "minimize conflicts of interest in the decision making process."[23] Underlying the Core Principle's mandate is the recognition that management of conflicts of interest, which could potentially compromise the independence of an exchange's decision making, is fundamental to the effective operations of the exchange—no less than customer protection and market integrity mandated by other Core Principles. Core Principle 15 requires the exchanges to have systems in place to address not only an individual's personal conflicts of interest, but also the broader potential conflicts of interest inherent in self-regulation.

As discussed earlier, with respect to SROs that operate as both markets and front-line regulators, these conflicts may be further exacerbated by emerging market trends. At present, however, there are no Acceptable Practices for Core Principle 15. The Commission's core mission is to promote and protect the integrity of the U.S. futures markets and to promote public confidence and trust in those markets. Now, as the futures industry undergoes one of the most significant transformations in its long history, self-regulation must keep pace. Accordingly, the Commission believes that it is appropriate and necessary to provide guidance to SROs in the form of Acceptable Practices for Core Principle 15.

Core Principle 15 is illustrative of the new regulatory approach ushered in by the Commodity Futures Modernization Act of 2000 ("CFMA"),[24] which replaced prescriptive rules governing futures exchanges with broad, flexible core principles. The core principles set standards of performance for the exchanges, and at the same time, allow exchanges considerable leeway in how to meet those standards. To facilitate compliance, the Commission has adopted Acceptable Practices for other core principles. Through its Acceptable Practices, the Commission provides exchanges with a safe harbor for complying with selected requirements of a core principle, but such Acceptable Practices, as stated in the Act, are not the exclusive means for compliance.[25] Once implemented, Acceptable Practices provide regulatory certainty that exchanges may rely upon when seeking designation as contract markets or when subject to periodic Rule Enforcement Reviews by the Commission.[26]

The Acceptable Practices proposed in this Release are designed to offer exchanges a roadmap for complying with selected requirements of Core Principle 15. The Acceptable Practices that we propose today would enable SROs to demonstrate that they are structurally capable of protecting their regulatory functions and decision making from conflicts of interest.[27]

As with Acceptable Practices generally, exchanges may choose not to comply with the proposed Acceptable Practices for Core Principle 15. They still will be required, however, to demonstrate that their policies and practices with respect to governance and decision making are in compliance with Core Principle 15 by other means.[28]

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the risks of there being some sort of conflicts of interest. * * *").

[19] Whether stemming from increased competition, demutualization, or for-profit structures, potential conflicts of interest in self-regulation may be all the more evident when exchanges regulate their competitors. For example, when firms operate their own market and also are users of an exchange, the exchange could discriminate in disciplinary matters, trading rules, fees, and other areas in which it has jurisdiction over the competitor. It has been suggested that, as with other conflicts of interest, "the conflicts inherent in an exchange regulating its competitors, while not new, become more apparent where the exchange is also a for-profit enterprise." IOSCO at 5.

[20] See, e.g., CME CL (Jan. 23, 2006) at 2 and NYMEX CL (Jan. 23, 2006) at 3.

[21] See, e.g., Fair Administration and Governance of Self-Regulatory Organizations, 69 FR 71126 (Dec. 8, 2004) ("Fair Administration"); World Bank—Corporate Governance Principles of Best Practices, available at: *http://www.worldbank.org/html/fpd/privatesector/cg/codes.htm;* CalPERS Governance Principles, available at: *http://www.calpers-governance.org/principles/default.asp.*

[22] In the face of such developments, a Hearing participant observed that "it is incumbent upon us all that the U.S. futures industry establish standards that recognize and are responsive to the realities of our changing industry and marketplace and are fair and without any appearance of conflicts." Jennings, Hearing Tr. at 28.

[23] Any board of trade that is registered with the Securities and Exchange Commission ("SEC") as a national securities exchange, is a national securities association registered pursuant to section 15(A)(a) of the Securities Exchange Act of 1934, or is an alternative trading system, and that operates as a designated contract market in securities futures products under Section 5f of the Act and SEC Regulation 41.31, is exempt from the core principles enumerated in Section 5 of the Act, and the Acceptable Practices thereunder.

[24] Appendix E of Pub. L. No. 106–554, 114 Stat. 2763 (2000).

[25] See CEA Section 5c(a)(2), 7 U.S.C. § 7a–2(a)(2).

[26] The Commission has explained that "boards of trade that follow the specific practices outlined under [the Acceptable Practices] * * * will meet the selected requirements of the applicable core principle." 17 CFR part 38, App. B, ¶ 2.

[27] In recent amendments to Appendix B of Part 38, the Commission has explained that "the enumerated acceptable practices under each core principle are neither the complete nor the exclusive requirements for meeting that core principle. With respect to the completeness issue, the selected requirements in the acceptable practices section of a particular core principle may not address all the requirements necessary for compliance with the core principle." Technical and Clarifying Amendments to Rules for Exempt Markets, Derivatives Transaction Execution Facilities and Designated Contract Markets, and Procedural Changes for Derivatives Clearing Organization Registration Applications, 71 FR 1953, 1958 (Jan. 12, 2006). The Acceptable Practices that we propose today do not reach, and are not intended to reach, individual, personal conflicts of interest. A contract market must address these conflicts as well as the structural conflicts that are the subject of these proposed Acceptable Practices in order to demonstrate full compliance with Core Principle 15's requirements.

[28] In this regard, the CFTC will take into account the governance and regulatory conflicts of interests

Continued

The elements of the proposed Acceptable Practices under Core Principle 15 are summarized below. The Commission proposes as a new Acceptable Practice under Core Principle 15 that at least fifty percent of the board members of exchanges' boards of directors and executive committees (or similarly empowered bodies) be "public" directors, as defined below ("*Board Composition Acceptable Practice*"). Day-to-day regulatory operations should be supervised by a Chief Regulatory Officer ("CRO") reporting directly to a ROC ("*Regulatory Oversight Committee Acceptable Practice*"). The Acceptable Practices define "public director" for persons serving on boards, ROCs, and disciplinary panels. An individual may qualify as a public director upon an affirmative determination by the board that the individual has no material relationship with the exchange.

In addition, the Acceptable Practices strengthen impartial adjudication by providing that SRO disciplinary panels should not be dominated by any group or class of SRO participants, and that each panel should include at least one public member ("*Disciplinary Panel Acceptable Practice*"). By increasing the public voice on governing boards and disciplinary committees and creating an independent board-level ROC, combined with Commission oversight, the Acceptable Practices seek to maintain the existing high standards of fair and effective self-regulation in the futures industry, while proactively adapting them to the market and business realities of a new era for the industry. Each of these Acceptable Practices is described below.

A. Board Composition; "Public" Director Defined

The Board Composition Acceptable Practice provides that exchanges should elect governing boards composed of at least fifty percent public directors. In addition, it provides that SROs' executive committees (or similarly empowered bodies) should be at least fifty percent public.

The Acceptable Practice offers guidance on the definition of "public" director. The proposed definition provides that a director is "public" only if the board of directors affirmatively determines that the director has no "material relationship" with the exchange. The nominating committee of the board of directors should affirmatively determine on the record that a director or nominee has no material relationship with the exchange, and should state on the record the basis for its determination and the scope of its scrutiny. The committee should reevaluate that determination at least on an annual basis.

"Material relationships" are those that reasonably could affect the independent judgment or decision making of the director. Material relationships are not exclusively compensatory or financial. Any relationship between a director and the exchange that may interfere with a director's ability to deliberate objectively and impartially on any matter is a material relationship. In this regard, material relationships are not limited to those where a director has an immediate interest in a particular matter before him or her.

In addition to the general materiality test, the proposed definition of "public" director identifies specific circumstances or relationships that would preclude a determination that a person qualifies as a "public" director. Specifically, a director could not be "public" if any of the following circumstances existed: [29]

—The director is an officer or employee of the exchange or a director, officer or employee of its affiliate; [30]

—The director is a member of the exchange, or a person employed by or affiliated with a member. In this context, a director is affiliated with a member if the director is an officer or director of the member;

—The director receives more than $100,000 in payments from the exchange, any affiliate of the exchange, or a member or anyone affiliated with a member; [31]

—Any of the relationships above apply to a member of the director's immediate family, *i.e.*, spouse, parents, children, and siblings.

—All of the disqualifying circumstances described above are subject to a one-year look back. Thus, for example, a director who, within the past year, was a member of the exchange, would not qualify as a "public" director.

Comments are solicited on whether there are additional categories of circumstances which should automatically disqualify a person from consideration as a "public" director. Also, commenters have suggested that members should not be precluded from serving as a "public" director. They have offered as examples persons who engage in *de minimis* trading, or members who lease their seats to others. The Commission seeks the public's views on whether these or similar circumstances could rebut the presumption of member disqualification as a "public" director.

B. Regulatory Oversight Committee

The Regulatory Oversight Committee Acceptable Practice recognizes the importance of insulating core regulatory functions from improper influences and pressures stemming from the exchange's commercial affairs. To comply with the Regulatory Oversight Committee Acceptable Practice, every exchange should establish, as a standing committee of its board of directors, a ROC with oversight responsibility for all facets of the SRO's regulatory program. This includes broad authority to oversee: (1) Trade practice surveillance; (2) market surveillance; (3) audits, examinations, and other regulatory responsibilities with respect to member firms; [32] (4) the conduct of investigations; (5) the size and allocation of regulatory budgets and resources; (6) the number of regulatory officers and staff; (7) the compensation of regulatory officers and staff; (8) the hiring and termination of regulatory officers and staff; and (9) the oversight of disciplinary committees and panels.

The ROC's primary role is to assist the board in fulfilling its responsibility of ensuring the sufficiency, effectiveness, and independence of self-regulatory functions.[33] In this capacity, the ROC should have the authority, discretion and necessary resources to conduct its own inquiries; consult directly with regulatory staff; interview employees, officers, members, and others; review relevant documents; retain independent legal counsel, auditors, and other professional services; and otherwise exercise its independent analysis and

specific to the exchange and how they are being managed.

[29] These specific circumstances—or "bright-line" tests—are neither exclusive nor exhaustive. A director does not qualify as "public" unless the board affirmatively determines that the director has no material relationship with the exchange, including but not limited to, the bright-line tests identified herein.

[30] As used in this context, an affiliate includes parents or subsidiaries of the contract market or entities that share a common parent with the contract market.

[31] Compensation for services as a director will not be counted towards the $100,000 threshold test.

[32] SROs' regulatory responsibilities with respect to member firms include ensuring compliance with financial integrity, financial reporting, sales practice, recordkeeping, and other requirements. Commission Regulation 1.52 permits cooperative agreements among exchanges to coordinate compliance examinations of FCMs such that each FCM is assigned a primary examiner (its DSRO). ROCs should have authority over SROs self-regulatory functions, both when the SROs are fulfilling SRO responsibilities and when they are fulfilling DSRO responsibilities.

[33] In its review of exchanges for compliance with Core Principles, the Commission will look at board documentation of the reasons for its actions and its acceptance or rejection of recommendations by the ROC, as well as by other committees.

judgment to fulfill its regulatory obligations.[34]

ROCs would be expected to identify aspects of the regulatory scheme that work well and those that need improvement, and, as necessary, to make recommendations to the governing board for changes that would ensure fair, vigorous, and effective regulation. ROCs should also be given an opportunity to review and, if they wish, present formal opinions to management and the board on any proposed rule or programmatic changes originating outside of the ROCs, but which their CROs believe may have a significant regulatory impact.[35] Exchanges should provide their CROs and ROCs with sufficient time to consider such proposals before acting on them. In addition to periodic reports to the board, ROCs should prepare for the governing board and the Commission an annual report assessing the effectiveness, sufficiency, and independence of the SRO's regulatory program, including any proposals to remedy unresolved regulatory deficiencies. ROCs are also expected to keep thorough minutes and records of meetings, deliberations, and analyses, and make these available to Commission staff upon request.[36]

Finally, the proposed Acceptable Practice envisions that the CRO of the SRO will report directly to, and regularly consult with, the ROC. ROCs may delegate their day-to-day authority over self-regulatory functions and personnel to the CRO. Although ROCs remain responsible for ensuring the sufficiency, effectiveness, and independence of self-regulation within their SROs, they are not expected to assume managerial roles.

C. Disciplinary Panels

The proposed Disciplinary Panel Acceptable Practice would preclude any group or class of exchange members from dominating or exercising disproportionate influence on any disciplinary panel. In addition, the Commission proposes that all disciplinary panels include at least one "public" participant. To qualify as "public," panel members should meet the same test as public directors.

For purposes of this Acceptable Practice, "disciplinary panel" means any person, panel of persons, or any subgroup thereof, which is authorized by an SRO to issue disciplinary charges, to conduct proceedings, to settle disciplinary charges, to impose disciplinary sanctions, or to hear appeals thereof, except in cases limited to decorum, attire, the timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities. If an exchange's rules provide for an appeal to the board of directors, or a committee of the board, then that appellate body should include at least one person who meets the qualifications for membership on the board's ROC. "Disciplinary panel" does not include exchange regulatory staff authorized to issue warning letters or summary fines imposed pursuant to established schedules.

To take advantage of this safe harbor, and thereby comply with Core Principle 15's requirement to minimize conflicts of interest in decisionmaking, the Commission is proposing that exchanges amend their disciplinary panel composition rules and policies to incorporate the terms of the Disciplinary Panel Acceptable Practices. Finally, under this Acceptable Practice, disciplinary committees and panels would fall under the oversight of the ROC.

IV. Analysis and Rationale for Proposed Acceptable Practices

A. Board Composition; "Public" Director

The Board Composition Acceptable Practice is designed to promote and safeguard the independence of the board of directors. It reaffirms the basic corporate principle that good governance is the cornerstone of a strong corporation and that a company's long-term success is best secured by enhancing the presence of independent participants at the highest level of corporate decisionmaking, the board of directors.

In any corporation, the paramount duty of the board of directors is to act, at all times, in the best interest of the corporation. It is the board that has the ultimate decisionmaking authority within a corporation and that must be accountable for any failure in the fulfillment of its corporate duties. In effect, the board represents the first line of defense against corporate misconduct. In the case of a corporation that also operates as an SRO, the board may have to make decisions in circumstances where its role as a fiduciary to the shareholders conflicts with its duty as a custodian of the public trust.[37] Increased competition and demutualization may further exacerbate these potentially competing claims and render the board susceptible to pressures that may impact its ability to carry out self-regulatory duties to their fullest extent.

The Commission's proposed Board Composition Acceptable Practice constitutes a strong, proactive approach to ensuring the continued success of self-regulation in the futures industry. With respect to exchange boards of directors, their dual regulatory and commercial roles suggest that a fifty percent "public" board is an appropriate balance and should best enable directors to carry out their responsibilities.[38]

The Commission notes that its proposed Board Composition

[34] Nevertheless, a ROC should not rely on outside professionals or firms that also provide services to the full board, other board committees, or other units of the exchange.

[35] ROCs' deliberations with respect to such proposed rule changes should be memorialized in thorough meeting minutes, and their formal opinions made available to Commission staff upon request.

[36] The Commission's review of Core Principle 15 compliance will include, inter alia, the ROC's records, annual reports, meeting minutes, analyses conducted or commissioned by the ROC, examinations of proposed and existing rules, and evaluations and recommendations concerning the effectiveness, sufficiency, and independence of the exchange's regulatory programs. *See* Section 8(a)(1) of the Act, 7 U.S.C. § 12(a)(1), authorizing the Commission to "make such investigations as it deems necessary to ascertain the facts regarding the operations of boards of trade and other persons subject to the provisions of this Act."

[37] Any decisions made by SROs' boards of directors, although not directly regulatory, implicate the public interest and the intersection between regulatory responsibilities and commercial imperatives. SROs' boards of directors determine transaction fees; market data fees; and membership criteria. They control the employment and compensation of senior executives, including the president of the exchange, and they are sometimes responsible for the appointment of public directors. Boards make fundamental governance decisions, including those made with respect to the strategic direction of the SRO and the oversight of self-regulation. In addition, SROs' public interest obligations are cited in the very purposes of the Act, which include "to serve the public interest * * * through a system of effective self-regulation of trading facilities." CEA Section 3(b), 7 U.S.C. 5(b).

As noted at the Hearing, "exchanges which also function as for-profit institutions as well as SROs are truly occupying an absolutely unique space in corporate America." Jennings, Hearing.Tr. at 79.

[38] Industry participants and observers noted that independence of an exchange's board of directors is key to effective and impartial self-regulation due to its role as the ultimate arbiter of decisions affecting both commercial and regulatory functions of the exchange. To address the conflicts of interest inherent in this dual role, most participants agreed on the benefits of including "public" directors on exchange boards. *See e.g.*, Jennings, Hearing Tr. at 29 ("[I]t is a fundamental requirement that exchange boards must have a significant representation of independent public directors. I believe it is appropriate that at least fifty percent of the exchange board must comprise this group."); and Phillips, Hearing Tr. at 159 (addressing reviews of exchanges' rulemaking authority, "* * * it comes back to the governance process and the independence of the board to really make those kinds of reviews meaningful."). However, industry participants did not agree on what specifically constitutes an appropriate board composition, or whether existing exchange board compositions are adequate.

Acceptable Practice is consistent with the trend of major governance initiatives across the corporate and SRO communities in the United States. In November 2003, the New York Stock Exchange ("NYSE") and NASDAQ both implemented new governance standards for their listed companies. Among the most important provisions is the requirement that listed companies' boards have a majority of independent directors. In addition, listed companies must have fully independent nominating, corporate governance, compensation, and audit committees. While the conflicts driving these governance initiatives may differ from those arising in the futures self-regulatory context, the NYSE and NASDAQ standards for listed companies reflect their recognition that good corporate governance is founded on strengthening the independence and accountability of the board.

Two futures exchanges, the CME and the CBOT are now subject to the NYSE listing standards outlined above, and others may join them as futures exchanges continue to demutualize and seek public listing of their shares. The Commission is satisfied that the listing standards provide a measure of shareholder protection for the owners of publicly-traded futures exchanges. However, the Commission is equally satisfied that these listing standards are not designed for public companies that also bear a special responsibility of public protection and fair and effective self-regulation. Although it may be true, as the publicly-traded futures SROs have determined, that SRO members are independent under the NYSE listing standards, the proposed Board Composition Acceptable Practice provides that members are not independent for purposes of protecting the public interest against conflicts of interest in self-regulation.

Finally, the fifty percent minimum standard strikes a favorable balance between inside expertise and "outside" impartiality and ensures that other exchange stakeholders, such as members and exchange management, are adequately represented. In this manner, the "self" in self-regulation is retained, along with its efficiencies and expertise, while the ultimate benefactors of the self-regulatory system—market participants and the public—are assured that their interests are well-represented at the highest level.

(i) Definition of "Public" Director

To facilitate compliance, the Commission has modeled aspects of its "public" director definition, and more specifically, the materiality test, on what have now become accepted standards for defining independent directors. For example, the NYSE governance standards, noted above, mandate that to qualify as independent, directors must meet both a series of bright-line tests capturing certain present and past employment, compensation, business, familial, and other relationships; and a categorical "no material relationship" test. Similarly, under the Commission's proposed definition, the determination of whether a person qualifies as a "public" director entails (1) proposed "bright-line" tests, such as membership, employment, and business and financial ties with the exchange, aimed at identifying many of the circumstances that necessarily impair independent decision making; and (2) a facts and circumstances analysis. As to the facts and circumstances analysis, the board, taking into account all of the relevant factors relating to the person's relationship with the exchange, must make a reasonable finding on the record that the person is capable of independent decision-making. This analysis is broader than the bright-line tests.

Similar standards have already been implemented in a variety of related contexts: by the Public Company Accounting Reform and Investor Protection Act of 2002 (Sarbanes-Oxley Act of 2002) with respect to independent directors serving on the audit committees of public companies;[39] and by the NYSE for its own board of directors.[40] The SEC has also proposed similar standards for independent directors on the boards of securities exchanges.[41]

The Acceptable Practice addressing board qualifications is named the "Public Director Acceptable Practice" rather than the "Independent Director Acceptable Practice" to emphasize the national public interest in futures trading and the role that SROs play in serving and protecting that interest.[42] The appropriate definition of, and qualifications for, an unconflicted director were debated vigorously during the SRO Review.[43] The debate often centered on whether the NYSE listing standards are sufficient for self-regulatory purposes. Several commenters and Hearing participants noted that the NYSE independent director standard principally operates to protect shareholder interests against undue management influence, and that more is needed to protect the public interest in an institution that exercises regulatory duties.[44] The Commission generally agrees that the listing standards are not sufficient for public companies that also bear special responsibility to the public to self-regulate fairly and effectively. Simply stated, self-regulation and shareholder protection are two distinct missions: they may be complementary, but they are not substitutes.

B. Regulatory Oversight Committee

ROCs would provide independent oversight of core regulatory functions, including trade practice, market, and financial surveillance, for all exchanges. ROCs also would oversee the performance of disciplinary committees. Because these functions are fundamental manifestations of SROs' regulatory authority, the Commission believes that they should be overseen in the most impartial manner possible within the context of self-regulation—by public directors who are neither members of the SRO nor otherwise dependent upon the commercial enterprise.[45]

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[39] Pub. L. No. 107–204, 116 Stat. 745 (2002).

[40] Constitution of the New York Stock Exchange, Art. IV, § 2.

[41] Fair Administration, *supra* note 21.

[42] *See* CEA Section 3(b), 7 U.S.C. § 5(b).

[43] FIA for example, commented that "[i]ndependent SRO directors should be independent not only of management but also of all activity on the exchange" because "[t]he special nature of an SRO's powers and functions * * * makes it essential to have truly independent directors with no direct, current ties to the industry the SRO regulates." FIA CL (Jan. 23, 2006) at 3. NYMEX, on the other hand, was of the view that active industry participation did not impair impartiality so long as a director had no ties to the exchange itself. *See* NYMEX CL (Jan. 23, 2006) at 7: NYMEX stated that its "Public Directors would qualify as independent directors" under NYSE listing standards and noted that "it is possible for markets subject to [NYSE] listing standards to conclude that exchange members qualify as independent directors." NYMEX noted the "specialized" nature of futures trading and emphasized the importance of board expertise. *Id.* The CME as well stated that independence should be determined on a case by case basis. CME CL (Jan. 23, 2006) at 7.

[44] *See, e.g.*, Karmel, Hearing Tr. at 33 ("The New York Stock Exchange and NASDAQ listing standards, as others have already said, do not squarely address the key issue of whether exchange members should be considered independent or not when they serve as directors of an exchange board or a regulatory subsidiary"; and FIA CL (Jan. 23. 2006) at 3.

[45] The Commission's proposed Regulatory Oversight Acceptable Practice is similar to measures already implemented or recommended by some exchanges in response to acknowledged self-regulatory concerns. The CME, for example, has formed an advisory board-level committee to "ensure the independent exercise" of self-regulatory obligations ("Market Regulation Oversight Committee" or "MROC"). Every member of the committee must be an independent director. The MROC reviews and reports to CME's board, on an annual basis, with respect to: (1) The independence of CME's regulatory functions from its business operations; (2) the independence of CME management and regulatory personnel from

The public directors on the ROC would be free to consider the unique responsibilities of the SRO to act in the public interest, to plan for effective self-regulation in the long-term, and to insulate regulatory decisions from short-term pressures that may be brought to bear in an increasingly competitive environment. The Commission believes that SROs generally stand to benefit from establishing ROCs.

ROCs' determinations with respect to their core competencies would be subject to review by the full board of directors, including member directors, and ROCs would be free to consult widely within the SRO throughout their deliberations, thus ensuring that member expertise remains central to self-regulation in the futures industry. At the same time, by placing initial oversight responsibility in the hands of public directors, arming them with the tools and resources necessary to make fully informed decisions, and providing an independent reporting line for senior regulatory officers, SROs would ensure that regulatory decisions are insulated from improper influences. The ROC structure, combined with careful Commission review of the interaction between the ROC and the board, fosters the continued integrity of futures self-regulation, effective management of conflicts of interest within SRO governance, and full consideration of the public interest in every decision of regulatory consequence.

C. Disciplinary Panels

Diversity in committee and panel composition has long been recognized as an effective tool for minimizing conflicts of interest in SRO disciplinary adjudication, a long-standing objective of the Commission. Prior to enactment of the CFMA, the Act set specific standards for the composition of SRO disciplinary committees, requiring that: (1) Exchanges provide for a diversity membership on all major disciplinary committees and (2) respondents in exchange disciplinary actions not be tried exclusively by their peers.

The CFMA continues the Act's commitment to fair disciplinary procedures. The Acceptable Practices for Core Principle 2, for example, require that exchanges discipline members and market participants pursuant to "clear and fair standards."[46] As stated earlier, Core Principle 15 requires exchanges to "minimize conflicts of interest in the decision making process." This requirement extends to disciplinary committees and panels, which must be free of both individual and group (*e.g.*, floor versus FCM) conflicts of interest.

The Commission believes that fair disciplinary procedures with minimal conflicts of interest require unbiased disciplinary panels representing a diversity of opinions and experiences. At the very least, this presumes panels that are not weighted in favor of any single class of exchange participants. Also, including a public person provides an outside perspective and helps to ensure that the public's interests are represented and protected. The Commission is confident that proper composition can minimize potential conflicts of interest and promote fairness on disciplinary panels, as required by Regulation 170.3 and Core Principles 2 and 15.

The SRO Review has found no indication of widespread inadequacy in exchange disciplinary committees, as many FCMs suggested. To the contrary, some exchanges maintain very diverse committees, including nonmember representatives. For example, CME's seven-person Probable Cause and Business Conduct panels each include three non-members.[47] Furthermore, the Commission has found that, at most exchanges, FCMs are more likely to appear before clearing house risk committees or financial compliance/surveillance committees (where FCMs are typically well-represented) than on business conduct committees or similar committees (which may include broker, local, commercial, FCM, and public panelists).

In addition, periodic Rule Enforcement Reviews conducted by the Commission's Division of Market Oversight, which carefully examine disciplinary sanctions, typically find that they are fair and do not discriminate among different classes of exchange participants. Rule Enforcement Reviews also examine exchange disciplinary procedures, and consistently find that these are adequate.

The Commission is generally satisfied with the composition and performance of most SRO disciplinary committees and panels, and believes that significant new measures are not required at this time. The Commission has found that disciplinary committees typically have adequate diversity, sometimes including FCMs and nonmembers, and seek to balance expertise with impartiality. Accordingly, the Commission's proposed Disciplinary Panel Acceptable Practice acknowledges SROs' current practices and the requirements of the Act, and identifies minimal panel composition standards as a means of protecting the continued integrity of the disciplinary process. It helps to minimize conflicts of interest by ensuring a basic degree of diversity, and the inclusion of at least one public person on SRO disciplinary panels.

To take advantage of the safe harbor offered by the proposed Disciplinary Panel Acceptable Practice, and comply with Core Principle 15's requirement to minimize conflicts of interest in decision making, the Commission is proposing that SROs' amend their rules and policies to ensure that they preclude any group or class of exchange members from dominating or otherwise exercising disproportionate influence on any disciplinary panel. The Commission is also proposing that SROs ensure that their rules and policies provide for public persons on disciplinary panels, except in cases limited to decorum and attire.[48] Public panel members should meet the definition of "public" for directors serving on Regulatory Oversight Committees.

V. Related Matters

A. Cost-Benefit Analysis

Section 15(a) of the Act, as amended by Section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation or order under the Act. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of its action or to determine whether the benefits of the action outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of the subject rule or order.

Section 15(a) further specifies that the costs and benefits of the proposed rule or order shall be evaluated in light of five broad areas of market and public

improper influence by industry directors regarding regulatory matters; (3) CME's compliance with its SRO responsibilities; (4) appropriate funding and resources to ensure effective performance of SRO responsibilities; and (5) appropriate compensation for CME employees involved in regulatory activities.

[46] 17 CFR Part 38, App. B, Core Principle 2, Acceptable Practices.

[47] CME Rules 402, 406.

[48] The proposed Disciplinary Panel Acceptable Practice is broader than Regulation 1.64, in that it requires a public member to participate in some categories of cases that, under Regulation 1.64, may be heard by a panel with no public members. The Commission believes the expansion of public participation is an appropriate response to the growth in the size and complexity of the futures markets, and the new profit element in exchange operations. Moreover, a public member's presence on disciplinary panels will enhance the appearance as well as the reality of fairness and impartiality in exchange disciplinary proceedings, and thus promote confidence in our markets among the public and market participants.

concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule or order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Acceptable Practices proposed herein are safe harbors for compliance with Core Principle 15's conflict of interest provisions. They offer exchanges the opportunity to meet the requirements of the Core Principle through a regulatory governance structure that insulates their regulatory functions from their commercial interests. The Acceptable Practices propose that exchanges implement boards of directors that are at least fifty percent public. The Acceptable Practices further propose that all exchange-SROs place oversight of their core regulatory functions in the hands of board-level ROCs composed exclusively of "public" directors. They also offer guidance on what constitutes a "public" director. In addition, the Acceptable Practices suggest minimum composition standards for exchange disciplinary committees.

The proposed Acceptable Practices are consistent with legislative, regulatory, and voluntarily undertaken changes in governance requirements and practices in other financial sectors, such as the securities markets, and are intended to enhance protection of the public. The Commission has endeavored, in offering these Acceptable Practices to propose the least intrusive safe harbors and regulatory requirements that can reasonably be expected to meet the requirements of Core Principle 15 of the Act. These Acceptable Practices advance the Commission's mandate of assuring the continued existence of competitive and efficient markets and to protect the public interest in markets free of fraud and abuse.

They nevertheless may be expected to entail some costs, including, among the most foreseeable, those attendant to recruiting and appointing additional directors, amending corporate documents, making necessary rule changes and certifying them to the Commission, and appointing a CRO.

After considering these factors, the Commission has determined to propose the Acceptable Practices with respect to contract markets. The Commission specifically invites public comment on its application of the criteria contained in the Act. Commenters are also invited to submit any quantifiable data that they may have concerning the costs and benefits of the proposed Acceptable Practices with their comment letter.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The proposed Acceptable Practices affect contract markets. The Commission has previously determined that contract markets are not small entities for purposes of the Regulatory Flexibility Act.[49] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed Acceptable Practices will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act of 1995

The Acceptable Practices contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3504(h)), the Commission has submitted a copy of this section to the Office of Management and Budget ("OMB") for its review.

Collection of Information: Rules Relating to Part 38, Establishing Procedures for Entities to become designated as Contract Markets, OMB Control Number 3038–0052. The Acceptable Practices increase the burden previously approved by OMB.

The estimated burden was calculated as follows:

Estimated number of respondents: 12.

Annual responses by each respondent: 1.

Total annual responses: 12.

Estimated average hours per response: 70.

Annual reporting burden: 840.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503; Attention: Desk Officer for the Commodity Futures Trading Commission.

[49] Policy Statement and Establishment of Definitions of "Small Entities" for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18619 (Apr. 30, 1982).

The Commission considers comments by the public on this proposed collection of information in:

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of collecting 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).

OMB is required to make a decision concerning the collection of information contained in these Acceptable Practices between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the Acceptable Practices.

Copies of the information collection submission to OMB are available from the Commission Clearance Officer, Three Lafayette Centre, 1155 21st Street, NW., Washington DC 20581, (202) 418–5160.

VI. Text of Proposed Acceptable Practices

List of Subjects in 17 CFR Part 38

Commodity futures, Reporting and recordkeeping requirements.

In light of the foregoing, and pursuant to the authority in the Act, and in particular, Sections 3, 5, 5c(a) and 8a(5) of the Act, the Commission proposes to amend Part 38 of Title 17 of the Code of Federal Regulations as follows:

PART 38—DESIGNATED CONTRACT MARKETS

1. The authority citation for part 38 is revised to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, 7, 7a–2 and 12a, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

2. In Appendix B to Part 38 amend Core Principle 15 by adding paragraph (b) "Acceptable Practices" as follows:

Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles

* * * * *

Core Principle 15 of Section 5(d) of the Act: Conflicts of Interest

* * * * *

(b) *Acceptable Practices.* All designated contract markets ("DCMs" or "contract markets") bear special responsibility to regulate effectively, impartially, and with due consideration of the public interest, as provided for in Section 3 of the Act. Under Core Principle 15, they are also required to minimize conflicts of interest in their decision making processes. To comply with this Core Principle, contract markets should be particularly vigilant for conflicts between their self-regulatory responsibilities, their commercial interests, and the interests of their management, members, owners, customers and market participants, other industry participants, and other constituencies.

Acceptable Practices for minimizing conflicts of interest shall include the following elements:

(1) *Board Composition for Contract Markets*

(A) At least fifty percent of the directors on a contract market's board of directors shall be public directors; and

(B) The executive committees (or similarly empowered bodies) shall be at least fifty percent public.

(2) *Public Director*

(A) To qualify as a public director of a contract market, an individual must first be found, by the board of directors on the record, to have no material relationship with the contract market. A "material relationship" is one that reasonably could affect the independent judgment or decision making of the director.

(B) In addition, a director shall not be considered "public" if any of the following circumstances exist:

(i) The director is an officer or employee of the contract market or a director, officer or employee of its affiliate;

(ii) The director is a member of the contract market, or a person employed by or affiliated with a member. "Member" is defined according to Section 1a(24) of the Commodity Exchange Act and Commission Regulation 1.3(q). In this context, a director is affiliated with a member if the director is an officer or director of the member;

(iii) The director receives more than $100,000 in payments from the contract market, any affiliate of the contract market or from a member or anyone affiliated with a member, provided that compensation for services as a director will not be counted towards the $100,000 threshold test;

(iv) A director shall be precluded from serving as a public director if any of the relationships above apply to a member of the director's "immediate family," *i.e.*, spouse, parents, children, and siblings; and

(v) An affiliate includes parents or subsidiaries of the contract market or entities that share a common parent with the contract market.

(C) All of the disqualifying circumstances described in Subsection (2)(B) shall be subject to a one-year look back.

(D) A contract market shall disclose to the Commission which members of its board are public directors, and the basis for those determinations.

(3) *Regulatory Oversight Committee*

(A) A board of directors of any contract market shall establish a Regulatory Oversight Committee ("ROC") as a standing committee, consisting of only public directors as defined in Section (2), to assist it in minimizing potential conflicts of interest. The ROC shall oversee the contract market's regulatory program on behalf of the board. The board shall delegate sufficient authority, dedicate sufficient resources, and allow sufficient time for the ROC to fulfill its mandate.

(B) The ROC shall:

(i) Monitor the contract market's regulatory program for sufficiency, effectiveness, and independence;

(ii) Oversee all facets of the program, including trade practice and market surveillance; audits, examinations, and other regulatory responsibilities with respect to member firms (including ensuring compliance with financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and the conduct of investigations;

(iii) Review the size and allocation of the regulatory budget and resources; and the number, hiring and termination, and compensation of regulatory personnel;

(iv) Supervise the contract market's chief regulatory officer, who will report directly to the ROC;

(v) Prepare periodic reports for the board of directors and an annual report assessing the contract market's self-regulatory program for the board of directors and the Commission, which sets forth the regulatory program's expenses, describes its staffing and structure, catalogues disciplinary actions taken during the year, and reviews the performance of disciplinary committees and panels;

(vi) Recommend changes that would ensure fair, vigorous, and effective regulation; and

(vii) Review regulatory proposals and advise the board as to whether and how such changes may impact regulation.

(4) *Disciplinary Panels*

All contract markets shall minimize conflicts of interest in their disciplinary processes through disciplinary panel composition rules that preclude any group or class of industry participants from dominating or exercising disproportionate influence on such panels. Contract markets can further minimize conflicts of interest by including at least one person who would qualify as a public director as defined in Section (2) above, on disciplinary panels, except in cases limited to decorum and attire. If contract market rules provide for appeal to the board of directors, or to a committee of the board, then that appellate body shall also include at least one person who would qualify as a public director as defined in Section (2) above.

* * * * *

Issued in Washington, DC, on June 28, 2006 by the Commission.

Eileen A. Donovan,

Acting Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

APPENDIX—STATEMENTS OF COMMISSIONERS HATFIELD AND DUNN

Commissioner Frederick W. Hatfield, writing separately.

Since the passage of the Commodity Futures Modernization Act of 2000 (CFMA), the U.S. futures industry has experienced dynamic growth. With rapid growth comes new challenges. U.S. futures exchanges are today faced with increased competition, domestically and from abroad, changing ownership structures, and new business models. As regulators, it is incumbent upon us to ensure that regulatory guidelines continue to keep pace with the ever changing environment of the industry. Accordingly, I applaud Chairman Jeffery and Commission staff for their thoughtful and exhaustive pursuit of fair, vigorous and effective self-regulation in this evolving market landscape.

In this review, I have been guided by two questions: have the exchanges produced self-regulatory structures that are up to the challenges of the changing marketplace and if not, are we as regulators suggesting a better model? I look forward to receiving comments on the Board Composition Acceptable Practice proposal. However, in my view, establishing a board level Regulatory Oversight Committee (ROC) comprised of nonmember public directors and a disciplinary panel structure, as described in the proposal, goes a long way toward ensuring that an exchange's regulatory duties will not be compromised by conflicts emanating from commercial goals.

The primary function of the proposed ROCs is to ensure that regulatory programs and staff are free of improper influence from exchange owners, management, members, investors, customers, and commercial considerations. As the proposal recognizes, "[t]he ROC structure, combined with careful Commission review of the interaction between the ROC and the board, fosters the continued integrity of futures self-regulation, effective management of conflicts of interest within SRO governance, and full consideration of the public interest in every decision of regulatory consequence." Section B. Regulatory Oversight Committee, last paragraph. Despite this recognition, the proposed safe harbor would require, in addition to public director ROCs, that at least fifty percent of the governing boards and exchange executive committees also be comprised of public directors.

Interest in SRO board composition has an established history in the Commodity Exchange Act (Act) and in the Commission's regulations. Prior to passage of the CFMA, Section 5a(14) of the Act mandated diversity of representation on exchanges' boards of directors.[1] With passage of the CFMA, the

[1] This provision of the Act was implemented by Commission Regulation 1.64, which required exchanges to establish meaningful representation for the following groups: (1) Futures commission merchants (FCMs); (2) floor brokers and traders; (3) independent non-members; (4) producers, consumers, processors, distributors, and merchandisers of commodities traded on the particular exchange ("commercials"); (5)

Continued

requirements of Section 5a(14) were removed for exchanges, as Congress and the Commission moved to a more flexible, principles-based oversight regime that does not include specific composition targets for exchanges' boards of directors.[2] Mutually owned exchanges are still subject to mandatory board composition standards under Section 5(c)(16) of the Act (Core Principle 16), which requires "that the composition of the governing board reflect market participants." The Application Guidance for Core Principle 16 identifies this as a "diversity of interests" requirement.

As part of the SRO Review, Commission staff examined the corporate documents of the major exchanges under CFTC authority and found that all require diversity of their boards of directors, including nonmember directors.[3] These diversity requirements are similar regardless of the exchanges' ownership structures, and they are present at all of the major exchanges. The Kansas City Board of Trade, for example, requires that nominating committees give "special consideration to the desirability of having all interests of the Corporation represented on the Board of Directors."[4] The Chicago Mercantile Exchange (CME) requires that its board of directors have "meaningful representation of a diversity of interests, including floor brokers, floor traders, futures commission merchants, [and commercials.]."[5]

Some exchanges employ specific numerical targets for their various participant categories and public directors. For example, the New York Mercantile Exchange requires three public directors, one FCM, one floor broker, one commercial, and one local trader.[6] The New York Board of Trade requires five public directors.[7] The Minneapolis Grain Exchange requires four nonmember directors, and at least four commercials, two FCMs, two floor traders, and one floor broker.[8] The CME requires that independent, nonmember directors constitute twenty percent of its board and that commercials constitute ten percent of the board.[9] Moreover, the CME currently exceeds its own requirements, with seven of its twenty directors (thirty-five percent) being independent, nonindustry persons.

Most of those who commented or testified during the course of the SRO study generally agreed that diverse boards best serve the needs of exchanges and the public. Participants also agreed on the benefits of including public directors on exchange boards, and our review demonstrates that this is a model that most exchanges are following. In their comments and testimony, however, exchanges unanimously opposed having mandatory board composition requirements. CME argued, for example, that "no one composition criteria can address the individual needs" of the diverse exchanges and business models active in the industry.[10]

In my view, having a ROC that serves to insulate the regulatory functions of an exchange from its commercial interests, combined with a disciplinary panel structure that strengthens impartial adjudication and reduces potential conflicts of interest by including at least one public person on every panel and ensuring that such panels are not dominated by any group or class of exchange participants, may well be sufficient to ensure fair, vigorous, and effective self-regulation and should demonstrate compliance with Core Principle 15. Such an approach would be narrowly tailored to focus specifically on regulatory governance and functions, and would be in keeping with the flexibility the CFMA intended to afford exchanges to conduct business without undue interference from regulators.

I am concerned that the Board Composition proposal also would create an additional and perhaps unnecessary layer of regulation for publicly traded exchanges, which are already subject to myriad new and enhanced corporate governance requirements, including, among others, Securities and Exchange Commission registration requirements, the audit committee provisions of the Sarbanes-Oxley Act of 2002, and the listing standards of the New York Stock Exchange (NYSE). I agree that the dual function of exchanges as commercial enterprises and self-regulatory organizations sets them apart from corporations engaged in business for the sole purpose of earning profits for the benefit of shareholders. In my opinion, however, the foregoing corporate governance standards, combined with properly structured ROCs and disciplinary committees, and the Commission's continuing obligation to monitor exchanges through rule enforcement reviews and otherwise, have provided multiple levels of safeguards that should be sufficient to ensure that exchanges" self-regulatory obligations are not compromised.

I recognize that what the Commission is contemplating is an acceptable practice rather than a mandatory requirement. In promulgating such guidance, however, the Commission should strive to establish standards that that are not overly broad and that are viewed as necessary, in most circumstances, to accomplish regulatory goals. Accordingly, I welcome comment on the advisability of adopting the proposed Board Composition Acceptable Practice, especially with respect to the following questions:

- Is there an existing problem that this proposal addresses?
- Will those exchanges that are not now subject to mandatory diversity requirements feel compelled to sacrifice voluntary diversity in order to increase the percentage of public directors and still maintain boards that are of manageable size, or will boards become larger? Is it feasible to comply with the acceptable practice and maintain the proper level of diversity? What are the relative costs and benefits of doing so?
- How would the acceptable practice affect mutually owned exchanges that are subject to the mandatory diversity requirements of Core Principle 16?
- How would the proposed requirement that exchange executive committees have at least fifty percent public representation affect the day-to-day operations of the exchanges?
- Is there any evidence that the proposed Board Composition Acceptable Practice will provide greater regulatory assurance than the proposed ROC and Disciplinary Panel Acceptable Practices?
- Do the corporate governance requirements currently applicable to publicly traded exchanges, combined with properly structured ROCs and disciplinary panels and continuing Commission oversight, provide sufficient assurance that conflicts of interests will be kept to a minimum in the decision making process of those exchanges?
- If the Commission adopts the Board Composition Acceptable Practice, should it be accompanied by a phase-in period and if so, what would be the appropriate length of time for exchanges to modify their boards?

I join with my Chairman and fellow Commissioners in requesting comment on this endeavor and look forward to reviewing the responses to these questions and any other views the Commission receives as we continue to consider the important issues raised in the proposal.

Commissioner Michael V. Dunn, writing separately.

The proposed acceptable practices published today represent an important step forward in ensuring the fairness and transparency of our commodity markets. I wish to comment on two aspects of the proposal.

First, the proposed rule notes that exchanges that elect to forgo the safe harbor of the best practices outlined in this proposal can still demonstrate compliance with Core Principle 15 through showing they have procedures and safeguards in place to address potential conflicts of interest. For these exchanges, the Commission will continue its current practice of reviewing the activities of these exchanges to ensure they are in compliance with Core Principle 15. Therefore, while the proposed acceptable practices offer a safe harbor for complying with Core Principle 15, they are not the only method of demonstrating compliance.

Second, efficient, transparent, and open markets bring great benefits to their

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participants in a variety of pits or principal groups of commodities traded on the exchange; and (6) other market users or participants. Specific composition targets existed only for commercials (ten percent) and nonmembers (twenty percent).

[2] Under Commission Regulation 38.2, exchanges are now exempt from Regulation 1.64.

[3] The corporate documents included the certificates of incorporation, bylaws, and rulebooks of the exchanges and their holding companies, if applicable.

[4] Kansas City Board of Trade Rulebook, Ch. II, § 210.01.

[5] Second Amended and Restated Bylaws of Chicago Mercantile Exchange Holdings, Inc., Art. III, § 3.5 (applicable to the board of trade through the Certificate of Incorporation of Chicago Mercantile Exchange, Inc., Art. V, § 3 (requiring that the board of directors of CME, Inc., be identical to that of CME Holdings, Inc.).

[6] Amended and Restated Certificate of Incorporation of NYMEX Holdings, Inc., Art. VI, § (c) (applicable to the board of trade through the Amended and Restated Certificate of Incorporation of New York Mercantile Exchange, Inc., Art. VII (the board of directors NYMEX Holdings, Inc., constitutes the board of NYMEX, Inc.).

[7] New York Board of Trade Bylaws, Art. II, § 302(c).

[8] Minneapolis Grain Exchange Rulebook, Ch. II, §§ 200.00 and 210.00.

[9] Note 5, *supra*.

[10] CME Comment Letter at 2.

participants and the public. The Commodity Futures Modernization Act of 2000 (CFMA), sought to safeguard these values by placing a much greater emphasis on industry self-regulation: setting out core principles registrants have to meet and giving industry flexibility in choosing how to comply.

While the Commission has final responsibility to ensure the fairness and transparency of the markets it regulates, its effectiveness in doing so relies heavily upon the presence of a robust self-regulatory system. Registered Futures Associations (RFAs) are provided for in the CEA to complement the Commission's oversight of commodities markets and to bring industry knowledge and experience to bear on regulatory issues affecting those markets.[1] In its June 2004 request for comments on SRO governance that led to this proposal, the Commission asked, "Should registered futures associations that are functioning as SROs also be subject to governance standards?" In its response, the National Futures Association ("NFA"), the sole RFA, wrote that "registered futures associations should be subject to the same governance standards as the other SROs," as long as these standards are flexible.

As the sole RFA, NFA occupies a unique position in the futures markets' system of self-regulation. NFA is entrusted with overseeing a wide variety of futures market intermediaries, cutting across different segments of the futures industry, including futures commission merchants, commodity pool operators ("CPOs"), commodity trading advisers ("CTA"), and introducing broker-dealers ("IBs"). NFA's functions are as varied as the members it oversees. NFA performs registration and fitness screening functions, conducts audits and surveillance of its members to enforce compliance with financial requirements, establishes and enforces rules and standards for customer protection, and conducts arbitration of futures-related disputes. NFA also has taken certain functions delegated to it by the Commission and more recently, has assumed trade practice and market surveillance activities for a number of exchanges.[2]

In light of the concerns raised in this proposal regarding conflicts of interest and self-regulation, I believe the Commission needs to review the conflicts of RFAs as well as exchanges. In this proposal, the Commission indicates in footnote 4 that we will be considering this matter further, and I look forward to that consideration.

[FR Doc. 06–6030 Filed 7–6–06; 8:45 am]
BILLING CODE 6351–01–P

[1] *See generally* Section 17 of the Act, 7 U.S.C. 21. An RFA must be determined by the Commission to be in the public interest. Id. at Section 17(b)(1), 7 U.S.C. 21(b)(1).

[2] When an RFA extends its sphere of operation beyond traditional, self-regulatory roles to include such ancillary activities, it appropriately should reexamine the methods it uses to manage and minimize conflicts of interests, to determine whether these methods remain adequate to meet changed circumstances.

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