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

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 735

RIN 3206–AJ74

Employee Responsibilities and Conduct

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a plain language rewrite of its regulations regarding the standards that govern employee responsibilities and conduct as part of a review of certain OPM regulations. The purpose of the revisions is to make the regulations more readable.

DATES: *Effective Date:* September 11, 2006.

FOR FURTHER INFORMATION CONTACT: Wade Plunkett, by telephone at 202–606–1700; or by FAX at 202–606–0082 or by e-mail at *wmplunke@opm.gov.*

SUPPLEMENTARY INFORMATION: OPM is revising part 735, which deals with employee responsibility and conduct, as part of a review of certain OPM regulations for plain language purposes. On January 15, 2003 (68 FR 1987) OPM published a proposed regulation. One internal commenter noted that since the original regulation was published, OPM has delegated examining authority to some agencies in certain circumstances. Therefore, the proposed regulations have been modified to recognize this and permit the head of an agency to which examining authority had been delegated or his or her designee to grant exceptions to the prohibition contained in section 735.202(a). Since no other comments were received, we are publishing the proposed rule as final without further modification, except we are updating the reference to General Accounting Office and changing it to Government Accountability Office. The purpose of this revision to part 735 is not to make substantive changes, but rather to make part 735 more readable, and to convert the regulation to a question and answer format.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

List of Subjects in 5 CFR Part 735

Conflict of interests, Government employees.

Office of Personnel Management
Linda M. Springer,
Director.

■ Accordingly, OPM is revising part 735 as follows:

PART 735—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—General Provisions

Sec.
735.101 Definitions.
735.102 What are the grounds for disciplinary action?
735.103 What other regulations pertain to employee conduct?

Subpart B—Standards of Conduct

Sec.
735.201 What are the restrictions on gambling?
735.202 What are the restrictions on conduct that safeguard the examination process?
735.203 What are the restrictions on conduct prejudicial to the Government?

Authority: 5 U.S.C. 7301; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart A—General Provisions

§ 735.101 Definitions.

In this part:

Agency means an Executive agency (other than the Government Accountability Office) as defined by 5 U.S.C. 105, the Postal Service, and the Postal Rate Commission.

Employee means any officer or employee of an agency, including a special Government employee, but does not include a member of the uniformed services.

Government means the United States Government.

Special Government employee means an officer or employee specified in 18 U.S.C. 202(a) except one who is employed in the legislative branch or by the District of Columbia.

Uniformed services has the meaning given that term by 5 U.S.C. 2101(3).

§ 735.102 What are the grounds for disciplinary action?

An employee's violation of any of the regulations in subpart B of this part may be cause for for disciplinary action by the employee's agency, which may be in addition to any penalty prescribed by law.

§ 735.103 What other regulations pertain to employee conduct?

In addition to the standards of conduct in subpart B of this part, an employee shall comply with the standards of ethical conduct in 5 CFR part 2635, as well as any supplemental regulation issued by the employee's agency under 5 CFR 2635.105. An employee's violation of those regulations may cause the employee's agency to take disciplinary action, or corrective action as that term is used in 5 CFR part 2635. Such disciplinary action or corrective action may be in addition to any penalty prescribed by law.

Subpart B—Standards of Conduct

§ 735.201 What are the restrictions on gambling?

(a) While on Government-owned or leased property or on duty for the Government, an employee shall not conduct or participate in any gambling activity, including operating a gambling device, conducting a lottery or pool, participating in a game for money or property, or selling or purchasing a numbers slip or ticket.

(b) This section does not preclude activities:

(1) Necessitated by an employee's official duties; or

(2) Occurring under section 7 of Executive Order 12353 and similar agency-approved activities.

§ 735.202 What are the restrictions on conduct that safeguard the examination process?

(a) An employee shall not, with or without compensation, teach, lecture, or write for the purpose of the preparation of a person or class of persons for an examination of the Office of Personnel Management (OPM) or other agency to which examining authority has been delegated, or Board of Examiners for the Foreign Service that depends on information obtained as a result of the employee's Government employment.

(b) This section does not preclude the preparation described in paragraph (a) of this section if:

(1) The information upon which the preparation is based has been made available to the general public or will be made available on request; or

(2) Such preparation is authorized in writing by the Director of OPM, or his or her designee, or by the head of an agency to which examining authority had been delegated, or his or her designee, or by the Director General of the Foreign Service, or his or her designee, as applicable.

§ 735.203 What are the restrictions on conduct prejudicial to the Government?

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

[FR Doc. E6–13149 Filed 8–10–06; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 235

RIN 0584–AD53

State Administrative Expense Funds

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule makes changes to the regulations governing State Administrative Expense funds for the Child Nutrition Programs to reflect amendments made by the Child Nutrition and WIC Reauthorization Act of 2004 to the Child Nutrition Act of 1966. This rule implements a provision of the Act that increases the minimum State Administrative Expense grant for each State administering the National School Lunch Program (NSLP), the School Breakfast Program (SBP) and/or the Special Milk Program (SMP) from $100,000 to $200,000 a year, adjusted by an index beginning in fiscal year 2009.

The rule also implements a requirement that for fiscal years 2005 through 2007 no State shall receive less than its fiscal year 2004 allocation for administrative costs. This final rule will increase the available funds to certain States to expand supervision and technical assistance of Child Nutrition Programs.

DATES: This rule is effective September 11, 2006.

FOR FURTHER INFORMATION CONTACT: Melissa Rothstein, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service (FNS) at 703–305–2595.

SUPPLEMENTARY INFORMATION:

Background

Section 202 of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265; June 30, 2004) amended section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) regarding State Administrative Expense (SAE) funds for administration of the Child Nutrition Programs which include the National School Lunch Program (NSLP), the School Breakfast Program (SBP) and/or the Special Milk Program (SMP). Section 202 increased the minimum SAE grant amount to States, from $100,000 to $200,000 per year and added an annual adjustment to the minimum grant beginning in fiscal year 2009. It also contained a provision that for fiscal years 2005 through 2007, no State shall receive less than its fiscal year 2004 SAE allocation. Regulations for SAE funds are codified at 7 CFR part 235.

Non-Discretionary SAE Funds

This final rule amends § 235.4 to include the requirement that for each of fiscal years 2005 through 2007 no State shall receive less than its fiscal year 2004 allocation for administrative expenses.

Minimum State Grant for Administrative Expenses

This final rule amends § 235.4(a)(1) by increasing the minimum SAE grant for each State administering the NSLP, the SBP and/or the SMP from $100,000 to $200,000 a year. The minimum SAE grant will be adjusted beginning fiscal year 2009 using the Department of Commerce, Bureau of Economic Analysis index for State and local government purchases. The percentage change between the value of the index for the 12-month period ending June 30 of the second preceding fiscal year and the value of the index for the 12-month period ending June 30 of the preceding fiscal year will be the basis for the annual adjustment.

It should be noted that the annual adjustment prescribed in the law is not a cumulative adjustment. Rather, the adjustment will be made each year, beginning in fiscal year 2009, to the minimum grant amount of $200,000. Depending on the performance of the Department of Commerce index, the grant amount levels could increase or decrease from one year to the next.

Pursuant to section 502(b)(2) of Public Law 108–265, these requirements were effective October 1, 2004. FNS issued an implementation memorandum informing State agencies of these changes on July 12, 2004.

Use of funds—Technology infrastructure improvement requirement section 202(b) of Public Law 108–265 also amended section 7 of the Child Nutrition Act of 1966 by adding a new subsection (i) which included a requirement that each State agency submit an amendment to the State agency's plan detailing how SAE funds would be used for technology infrastructure improvement. The amendment to the plan was required to describe how SAE funds would be used by the State agency in part to implement information systems that address potential cost savings and improve program integrity by:

- Monitoring the nutrient content of meals served;
- Providing training to local educational agencies, school food authorities, and schools on how to use technology and information management systems for activities including menu planning, collecting point-of-sale data, and the processing of applications for free and reduced-price meals; and
- Using electronic data to establish benchmarks to compare and monitor program integrity, participation and financial data across schools and school food authorities.

Pursuant to section 502(a) of Public Law 108–265, this requirement was effective on June 30, 2004. FNS issued an implementation memorandum informing State agencies of this requirement on August 30, 2004. All required amendments to SAE plans have been submitted to FNS. No change to the existing regulations at 7 CFR part 235 is needed in order to implement this statutory requirement.

Executive Order 12866

This final rule has been determined to be not significant and was not reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Roberto Salazar, Administrator, Food and Nutrition Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule provides for an increase in the minimum SAE grant to States.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS must generally prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. This final rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

SAE for Child Nutrition is listed in the Catalog of Federal Domestic Assistance under No. 10.560. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. FNS provided information to State agencies on these non-discretionary requirements by conducting informational meetings and training sessions with State officials which allowed for clarification and discussion. Additionally, FNS issued explanatory memoranda to State agencies on July 12 and August 30, 2004.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule has a preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the Dates paragraph. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. The administrative process can be found in § 235.11 (f).

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, "Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on children on the basis of race, color, national origin, sex, religion, or disability. After a careful review of the rule's intent and provisions, FNS has determined that it does not affect the participation of protected individuals in the Child Nutrition Programs.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This information contained in 7 CFR 235 is cleared under OMB No. 0584–0067. This final rule contains no new paperwork burden or information collection requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

E-Government Act Compliance

The FNS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Public Participation

This action is being finalized without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(A) and (B). This rule codifies through amendment to current program regulations the non-discretionary amendments made by section 202 of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265) to the Child Nutrition Act of 1966. Thus, the Department has determined in accordance with 5 U.S.C. 553(b) that Notice of Proposed Rulemaking and Opportunity for Public Comments is unnecessary and contrary to the public interest.

List of Subjects in 7 CFR Part 235

Administrative practice and procedure, Child and Adult Care Food Program, Food assistance programs, Grant administration, Intergovernmental relations, National School Lunch Program, Reporting and recordkeeping requirements, School Breakfast Program, Special Milk Program.

■ Accordingly, 7 CFR part 235 is amended as follows:

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

■ 1. The authority citation for Part 235 continues to read as follows:

Authority: Secs. 7 and 10 of the Child Nutrition Act of 1966, 80 Stat. 888, 889, as amended (42 U.S.C. 1776, 1779).

■ 2. In § 235.4:
■ a. Amend paragraph (a)(1) by removing "$100,000" and adding in its place "$200,000";
■ b. Further amend paragraph (a)(1) by adding a new sentence at the end; and
■ c. Add a new paragraph (a)(3).

The additions read as follows:

§ 235.4 Allocation of funds to States.

(a) * * *

(1) * * * On October 1, 2008 and each October 1 thereafter, the minimum dollar amount for a fiscal year for administrative costs shall be adjusted to reflect the percentage change between

the value of the index for State and local government purchases, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30 of the second preceding fiscal year, and the value of that index for the 12-month period ending June 30 of the preceding fiscal year.

(3) For each of fiscal years 2005 through 2007 no State shall receive less than its fiscal year 2004 allocation for administrative costs for all child nutrition programs.

Dated: August 3, 2006.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. E6–13154 Filed 8–10–06; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25153; Airspace Docket No. 06–AWP–10]

RIN 2120–AA66

Amendment to Class D Airspace; Broomfield, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D airspace area at Broomfield, CO. A review of the legal description revealed that it does not reflect the current airport reference point (ARP) for Jefferson County Airport.

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

FOR FURTHER INFORMATION CONTACT: Francie Hope, Western Terminal Operations Airspace Specialist, AWP–520.3, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6502.

SUPPLEMENTARY INFORMATION:

History

An examination of the Class D airspace area designation at Broomfield, CO, revealed that the legal description did not reflect the current ARP for Jefferson County Airport. This action will change the latitude of the ARP for the airport. Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9N, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the latitude in the legal description of Jefferson County Airport's ARP. Accordingly, since this action only involves a change in the airport's legal description of the Broomfield, CO, Class D airspace area, and does not involve a change in the dimensions or operating requirements of that airspace, notice and public procedure under 5 U.S.C. 533(b) are unnecessary. 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 Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

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 14 CFR 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 the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM CO D Broomfield, CO [Amended]

Jefferson County Airport, CO

(Lat. 39°54′32″ N., long. 105°07′02″ W.)

* * * * *

Issued in Los Angeles, California, on July 5, 2006.

Leonard A. Mobley,

Acting Area Director, Western Terminal Operations.

[FR Doc. E6–13196 Filed 8–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25502; Airspace Docket No. 06–ACE–10]

Modification of Class E Airspace; West Plains, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by modifying the Class E airspace area at West Plains Municipal Airport. The establishment of Area Navigation (RNAV) Global Positioning System (GPS) Instrument Approach Procedures (IAP) to Runways (RWY) 18 and 36 requires the modification of the Class E airspace area beginning at 700 feet above ground level (AGL). In addition, this action corrects the airport reference point (ARP). This airspace area and the legal description are modified to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, November 23, 2006. Comments for inclusion in the Rules Docket must be received on or before September 15, 2006.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2006–25502/ Airspace Docket No. 06–ACE–10, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is on the plaza level

of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, Airspace Branch, ACE–520G, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet AGL (E5) at West Plains Municipal Airport and corrects the ARP. The establishment of RNAV(GPS)IAPs to RWYs 18 and 36 requires the modification of the Class E airspace area beginning at 700 feet AGL (E5). The area is expanded from a 6.4-mile radius to a 6.9-mile radius of the airport. This modification brings the legal description of the West Plains Municipal Airport, MO Class E5 airspace area into compliance with FAA Orders 7400.2F and 8260.19C. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that his regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2006–25502/Airspace Docket No. 06–ACE–10." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that 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) if promulgated, 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to West Plains Municipal Airport, MO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, dated September 1, 2005, and effective September 16, 2005, is amended as follows:

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

* * * * *

ACE MO E5 West Plains, MO

West Plains Municipal Airport, MO
(Lat. 36°52′42″ N., long. 91°54′10″ W.)
Hutton VOR/DME
(Lat. 36°52′17″ N., long. 91°54′00″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of West Plains Municipal Airport and 8 miles west and 4 miles east of the 196° radial of the Hutton VOR/DME extending from the Hutton VOR/DME to 10 miles south of the Hutton VOR/DME.

* * * * *

Issued in Kansas City, MO, on July 31, 2006.

Donna R. McCord,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 06–6858 Filed 8–10–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24467; Airspace Docket No. 06–ANM–2]

Revision of Class E Airspace; Eagle, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule will revise the Class E airspace at Eagle, CO. Additional controlled airspace is necessary for the safety of Instrument Flight Rules (IFR) aircraft executing a new Instrument Landing System or Localizer Distance Measuring Equipment (ILS or LOC DME) Standard Instrument Approach Procedures (SIAP) at Eagle County Regional Airport.

DATES: *Effective Date:* 0901 UTC, November 23, 2006.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Federal Aviation Administration, Western Service Area Office, 1601 Lind Avenue SW., Renton, WA, 98055–4056; telephone (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On May 4, 2006, the FAA published in the **Federal Register** a notice of proposed rulemaking to revise Class E airspace at Eagle, CO (71 FR 26284). This action would provide additional controlled airspace for the safety of IFR aircraft executing a new published ILS or LOC DME SIAP at Eagle County Regional Airport. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6002 and 6005 of FAA Order 7400.9N, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Eagle, CO. Additional controlled airspace is necessary for the safety of IFR aircraft executing the new ILS or LOC DME SIAP at Eagle County Regional Airport.

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 operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

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; TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR 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 part 71.1 of the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 6002 Class E airspace areas extending upward from the surface of the earth.

* * * * *

ANM CO E2 Eagle, CO [New]

Eagle County Regional Airport, CO
(Lat. 39°38′33″ N., long. 106°55′04″ W.)

That airspace extending upward from the surface of the earth within a 4.4-mile radius of Eagle County Regional Airport, and within 4.0 miles each side of the 079° bearing extending from the 4.4-mile radius to 16.5 miles east of the Eagle County Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ANM CO E5 Eagle, CO [Revised]

Eagle County Regional Airport, CO
(Lat. 39°38′33″ N., long. 106°55′04″ W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Eagle County Regional Airport; within 9.5 miles north and 6 miles south of the 085° bearing from the Eagle County Regional Airport extending from the 10-mile radius area to 22.5 miles northeast of the airport.

* * * * *

Issued in Seattle, Washington, on July 25, 2006.

Clark Desing,

Manager, System Support, Western Service Area.

[FR Doc. E6–13204 Filed 8–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 42

[Docket No. RM06–8–000]

Long-Term Firm Transmission Rights in Organized Electricity Markets; Correction

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction.

SUMMARY: This document corrects a compliance deadline error and a typographical error in a final rule that the Federal Energy Regulatory Commission published in the **Federal Register** on August 1, 2006. That action amended the Commission's regulations to require transmission organizations that are public utilities with organized electricity markets to make available long-term firm trnamission rights that satisfy certain guidelines adopted in the Final Rule.

DATES: This correction is effective August 31, 2006.

FOR FURTHER INFORMATION CONTACT: Jeffery Dennis (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission at (202) 502–6027.

SUPPLEMENTARY INFORMATION: In FR Document 06–6494, published August 1, 2006 (71 FR 43564), make the following correction to the date for transmission organizations to file compliance proposals and to the word "what", changing it to "that".

On page 43616, column 3, paragraph 490, the second sentence is corrected to read: "We clarify that we expect transmission organizations subject to this Final Rule to file compliance proposals on or before January 29, 2007".

Magalie R. Salas,

Secretary.

[FR Doc. E6–13155 Filed 8–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 555

[Docket No. ATF 6F; AG Order No. 2829–2006]

RIN 1140–AA25

Commerce in Explosives—Hobby Rocket Motors (2004R–7P)

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is amending the regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to clarify that the requirements of part 555 do not apply to model rocket motors consisting of ammonium perchlorate composite propellant, black powder, or other similar low explosives, containing no more than 62.5 grams of total propellant weight, and designed as single-use motors or as reload kits capable of reloading no more than 62.5 grams of propellant into a reusable motor casing. This final rule is intended to provide rocketry hobbyists with guidance to enable them to enjoy their hobby in compliance with the safety and security requirements of the law and regulations.

The remaining proposals made in ATF's notice of proposed rulemaking (Notice No. 968) will be addressed separately in a forthcoming rulemaking document or documents.

DATES: This rule is effective October 10, 2006.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives; U.S. Department of Justice; 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8203.

SUPPLEMENTARY INFORMATION:

I. Background

ATF is responsible for implementing Title XI, Regulation of Explosives (18 United States Code (U.S.C.) chapter 40), of the Organized Crime Control Act of 1970. One of the stated purposes of the Act is to reduce the hazards to persons and property arising from misuse and unsafe or insecure storage of explosive materials. Organized Crime Control Act of 1970, Public Law 91–452, § 1101, 84 Stat. 952 (1970). Under section 847 of title 18, U.S.C., the Attorney General "may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter." Regulations that implement the provisions of chapter 40 are contained in title 27, Code of Federal Regulations (CFR), part 555 ("Commerce in Explosives").

Under the law, the term "explosives" is defined as "any chemical compound[,] mixture, or device, the primary or common purpose of which is to function by explosion." The definition states that the term "includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters." See 18 U.S.C. 841(d).

ATF is required under the law to publish an annual list of items that fall within the coverage of the definition of explosives. Since publication of the first "Explosives List" in 1971, ammonium perchlorate composite propellant (APCP) has been classified by ATF as an explosive. This classification is based upon the statutory definition of "explosives," which contemplates that items can "function by explosion" either by detonating (dynamite and other high explosives detonate) or by deflagrating (low explosives, such as black powder, pellet powder, and rocket propellants, deflagrate, or burn very quickly). Because APCP deflagrates when confined, it has been classified by ATF as an explosive.

Under the law and its implementing regulations, persons engaging in the business of manufacturing, importing, or dealing in explosive materials are required to be licensed. Other persons who acquire or receive explosive materials are required to obtain a permit. Licensees and permittees must comply with the provisions of part 555, including those relating to storage and other safety requirements, as well as recordkeeping and theft reporting requirements. However, certain activities and items have been given exempt status under the law (see exemptions at 18 U.S.C. 845(a)) and its implementing regulations at 27 CFR 555.141.

Although APCP is an explosive material, ATF currently exempts from regulation rocket motors containing 62.5 grams or less of this and other explosive propellants for reasons set forth below. Rocket motors that contain more than 62.5 grams of APCP are subject to all applicable Federal explosives controls pursuant to 18 U.S.C. 841 *et seq.* and the regulations in part 555.

II. Regulatory History

In 1981, ATF exempted from regulation Class C explosives, including "common fireworks," and certain other explosives designated by United States Department of Transportation (DOT) regulations. Included among the items in the DOT regulations that were exempted by ATF were "toy propellant devices and toy smoke devices" that were defined by DOT as items "consist[ing] of small paper or composition tubes or containers containing a small charge of slow burning propellant powder or smoke producing powder." ATF determined that 62.5 grams was the maximum amount of propellant that could be deemed a "small charge" for toy propellant devices as described in 49 CFR 173.100(u). Subsequently, DOT regulations were revised and the term "model rocket motor" was used to apply to items previously described as "toy propellant devices."

Between 1996 and 1998, ATF updated its regulations (27 CFR 555.141(a)(7)) to reflect various DOT revisions. In doing so, however, ATF inadvertently removed from the subsection all language under which "toy" sport rocket motors had previously been exempted and failed to add language documenting the continued exemption of motors containing 62.5 grams or less of propellant. See 61 FR 53688 (Notice No. 841, October 15, 1996); 63 FR 44999 (T.D. ATF–400, August 24, 1998). Despite this administrative error, ATF has continued to exempt sport rocket motors containing 62.5 grams or less of propellant from the provisions of the Federal explosives laws and regulations.

The Safe Explosives Act (SEA), enacted in 2002 as Title XI of the Homeland Security Act, substantially amended the Organized Crime Control Act of 1970. In drafting the SEA, Congress took into consideration existing Federal explosives law and regulation, but did not do away with ATF's regulation of rocket motors containing more than 62.5 grams of propellant, nor did it decide that motors containing no more than 62.5 grams of propellant should be regulated. Thus, it can be argued that Congress acquiesced in continuance of the exemption. *Cammarano* v. *United States*, 358 U.S. 498, 79 S.Ct. 524, 3 L.Ed.2d 462 (1959); *Ward* v. *Commissioner* of the Internal Revenue Service, 784 F.2d 1424 (9th Cir. 1986). This final rule clarifies in the regulations ATF's long-standing policy and reflects that, after careful consideration, ATF has determined that the 62.5-gram threshold is an appropriate exemption level.

III. Litigation—Tripoli Rocketry Association and National Association of Rocketry v. ATF

In February 2000, the Tripoli Rocketry Association (Tripoli) and the National Association of Rocketry (NAR) brought a cause of action against ATF in United States District Court for the District of Columbia, alleging that:

1. APCP does not "function by explosion" and, therefore, APCP is not an explosive material subject to control by ATF;

2. ATF violated the Administrative Procedure Act (APA) by including APCP on the "List of Explosive Materials" without subjecting the List to "notice-and-comment" rulemaking;

3. Even if APCP is an explosive, sport rocket motors are propellant actuated devices (PADs) and are, therefore, exempt from regulation pursuant to section 555.141(a)(8); and

4. ATF violated the APA and acted arbitrarily and capriciously in setting the maximum-propellant-weight threshold for exempting sport rocket motors at 62.5 grams.

In a subsequent amendment to the complaint, the plaintiffs alleged that certain kits are designed to enable rocket hobbyists to construct rocket motors containing more than 62.5 grams of propellant by placing multiple propellant grains (each weighing 62.5 grams or less) in a reusable motor casing, and that ATF had determined that these kits pose the same dangers and require the same controls as single-use rocket motors containing more than 62.5 grams of propellant and had classified them accordingly. According to plaintiffs, this classification is invalid because ATF did not engage in "notice-and-comment" rulemaking before making this determination.

On March 19, 2004, the district court granted partial summary judgment to ATF on the issue of whether APCP is an explosive. In addition, the court concluded that ATF's determination that sport rocket motors containing not more than 62.5 grams of propellant are not PADs, which was confirmed by ATF in a letter dated December 22, 2000, was invalid because it was made without compliance with the APA. The court based its decision on its review of two letters issued by ATF in 1994 that appeared to take a different position from the 2000 letter with respect to the applicability of the PAD exemption to hobby rockets containing not more than 62.5 grams of propellant. Finally, the court held in abeyance a ruling on the remaining counts of the lawsuit pending the completion of ATF's rulemaking that, among other things, as reflected in this document, will establish by regulation ATF's exemption for rocket motors containing no more than 62.5 grams of APCP, black powder or other similar low explosives (Notice No. 968, 68 FR 4406, January 29, 2003).

On February 10, 2006, the United States Court of Appeals for the District of Columbia Circuit determined that ATF's classification of APCP as an explosive could not "be sustained on the basis of the administrative record," 437 F.3d at 81, and therefore remanded the case to the district court in order to allow ATF to "reconsider" the classification of APCP and offer a coherent explanation for whatever conclusion it ultimately reaches. *Tripoli Rocketry Ass'n* v. *Bureau of Alcohol, Tobacco, Firearms and Explosives*, 437 F.3d 75, 84 (D.C. Cir. 2006). The court explained that ATF had not "provided a clear and coherent explanation for its classification of APCP" and did not "articulate the standards that guided its analysis." Id. at 81. The court did not vacate ATF's designation of APCP as an explosive, because it "was in place long before the present litigation." Id. at 84. Therefore, APCP remains classified as an explosive material and continues to be regulated accordingly by ATF.

On remand, the district court held a status conference with the parties on April 20, 2006, in which the court stated that ATF could pursue its testing and reconsideration efforts and work to provide a more thorough basis for the classification of APCP pursuant to the D.C. Circuit opinion. Presently, ATF is engaged in the reconsideration process and the matter is pending in district court.

IV. Miscellaneous

The carefully-framed exemption embodied in this rule is maintained with a view to maximizing ATF's performance of its statutory responsibilities within the limits of available resources, without compromising public safety. If all hobbyists and retailers who receive or distribute rocket motors containing no more than 62.5 grams of explosive were required to obtain permits and licenses, ATF resources would be stretched beyond their limits to ensure compliance with regulatory requirements and effective administration of the existing Federal explosives laws.

Specifically, the legal requirements placed upon hobbyists and retailers would, in turn, impose an unmanageable administrative burden on ATF. Industry statistics garnered from proprietary manufacturing information reflect that in 2004, there were more than 1.5 million purchasers of small rocket motors. Without the proposed exemption, hobbyists seeking permits to purchase the motors would undergo background checks, submit applications, and be subject to inspection by ATF. Additionally, based upon U.S. Census Bureau and industry information, it is conservatively estimated that there are approximately 10,000 retailers, including nationwide chain retail stores, as well as hobby, game, and toy stores that sell small rocket motors. These retailers sell the vast majority of their smaller motors to children and other hobbyists who use these smaller rocket motors exclusively. If required to obtain licenses, these retailers would be subject to requirements similar to those enumerated above and would need to maintain proper records of receipt and distribution of rocket motors.

In view of the large universe of hobbyists who use small rocket motors and currently are not required to obtain permits—and also in view of the large number of currently-unlicensed retailers selling small rocket motors, it is apparent that to discontinue ATF's long-standing practice of exempting motors containing no more than 62.5 grams of explosive material would be to place upon ATF an administrative burden that would greatly outstrip the agency's licensing, inspection, and enforcement resources. An increase from the current 4,000 Federal explosives licensees to a potential 14,000 licensees and an increase from 8,000 permittees to a potential 1.5 million permittees would result in an unmanageable workload for ATF's administrative personnel and would hamper the agency's ability to effectively manage the overall regulation program with respect to both explosives and firearms. For instance, a massive increase in license and permit applications would undercut ATF's ability to promptly process firearms license applications if it became necessary to draw upon the firearms licensing staff already working at capacity. Furthermore, regulating motors with no more than 62.5 grams would consume these resources even though the hobby rockets that use these smaller motors have been found to pose a relatively small public safety hazard.

V. Notice of Proposed Rulemaking

On January 29, 2003, ATF published in the **Federal Register** a notice of proposed rulemaking (NPRM) soliciting comments from the public and industry on a number of proposals to amend the regulations in part 555 (Notice No. 968, 68 FR 4406). ATF issued the NPRM, in part, pursuant to the Regulatory

Flexibility Act (RFA), which requires an agency to review—within ten years of publication—rules for which an agency prepared a final regulatory flexibility analysis addressing the impact of the rule on small businesses or other small entities.

Notice No. 968 proposed amendments to the regulations that were initiated by ATF and amendments proposed by members of the explosives industry. One proposal initiated by ATF concerned an amendment of the regulations to clarify the items that are exempt from the requirements of part 555. In particular, ATF proposed to amend 27 CFR 555.141 to provide that the regulations in part 555 do not apply to the importation and distribution of model rocket motors consisting of APCP, black powder, or other similar low explosives; containing no more than 62.5 grams of total propellant weight; and designed as single-use motors or as reload kits capable of reloading no more than 62.5 grams of propellant into a reusable motor casing. This proposal mirrored ATF's long-standing policy, which had initially been adopted by the agency to give effect to the "toy propellant device" exemption that had existed in the regulations until 1998. Discontinuance of the 62.5 gram or less exemption would render it infeasible for ATF effectively to administer the Federal explosives controls with respect to rocket motors, including those that pose the most threat to public safety and homeland security. Without the exemption, all requirements of the Federal explosives controls would apply to all persons who acquire and store hobby rockets, regardless of the amount of propellant contained in the motors, thereby spreading ATF resources so thin that ATF could not ensure compliance with regulatory requirements and effective administration of the Federal explosives law.

The comment period for Notice No. 968, initially scheduled to close on April 29, 2003, was extended until July 7, 2003, pursuant to ATF Notice No. 2 (68 FR 37109, June 23, 2003). ATF received approximately 1,640 comments in response to Notice No. 968. This final rule addresses only the proposal made in Notice No. 968 with respect to model rocket motors. The remaining proposals made in Notice No. 968 will be addressed separately in a forthcoming rulemaking document or documents.

VI. Analysis of Comments and Decisions With Respect to Model Rocket Motors

Approximately 620 comments addressed ATF's proposal to exempt from regulation model rocket motors containing up to 62.5 grams of propellant. Comments were submitted by sport rocketry hobbyists, businesses that manufacture or sell hobby rocket motors and related products, one sport rocketry organization (the National Association of Rocketry (NAR)), and others.

In its comments (Comment Nos. 974 and 1570), NAR stated that it is a "non-profit scientific organization dedicated to safety, education, and the advancement of technology in the sport rocket hobby in the United States." The commenter further stated that, founded in 1957, it is the oldest and largest sport rocketry organization in the world, with over 4,800 members and 110 affiliated clubs. According to the commenter, it is the recognized national testing authority for safety certification of rocket motors in the United States and it is the author of safety codes for the hobby that are recognized and accepted by manufacturers and public safety officials nationwide. Thirty-seven (37) comments expressed specific support for NAR's position as set forth in its comments in response to Notice No. 968.

Most commenters addressing the proposal argued that ATF should not regulate model rocket motors or model rocket propellant for reasons discussed below. Other commenters expressed specific concerns regarding the proposed regulation and those concerns are also addressed below.

A. Commenters' Reasons for Objecting to ATF's Regulation of Model Rocket Motors and Model Rocket Propellant

1. Rocket Motors and Rocket Propellants Are Not Explosives

Under the law, the term "explosives" is defined as "any chemical compound[,] mixture, or device, the primary or common purpose of which is to function by explosion." The definition states that the term "includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters." See 18 U.S.C. 841(d).

As previously explained, ATF is required under the law to publish an annual list of items that fall within the coverage of the definition of explosives. Since publication of the first "Explosives List" in 1971, ammonium perchlorate composite propellant (APCP), the propellant used in many high-powered rocket motors, has been classified by ATF as an explosive. This classification is based upon the statutory definition of "explosives," which contemplates that items can "function by explosion" either by detonating (dynamite and other high explosives detonate) or by deflagrating (low explosives, such as black powder, pellet powder, and rocket propellants, deflagrate, or burn very quickly). Because APCP deflagrates when confined, it has been classified by ATF as an explosive.

Approximately 500 commenters contended that rocket motors and rocket propellants (including APCP) are not explosives because they do not "function by explosion." In general, the commenters argued that rocket motors and rocket propellants neither detonate nor deflagrate. NAR argued that ATF's authority to regulate, in any manner, any form of propellant or rocket motor under the Federal explosives law first requires a determination that such items have as their primary or common purpose to function by explosion. NAR contended that ATF failed to make the required statutory determination for rocket motors or APCP in the notice of proposed rulemaking. As such, NAR concluded that ATF cannot regulate rocket motors consisting of APCP as an explosive. NAR also argued that ATF has failed to recognize that rocket motors containing APCP as a fuel source do not have as their primary or common purpose to function by explosion. According to the commenter—

> The leading manufacturer of APCP for rockets (Aerotech, Inc.) has recently explained that the formulation of APCP utilized in such rockets consists of between 40 and 77 percent ammonium perchlorate as the oxidizer, with the remainder consisting of various supplemental metals such as aluminum or magnesium for fuel, various other chemicals that serve as burn rate catalysts and antioxidants, and a synthetic rubber binder. The rubber binder effectively passivates the ammonium perchlorate rendering the resultant composite non-explosive.

NAR disagreed with ATF's determination that rocket motors containing APCP function by explosion because they deflagrate when ignited. As stated in its comment:

> It is widely acknowledged, and accepted by ATFE, that the speed of the burn front in materials that deflagrate is on the order of meters per second (in a detonation reaction the velocity is typically more than one kilometer per second), whereas the speed of the burn front in materials that burn is on the order of millimeters per second * * * the data relied upon by ATFE to date clearly reveals that when APCP is lit the burn front propagates on the order of 'millimeters per second,' which under ATFE's own concept is indicative that APCP 'burns' and does not 'deflagrate.'

NAR provided information to support its position that APCP burns and does not deflagrate. Based on that information, NAR concluded that "when ignited APCP in rocket motors typically burns at a rate of less than 25 millimeters per second. Accordingly, APCP in rocket motors does not deflagrate when ignited, and thus ATFE cannot classify APCP in rocket motors as an explosive."

Most commenters expressed views similar to that of NAR. The following excerpts reflect the commenters' position:

If the ATF's interpretation were correct every rocket ever lit would explode on the pad every time without fail. Obviously it doesn't do that. Solid Rocket Propellant (APCP) is a tried and true, safe technology and that is why most of the worlds [sic] professional and hobby rockets use it as the fuel of choice. (Comment No. 88)

APCP does not 'function by explosion.' It functions by combustion * * * It is and has been obvious to the professionals in the field for several decades that APCP does not function by explosion. It does not belong, and never has belonged, on the BATFE's list of explosives. (Comment No. 834)

'Explosion' entails either 'deflagration' or 'detonation'. The generally accepted definition for detonation is the propagation of the burn front at greater than 1 kilometer per second. Deflagration is defined by a burn front propagating on the order of meters per second. Ammonium Perchlorate Composite Propellant (APCP), the most common hobby rocketry propellant, generally burns at less than 25 millimeters per second, putting it well below the definition of both deflagration and detonation. Thus, APCP burns; it does not explode. (Comment No. 854)

Their [solid rocket motors] sole purpose is to propel a rocket by the ejection of hot, high pressure gases produced by the controlled combustion of one of more solid monolithic propellant grains in a high-pressure combustion chamber through an expansion controlling orifice device called a nozzle. The solid rocket motor/propellant system is specifically designed not to explode, and therefore is not an explosive, nor is it an explosive device, and therefore should not be regulated by the BATFE. (Comment No. 895)

Deflagration is characterized by a subsonic burn rate measured in meters per second; * * * APCP merely burns at the rate of millimeters per second. When confined, and should the casing rupture due to over-pressure, the remaining unburnt APCP typically self-extinguishes. An individual could safely ignite one end of APCP, and it would burn much like a road flare! The inclusion of APCP on the list of regulated explosives has no logical basis * * * (Comment No. 1071)

[H]obby rocketry fuel, particularly APCP, is not an explosive, either by nature or by design. APCP neither detonates nor deflagrates. Detonation is characterized by a supersonic burn rate, measured in kilometers per second. The APCP used in hobby rockets cannot be made to detonate by use of a blasting cap. (Comment No. 1164)

ATF has never produced any technical studies, tests, or scientific papers to support the contention that APCP functions by explosion, or even that APCP does detonate or deflagrate. (Comment No. 1547)

Department Response

Beginning in 2000, the issue of classifying APCP as an explosive material has been litigated in the United States District Court for the District of Columbia. *See Tripoli Rocketry Ass'n* v. *Bureau of Alcohol, Tobacco, Firearms and Explosives*, 337 F. Supp. 2d 1 (2004). After assessing technical and legal arguments presented by the Government and opposing rocketry associations, the district court held that ATF's decision that APCP is a deflagrating explosive was permissible. *Tripoli Rocketry Association* v. *ATF* Civil Action No. 00–273 (Mar. 19, 2004).

As previously stated, in February 2006, the D.C. Circuit disagreed with the district court on this issue because in its view ATF had failed to provide a sufficiently thorough justification to support its classification with a specific, articulated standard for deflagration. *Tripoli Rocketry Assoc., Inc.* v. *Bureau of Alcohol, Tobacco, Firearms and Explosives*, 437 F. 3d 75 (D.C. Cir. 2006). However, the court declined to set aside the classification, and APCP thus remains on the "List of Explosive Materials" that ATF is obligated to maintain. *See Tripoli Rocketry Assoc.*, 437 F. 3d at 84. The case was remanded to the district court so that ATF may reconsider the matter and offer a coherent explanation for whatever conclusion it ultimately reaches. Id. Furthermore, the Court of Appeals offered clear guideposts as to the characteristics of a classification decision that would pass judicial review. See, e.g., id. at 81. Accordingly, ATF will utilize those guideposts in conducting testing of APCP as part of the reconsideration process. ATF will test and analyze APCP throughout the summer and fall of 2006 and submit reconsideration results upon completion.

2. Model Rockets/Rocket Motors Containing APCP Are "Propellant Actuated Devices" and, as Such, Are Exempt From ATF Regulation

Propellant actuated devices (PADs) imported or distributed for their intended purposes are exempt from regulation pursuant to 27 CFR 555.141(a)(8). The term "propellant actuated device" is defined in section 555.11 as "[a]ny tool or special mechanized device or gas generator system which is actuated by a propellant or which releases and directs work through a propellant charge." In applying the regulatory definition, ATF has classified certain types of products as propellant actuated devices: Aircraft slide inflation cartridges, inflatable automobile occupant restraint systems, nail guns and diesel and jet engine starter cartridges.

Approximately 300 commenters contended that model rocket motors meet the definition of a PAD and, as such, are exempt from ATF regulation. Some of the arguments raised by the commenters include:

A rocket motor, fuel grains and rockets are comparable to exempted tools such as a nail gun with it's [sic] cartridges and nails. Like a nailgun, a rocket motor directs the gases generated by a propellant. Just as the nailgun and cartridge are used to propel a nail, the rocket motor and fuel grains are used to propel a rocket vehicle. (Comment No. 331)

APCP burning inside a rocket motor casing produces hot, pressurized gasses which are directed out of the nozzle end of the motor. These rapidly exiting gasses cause the rocket to move in the opposite direction. No explosion occurs. Thus an APCP rocket motor is essentially a 'propellant actuated device', a category of devices that is already explicitly exempted from regulation. (Comment No. 734)

Until the mid 1990s, the BATFE had exempted all APCP rocket motors, regardless of propellant weight, because APCP motors were considered to be propellant actuated devices, which were exempt from BATFE permits. APCP rocket motors have not changed since then, and Congress has not changed its definition of an explosive; therefore, the BATFE should never have started regulating APCP as an explosive in the first place, and should not start regulating APCP in the future. (Comment No. 982)

NAR commented that although the Federal explosives law does not specifically include an exemption for PADs, the legislative history of the law clearly intended that such devices should be exempt by noting that the term "explosives" is not "intended to include propellant actuated devices or propellant actuated industrial tools used for their intended purpose." According to the commenter:

Congress must have intended that propellant actuated devices be exempted because their 'primary or common purpose' is not to function by explosion but rather is to perform useful non-destructive work. Rocket motors fit this concept precisely—their purpose is not destructive, but to perform useful work by propelling a rocket.

NAR stated that a rocket motor serves but one function, i.e., to expel gases through its nozzle from a burning propellant for the purpose of generating the thrust necessary to launch the rocket. Based on its nature and function, the commenter contended that a rocket motor is a propellant actuated device that is exempt from regulation because "it qualifies as either a 'special mechanized

device,' or a 'gas generator system,' if not both, and because a rocket motor is both 'actuated by a propellant' and 'releases and directs work' (i.e., thrust) 'through a propellant charge' * * *"

Department Response

ATF's position is that the term "propellant actuated device" does not include hobby rocket motors or rocket-motor reload kits containing APCP, black powder, or other similar low explosives. The definition of "propellant actuated device" in 27 CFR 555.11 is "[a]ny tool or special mechanized device or gas generator system which is actuated by a propellant or which releases and directs work through a propellant charge." To determine the common meanings of "tool," "special mechanized device," and "gas generator system," it is useful to look to Merriam-Webster's Collegiate Dictionary (Tenth Edition, 1997) (Webster's). Webster's defines "tool" in pertinent part as: "a handheld device that aids in accomplishing a task; the cutting or shaping part in a machine or machine tool; a machine for shaping metal." Webster's defines the word "device" as "a piece of equipment or a mechanism designed to perform a special function." For a particular device to be a "special mechanized device," Webster's appears to suggest, it would be necessary that it be both unique and of a mechanical nature. Webster's defines "generator" as "an apparatus in which vapor or gas is formed" and as "a machine by which mechanical energy is changed into electrical energy." Further, Webster's defines "system" as "a regularly interacting or interdependent group of items forming a unified whole." Thus, Webster's may be read to suggest that a "gas generator system" is properly defined as a group of interacting or interdependent mechanical and/or electrical components that generates gas.

Based on the above definitions and conclusions, the Department believes that rocket motors, regardless of the amount of propellant contained therein, cannot be brought within the regulatory definition of propellant actuated device. Rocket motors are not "tools," because they are neither handheld nor a complete device. Nor are they a metal-shaping machine or a part thereof. Further, they cannot be considered to be a "special mechanized device" because, although clearly designed to serve a special purpose, they lack the necessary indicia of a mechanized device. Clearly, rocket motors are in no way reminiscent of a mechanism since they consist essentially only of propellant encased by a cardboard, plastic, or metallic cylinder. Though such motors may include a nozzle, retaining cap, delay grain and ejection charge, the rocket motor is little more than a propellant in a casing, incapable of performing its intended function until fully installed, along with an ignition system, within a rocket. Finally, because rocket motors have no interacting mechanical or electrical components, rocket motors cannot be deemed to be a gas generator system.

For the reasons set forth above, the Department does not believe that rocket motors of any size should be classified as propellant actuated devices.

On March 19, 2004, the United States District Court for the District of Columbia issued a memorandum opinion in *Tripoli Rocketry Ass'n.* 337 F. Supp. 2d 1. In its opinion, the court specifically addressed two letters issued by ATF, one dated April 20, 1994, and the other dated December 22, 2000, in which ATF had discussed the applicability of the propellant actuated device ("PAD") exemption to rocket motors. *See id.* at 10–13. The 1994 letter gave the impression that ATF had exempted sport rocket motors containing 62.5 grams or less of propellant as propellant actuated devices (PADs) under 27 CFR 555.141(a)(8). The 2000 letter more accurately and clearly stated that rocket motors did not meet the regulatory definition of a PAD, but that rocket motors with 62.5 grams or less of propellant were exempt from regulation, in light of the pre-existing "small charge" threshold that has historically been in place to exempt "toy" devices.

The court unambiguously determined that ATF's 2000 letter was at variance with its 1994 letter. The court then concluded:

> Thus, before the ATF could [have] altered its earlier interpretation of the applicability of the PAD exemption, it was required to undertake notice-and-comment rulemaking as required by the [Administrative Procedure Act] and the [Organized Crime Control Act of 1970]. Because the ATF failed to do so, the Court concludes that its December 22, 2000 pronouncement regarding the applicability of the PAD exemption to sport model rockets was not in compliance with the OCCA and the APA.

The court also explicitly set out the controlling 1994 ATF statement on the applicability of the PAD exemption in its Opinion:

> Of particular significance to the plaintiffs, is the statement in the April 20 Letter that
>
> [t]he exemption at 27 CFR Part 55, section 141(a)(8) includes propellant-actuated 'devices.' The term 'device' is interpreted to mean a contrivance manufactured for a specific purpose. Under this definition, a fully assembled rocket motor would be exempt. However, the propellant, prior to assembly, would not be exempt.

Id. (emphasis added). The ATF went on to state that

> [t]he AeroTech products which have been classified by the Department of Transportation as a flammable solid 4.1 or as explosives 1.4c, which are within the 62.5 grams limit contained in NFPA 1122 and conform to the requirements of model rocket motors set forth in 16 CFR section 1500.85(a)(8)(ii), would meet ATF requirements for exemption under 27 CFR Part 55, section 141(a)(8).

Id. Opinion at 15.

ATF is currently regulating rocket motors in conformity with this ruling, exempting from regulation fully assembled rocket motors containing no more than 62.5 grams of propellant, and producing less than 80 newton-seconds (17.92 pound seconds) of total impulse with thrust duration not less than 0.050 seconds. This final rule does not materially change this state of affairs inasmuch as rocket motors containing 62.5 grams or less of propellant will continue to be exempt from regulation. However, the final rule does alter ATF's position in that a fully assembled rocket motor containing 62.5 grams or less of propellant, while still exempt from regulation, will not be classified as a propellant actuated device under this final rule.

3. The Proposed 62.5-Gram Exemption Threshold Is Arbitrary and Lacks a Reasoned Basis, Is Unreasonable and Unnecessarily Restrictive, and Is Inconsistent With Existing Weight Limits for Other Explosives

a. The Proposed 62.5-Gram Limit Is Arbitrary and Lacks a Reasoned Basis

Approximately 120 comments objected to ATF's proposal to exempt from regulation rocket motors containing 62.5 grams or less of propellant, arguing that the proposed limit is arbitrary and that ATF did not explain the basis for the proposed limit. In its comment, NAR stated that the agency failed to present any scientific basis to support the proposed 62.5-gram limit, presented no factual data that demonstrates why the proposed amount represents a reasonable limit on possession of APCP, and offered no data or test results as to the relative properties of this quantity of APCP. To the extent that ATF based its 62.5-gram weight limitation on regulations enacted by the United States Department of Transportation (DOT) or the Consumer Product Safety Commission (CPSC), the commenter argued that ATF failed to explain in the NPRM why a weight limit

created by another Federal agency should be applied to ATF's explosives regulations. As stated by the commenter:

> What possible bearing does a DOT regulation imposing a weight limit on rocket motors in order to avoid hazardous synergistic effects with other hazardous materials, or a CPSC regulation protecting children from using rocket motors above a specific weight limit have on adults that possess and store rockets?

Several commenters argued that the proposed 62.5-gram exemption is not based on Federal explosives law, noting that the law "makes no exemptions of explosives based on weight except for black powder used in antique firearms and devices." (Comment No. 88)

Other commenters raised concerns similar to those mentioned above:

> I'd also like to know from whence the threshold weight of 62.5 grams was derived. This seems to be an arbitrary number since the behavior of 62.5 grams of APCP is not much different than that of 80 grams. Does the Bureau have any scientific basis for this figure? (Comment No. 33)
>
> The 62.5 gram limit * * * has no scientific basis. The BATF has no tests or justification to show that this 62.5-gram limit (which is inherited from old shipping regulations) has any rational meaning in this situation. (Comment No. 325)
>
> The 62.5 gram limit is arbitrary * * * It has no technical basis as to what may or may not constitute a hazard to the public. (Comment No. 327)
>
> ATFE has focused on a 62.5 gram limit without showing the reasoning behind this number. ATFE has quoted (in the past) other agencies' use of a 62.5 gram unregulated limit, such as DOT and CPSC, for ATFE's unregulated limit. However, the absence of technical data does not support ATFE's reasoning. (Comment No. 864)
>
> ATFE has failed to present any scientific basis to support the 62.5 gram limit. ATFE presents no factual data that demonstrates why this amount represents a reasonable limit on possession of this non-explosive material. (Comment No. 974)
>
> The proposed change in exemptions for model rocket motors introduces an arbitrary limit of 62.5 grams per motor or reload kit. This limit has no basis in scientific data. The proposed rule implies that a single rocket motor of 62.5 grams of propellant is safe, but one with 62.6 grams is unsafe. Two motors with 62.5 grams of propellant are safe, but one with 62.6 grams is unsafe. One thousand motors with 62.5 grams of propellant is safe, but a single motor with 62.6 grams is unsafe. ATFE is obviously not concerned with safety issues related to the total amount of APCP stored since there is no limit on the total number of motors or reloads stored, as long as no single motor exceeds 62.5 grams. (Comment No. 1033)
>
> [A] total weight limit of APCP such as 40–50 pounds would address the individual who, without a permit, would be able to obtain as many motors containing 62.5 g or less as he wants. For example, the proposed arbitrary 62.5g limit would not stop somebody from having 1000 motors each containing 62.5 g for a total of 62.5 kg (137.5 pounds!) of APCP. (Comment No. 1170) The ATFE gives no explanation or justification why 62.5 gram is an appropriate limit. I notice that my state (New Jersey) regulations do not require a permit for owning and storing up to 220 pounds (100,000 grams!) of rocket propellant; likewise no permit is required for owning and storing up to 50 pounds of black powder * * * ATF is basing the 62.5 gram limit on the Consumer Product Safety Commission limit, which was set as a limit for children handling rocket motors. This limit for requiring permits is arbitrary and excessive and has not been demonstrated by the ATFE as being appropriate. (Comment No. 1230)
>
> The proposed limit of 62.5 grams is without substantiation. Why not higher? Why not lower? What is the technical reason that a higher limit would be problematical? * * * Rocket motors containing less than 62.5 grams of propellant comprise only a small part of the hobbyist rocket spectrum. (Comment No. 1626)

Department Response

The Department has considered the comments and disagrees with the arguments suggesting the exemption from regulation should be higher than 62.5 grams.

The origin of the 62.5-gram limit is found in regulations covering devices that are in the nature of toys. In 1981, ATF exempted from regulation, under 27 CFR 55.141(a)(7), "[t]he importation and distribution of fireworks classified as Class C explosives and generally known as 'common fireworks,' and other Class C explosives, as described by U.S. Department of Transportation regulations in 49 CFR 173.100(p), (r), (t), (u) and (x)." One of these DOT subsections, 49 CFR 173.100(u), listed "toy propellant devices and toy smoke devices" as Class C explosives and described them as "consist[ing] of small paper or composition tubes or containers containing a small charge of slow burning propellant powder or smoke producing powder." It also provided that "these devices must be so designed that they will neither burst nor produce external flame on functioning * * *." In construing its regulation, ATF determined that 62.5 grams was an appropriate ceiling for what could be considered a "small charge" of propellant for these "toy" devices, a determination that was in keeping with guidelines published by the National Fire Protection Association and with regulations promulgated by the Consumer Product Safety Commission's (CPSC's) predecessor organization at the request of both the National Association of Rocketry and Estes Industries. CPSC applies its 62.5-gram exemption in such a manner as to prohibit the sale of some rocket motors to children, by regulating propellant weight and energy output. The Department believes it is appropriate, whenever possible, for Federal agencies to regulate commodities in a consistent manner.

ATF is charged with safeguarding the public from dangers associated with explosives that are misused, criminally diverted or improperly stored. Public safety would no doubt be increased were ATF to apply regulatory controls to all sport rocket motors. However, ATF has rationally crafted an exemption from its explosives controls for sport rocket motors containing small amounts of explosive material and for other devices that are in the nature of toys (*e.g.*, toy plastic or paper caps for toy pistols, trick matches, and trick noise makers). ATF has drawn the line for exemption at 62.5 grams of propellant because this amount represents a reasonable balance between ATF's goal of allocating its resources in the most efficient and effective manner and its goals of maintaining public safety. ATF believes that rockets utilizing motors containing 62.5 grams of propellant or less have a shorter range that is less likely to allow use as a weapon against a particular target without detection. In addition, rockets powered by motors containing no more than 62.5 grams of propellant have less power to cause significant damage when used against a target. As discussed in more detail below, the Department believes that rocket motors containing more than 62.5 grams of propellant pose a significant threat to public safety because they can be modified for use as weapons.

ATF has conducted testing of the performance characteristics associated with rockets powered by motors containing 62.5 grams or less of APCP and of the performance characteristics associated with rockets powered by motors containing more than 62.5 grams of APCP. Although many of the results of this testing are classified, the testing showed clearly that to raise the exemption threshold beyond 62.5 grams would pose an increased threat to public safety and homeland security.

In conclusion, the exemption of rocket motors containing 62.5 grams or less of propellant is consistent with ATF's congressional mandate to reduce the hazard arising from misuse and unsafe storage of explosive materials while not unduly or unnecessarily restricting or burdening law-abiding citizens in their lawful use of explosives.

b. The Proposed 62.5-Gram Limit Is Unreasonable and Unnecessarily Restrictive

Approximately 190 comments maintained that the proposed exemption threshold is unreasonable and too restrictive for adult sport rocketry hobbyists and the commenters recommended that the threshold be increased. Several commenters proposed various upper limits for APCP in rocket motors, with one commenter suggesting that the exemption threshold be increased to 1,000 pounds. Following are excerpts from some of the comments:

The 62.5 gram limit proposed by the ATF is based on the regulations of the consumer product safety commission * * * These regulations allow any motor less than 62.5 grams to be sold to the general public and to be used by unsupervised minors to fly toy rockets. However, large rocket motors cannot be purchased by the general public * * * It should be possible to allow responsible certified adults to buy and use the larger hobby rocket motors that are controlled by the certification process of the TRA and NAR without adding ATF regulation. (Comment No. 69)

This proposal to exempt only rocket motors with no more than 62.5 grams propellant is too strict. Rocket motors currently conforming to this requirement are only suitable for model (low-power) rockets, which are considered by many adults to be essentially toys or entry level projects. Adults are interested in certifying in and taking on the many challenges of high-power rocketry, requiring higher total impulses, and thus, rocket motors with more propellant. (Comment No. 128)

I urge you to reconsider the 62.5 gram hobby/amateur rocketry exemption limit as unreasonable and at the very least increase the limit for APCP to 7800 grams [17.2 pounds] with a motor diameter not-to-exceed 98mm, the size and amount of APCP necessary to make an 'N' -class motor which is the highest used with any frequency by hobby and amateur rocketeers. (Comment No. 326)

Within the Tripoli Rocketry Association, there are currently 3072 individuals who are on record as being certified to use motors containing more than 62.5 grams of APCP * * * Increase the exemption to include motors containing up to 40 pounds of propellant. This is equivalent to the largest rocket motor that can be flown under NFPA, Tripoli Rocketry Association and National Association of Rocketry rules. (Comment No. 819)

[T]he selection of 62.5 grams of APCP as the upper limit of what is permitted for unrestricted access * * * does not even come close to satisfying the needs of rocket hobbyists * * * the large majority of high-power rocket flyers would have their needs served if an exemption were granted to allow them to acquire and use rocket motors that contained up to 2,800 grams [6.17 pounds] of APCP without the need for a permit. (Comment No. 924)

Department Response

APCP is an explosive material. By nature, explosive materials present unique safety hazards. Accordingly, they are regulated by law and very few categories of explosive materials are expressly exempted in any way from the law's requirements. Therefore, it cannot be said that ATF's regulatory stance with respect to rocket motors containing APCP or other explosive materials is unreasonable or unnecessary. Indeed, ATF's long-standing policy to exempt from regulation motors containing 62.5 grams or less of propellant reflects the agency's desire to accommodate the interests of rocketry hobbyists and to balance those interests with important public safety and homeland security concerns. As noted previously, in view of their inherent dangers, very few types of explosive materials are exempted in any way from the Federal explosives controls administered by ATF.

Some commenters suggested that the exemption be extended to 40 pounds, 17.2 pounds or 6.17 pounds. However, unrestricted commerce in motors containing APCP in these amounts would present a significant risk to public safety and homeland security. By regulating motors with more than 62.5 grams of propellant, terrorists, felons, and other prohibited persons will be prevented from gaining access to large motors that could pose an increased threat and that could be more readily adapted for terrorist or other criminal purposes. APCP can be used to make a very effective pipe bomb or other improvised explosive device that could be used for criminal or terrorist purposes. Furthermore, motors containing more than 62.5 grams of propellant can be used to power rockets capable of carrying large warheads containing either explosives or other noxious substances. Rockets powered by motors containing more than 62.5 grams of propellant can be directed at targets from a great distance, avoiding detection and apprehension of persons who would use them for criminal or terrorist purposes. Likewise, the proposed exemption is reasonable because it is comparable to other regulations and exemptions from other agencies addressing low explosives.

A commenter points out that "responsible certified adults" should have access to larger hobby rocket motors for lawful purposes. Such certification refers to procedures required by rocketry associations, which are not imposed upon hobbyists who are not members of the specific associations and which have no application whatsoever to terrorists or criminals who might seek to gain access to large rocket motors for nefarious purposes. ATF does not believe that voluntary procedures are sufficient to safeguard public safety and homeland security. In order to responsibly implement the Federal explosives laws, the exemption established by this final rule will impose mandatory controls on all persons seeking to acquire rocket motors containing more than 62.5 grams of propellant and, in this regard, will among other things require that persons acquiring such large motors undergo a background check and obtain a Federal permit.

c. The Proposed 62.5-Gram Limit Is Inconsistent With Existing Weight Limits for Other Explosives

In general, the regulations at 27 CFR 555.141(b) specify that the requirements of part 555 do not apply to commercially manufactured black powder in quantities not to exceed 50 pounds if the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms.

Approximately 30 commenters maintained that a similar exemption should be established for rocket motors containing APCP. In its comment, NAR stated the following:

[N]otwithstanding ATFE's proposal to limit the exemption for rocket motors containing 62.5 grams or less of APCP * * * elsewhere in its explosives regulations ATFE establishes higher weight limits for arguably similar materials.* * * ATFE permits an individual that possesses an antique firearm to purchase up to 50 pounds of black powder for use in that firearm without obtaining an ATFE-issued permit or storing the material in an ATFE-approved magazine * * * Those ATFE exemptions are not conditioned upon whether the bullet to be used in the antique firearm contains a specific quantity of black powder or whether, by design or intent, the individual will use one or more bullets at the same time in the antique firearm.

Other commenters argued that APCP is less of a public safety hazard than black powder, due to its significantly lower burn rate and non-explosive nature and, as such, should also be exempt from regulation. Some of their arguments are set forth below:

[T]he best solution to regulating hobby rocket motors * * * would be a parallel to the exemption for black powder * * * while I would feel vastly safer having 50 pounds of APCP around the house than I would having 50 pounds of black powder (because APCP is inherently much safer to handle and store, compared to black powder), I think most educational and hobby and rocketeers don't need 50 pounds of propellant on hand * * * an exemption for a total weight limit of 20 pounds * * * of propellant would be equitable and reasonable. (Comment No. 325)

My understanding is that gun enthusiasts are allowed to own and transport as much as 50 pounds of black powder. A similar rule for rocketry makes better sense. In fact, it is easy to argue that rocket users should be allowed to have more total mass than gun owners because the black powder used in guns is in powder form which is much more flammable than the pellet form used for rockets. (Comment No. 142)

APCP is far less dangerous than Black Powder for which there exists an exemption of 50 lbs for antique firearms collectors. For rocketry, I believe an exemption on the order or [sic] 100–200 lbs would be very reasonable. This amount * * * would allow small business in the industry and the majority of the consumers to function unburdened and within very safe limits. (Comment No. 806)

I understand that antique gun owners do not need a LEUP [low explosives user permit] to purchase, or are required to use a explosives magazine to store, up to 50 pounds of Black Powder propellant (which unlike APCP is very explosive). I have a hard time understanding why I can store 50 pounds of very explosive Black Powder in my closet if I'm an antique gun hobbyist but I can't store 3 ounces of APCP non-explosive rocket propellant if I'm a rocketry hobbyist. I propose that rocket hobbyist[s] be given the same 50 pound exemption * * * (Comment No. 1444)

BATFE's proposal to impose a weight limit of 62.5 grams of APCP in rocket motors in order for the exemption of 27 CFR 55.141(a)(7)(v) to apply is wholly inconsistent with existing weight limits for other explosives. It is well-established that loose black powder poses a significantly greater hazard than chunks of APCP, in its easier ignitability, rapid burn rate even when unconfined, and its sensitivity to static electricity. Yet, the regulations permit up to 50 pounds of black powder to be stored without restriction. (Comment No. 1537)

Department Response

Congress determined that any person may purchase commercially manufactured black powder in quantities of 50 pounds or less, solely for sporting, recreational, or cultural purposes for use in antique firearms or antique devices without complying with the Federal explosives laws. Congress enacted this exemption as part of the original 1970 Act, although the exemption initially allowed the acquisition of only five pounds of black powder. In 1975 the exemption was increased to 50 pounds, again by the Congress. Accordingly, the commenters who refer to the black powder exemption as one created by ATF are in error.

The comparison between the black powder exemption and the exemption for certain model rocket motors is a poor one. The Department's regulatory authority lies within the sound discretion of the Attorney General, consistent with the scope of his authority under 18 U.S.C. chapter 40 and the Administrative Procedure Act. It is being exercised in this final rule in the Attorney General's best efforts to give voice to Congress's intention that the Federal explosives controls be administered in such a way as to balance the need to prevent the misuse of explosives with the need for persons to have access to explosives for lawful purposes without undue regulation. It is significant that the exemption for black powder was increased in 1975 through legislation, rather than by regulation. Accordingly, the commenters' comparison of the proposed regulatory exemption to the statutory exemption for black powder is not persuasive and will not result in a change in the final rule.

4. Model Rocket Motors, Propellants, and Model Rockets Are Not a Threat to Homeland Security

Approximately 45 commenters argued that model rocket motors and propellants, as well as model rockets, do not pose a threat to homeland security and should not be regulated by ATF. Other commenters (approximately 50) contended that the proposed regulation, if adopted, might actually jeopardize homeland security. The commenters argued that requiring sport rocketry hobbyists to obtain a Federal permit would result in an increase in the number of people with access to explosives. Following are excerpts from some of the comments:

ATFE's concern with hobby rocket propellants such as Ammonium Perchlorate Composite Propellant is misplaced. It is simply not effective as an explosive for destructive purposes * * * Neither is it a credible terrorist threat as a missile against aircraft. Hobby rockets do not have guidance systems. The subtleties of the physics of dynamic stability, the vagaries of the wind, and available launch systems simply do not allow an unguided rocket to be aimed accurately against any target as small as an aircraft. Since terrorists can presumably acquire guided military rockets on the black market, the weaponization of hobby rocket motors is not credible. (Comment No. 91)

Simple analysis of the attributes of sport rockets would make it abundantly clear that they are wholly unsuited to the tasks sought by terrorists:

- Sport rockets are unguided.
- Sport rockets have very limited range (only a few can reach 10,000 feet; most go no higher than 2,000 to 3,000 feet) and are highly susceptible to adverse weather conditions * * *
- Payloads are minimal at best * * *
- Rockets are not easy to setup and launch unobtrusively * * *
- Substantial modifications would be necessary to turn a sport rocket, even a large one, into a weapons delivery system * * * (Comment No. 269)

Requiring rocket hobbyists to obtain an explosives permit is counterproductive to security, as it means that thousands of hobbyists who normally would never have a need for real explosives would now be permitted to obtain them. (Comment No. 301)

Possession of an LEUP may encourage otherwise disinterested persons to obtain real explosives. I believe that an increased number of people having access to true explosives will have an adverse and significant impact on public safety. (Comment No. 740)

A terrorist or other illicit user has many explosives available to them and wouldn't logically use amateur rocket propellants because they are relatively expensive (as compared to fertilizer and fuel oil, gasoline, gunpowder, lpg [liquefied petroleum gas], propane, etc.). (Comment No. 849)

Given all of the readily available unregulated materials that are available to a terrorist, the BATFE's approach to the regulation of APCP is by this analysis a waste of taxpayer's time and money. If large numbers of APCP-based IEDs [improvised explosive devices] were being encountered by law enforcement, there might be a cause of action * * * IEDs are typically constructed of far more commonly available, less expensive, and unregulated materials * * * (Comment No. 1622)

Department Response

The Department has considered the comments regarding the threat posed by sport rocket motors. For the following reasons, motors with more than 62.5 grams of propellant present very real security and public safety risks. Rocket motors containing large amounts of APCP can power rockets more than 30,000 feet into the air, frequently requiring high-power rocketry hobbyists to obtain waivers from the Federal Aviation Administration prior to a launch. These large rocket motors could also be used to power rockets carrying explosive or noxious warheads miles downrange into a fixed target. Commenters state that sport rockets are unguided, not easy to set up, and have a limited range. These are, in fact, some of the reasons ATF has maintained an exemption for small sport rockets with 62.5 grams or less of propellant. However, rockets using more than 62.5 grams of propellant are capable of stable flight over a fairly long range (one mile or greater). A willing, determined criminal or terrorist could assemble a weapon that utilizes a large rocket motor and launch such a device at a populated area, stadium, or transportation center in a matter of minutes from a distance sufficient to avoid detection. In addition, commercially available software can calculate launch parameters to fire a rocket horizontally or at an angled

trajectory. Rockets can be utilized to hit fixed targets, such as buildings, or be shot into populated areas with a reasonable degree of accuracy. Likewise, a rocket being used as a weapon could be launched from the bed of a truck, thereby making the launch site and any evidence of the launch mobile. The longer the range of the rocket, the greater the likelihood that the persons using them for criminal purposes would succeed in their attack and evade detection and apprehension. Finally, APCP could be used as an explosive filler in a pipe bomb or other improvised explosive device. For purposes of homeland security and the global fight against terrorism, all of these factors must be taken into account.

The potential for terrorist or criminal misuse of rocket motors containing APCP or other propellant explosive is, of course, only one side of the equation when balancing homeland-security needs against the ability of law-abiding citizens to participate in hobby rocketry activities. The Department is fully aware that hobbyists have a legitimate and lawful desire to acquire explosive materials in pursuit of their recreational activities. In keeping with Congress's intention, ATF has maintained a long-standing exemption from the Federal explosives controls for hobby rocket motors containing 62.5 grams or less of low explosive materials. This exemption covers more than 90 percent of all rocket motors that are sold to hobby rocketry enthusiasts and encompasses all rocket motors that can lawfully be possessed without a license or permit or complying with the other requirements of Federal law. Under this final rule, a Federal permit will be required for persons purchasing motors containing more than 62.5 grams of propellant and reload kits designed to enable the assembly of motors containing more than 62.5 grams of propellant per motor. Again, establishing the exemption level at no more than 62.5 grams of propellant mitigates the burden on rocketry enthusiasts while addressing the threat to public and homeland security presented by larger motors.

Even if this rule results in more permits being issued to rocketry hobbyists, the Department does not believe that this requirement will result in such permittees using the permit to acquire other types of low explosives. There is no evidence to indicate that rocketry enthusiasts are interested in acquiring explosives other than those contained in rocket motors, and associated components. Even if rocketry enthusiasts choose to use their Federal explosives permit to acquire other types of explosives, only persons with no criminal record or other prohibiting factors will be issued a permit. In addition, all permittees must demonstrate their ability to store the explosives they acquire in accordance with the regulations in 27 CFR part 555. Accordingly, even if the commenters are correct, the acquisition of other types of explosive materials by rocketry enthusiasts will not pose a threat to public safety. For this reason, the Department does not believe these comments warrant a change in the proposed rule.

5. ATF Does Not Need To Regulate Model/Sport Rocketry

Approximately 100 commenters maintained that there is no need for ATF to regulate the model/sport rocketry hobby. Some commenters argued that the hobby is already subject to the requirements of many other governmental authorities at the Federal, State, and local levels. Other commenters stated that the hobby is also subject to the rules and regulations of non-governmental organizations, including the National Fire Protection Association (NFPA), NAR, and the Tripoli Rocketry Association. In its comment, NAR stated the following:

> [R]ocket motors themselves as well as their operation are specifically regulated by a variety of other government authorities. Specifically, the U.S. Department of Transportation ('DOT') regulates the storage, transport, containerization, and sale of rocket motors used by the hobbyists * * * the U.S. Federal Aviation Administration ('FAA') regulates launches, flight locations, airframe composition, rocket weight, and requires various governmental notifications * * * the U.S. Consumer Product Safety Commission ('CPSC') regulates the hobby by prohibiting minors from purchasing motors and propellants used in high-powered sport rockets * * * Local and county ordinances as well as state regulations address fire protection issues and launch locale restrictions. The hobby is also extensively monitored for compliance with codes promulgated by the National Fire Protection Association, which are incorporated by reference into many state laws.

Other commenters expressed similar views:

> Sport rocketry is subject to many, many regulatory agency rules and regulations including those of the Department of Transportation, Federal Aviation Administration, Consumer Product Safety Commission, and local and national Fire Marshalls [sic]. Government regulations notwithstanding, sport rocketry is also directed by self regulation from national organizations concerned with the safety and promotion of sport rocketry. (Comment No. 15)

> The existing National Fire Protection Association rules on rocketry provide adequate rules for safety in the use of hobby rocket propellant, and no further rules are necessary by the Federal government. (Comment No. 852)

> Regulation of rocket motors is unnecessary. The high power rocket motor industry and the National Association of Rocketry and the Tripoli Rocketry Association already do a good job regulating access to high power rocket motors. (Comment No. 1439)

Department Response

Government agencies tailor their regulations to facilitate their specific mission. For instance, DOT regulations are primarily designed to ensure the safe transportation of explosive materials. ATF's regulations, on the other hand, are designed to prevent the diversion and criminal misuse of explosives and also to ensure that explosives are safely and securely stored. Therefore, although there are numerous agencies and organizations involved in the regulation of explosives, ATF's regulations are necessary to accomplish its specific mission.

In addition to Government agencies, ATF is aware of the self-regulation efforts of rocketry clubs and organizations. This self-regulation is laudable. However, it does not, nor can it, provide a mechanism to ensure that persons prohibited under Federal law from acquiring explosives are denied access to large rocket motors. Voluntary club regulation and certification provide some oversight of club members, but this final rule will govern all persons, including potential terrorists, felons, or illegal aliens. Moreover, it will apply to all sellers of rocket motors containing more than 62.5-grams of explosive material as well as to sellers of reload kits designed to enable the assembly of motors containing more than 62.5 grams of explosive material.

6. The Proposed Regulation Is Not Necessary or Justified for Correction of a Demonstrated Public Safety Issue

Several commenters objected to the proposed rule, contending that ATF does not need to regulate model rocket motors or propellant because model rocketry is a safe hobby, both in terms of personal injury and homeland security. Following are excerpts taken from some of the comments:

> [I]n the well over 250 million flights in the many decades that the hobby has existed, there have been a grand total of zero fatalities (yes, zero) due to rocketry. * * * Given the exemplary safety record of rocketry as a hobby, what possible reason can there be for regulating the motors we use? (Comment No. 30)

> I have flown over 5000 rockets in my years in the hobby and watched over 25,000 others fly, including many large rockets that this regulation would cover. I have never seen anyone seriously injured by a rocket, nor

have I ever seen one that was used as a weapon or explosive device or that could have been used as an effective weapon* * * Several million adults and young people build and fly model rockets each year without danger to public safety; the hobby is safer than any outdoor sport. (Comment No. 49)

The ATFE has no need to regulate rocket motors, since they pose little risk to the public. According to the most recent data published on the ATFE web site referencing the comprehensive list of materials used in explosive and incendiary devices since 1991, APCP is not listed in the construction of even one device. (Comment No. 797)

The consumers who use APCP rocket motors have done so for decades with an unprecedented safety record, a record that is far better than that of (for example) any high-school sporting activity. Those consumers have pursued their activities under the watchful eye of the Department of Transportation * * * and the Federal Aviation Administration * * * Commercial consumer rocket motors are certified via rigorous test by one or more organizations * * * Additional regulations to an already-highly-regulated activity will not provide additional safety, when that safety has already been realized. (Comment No. 834)

Sport Rocketry * * * has one of the best safety records of all hobbies during the past 50 years. There have been no major injuries or property damage when conducted according to the rules established by the National Association of Rocketry and the Tripoli Rocketry Association. (Comment No. 1008)

Department Response

The Department acknowledges the efforts of many within the rocket hobbyist community to promote safety; however, this final rule is designed not simply to promote safety among rocket hobbyists but rather to promote the safety of all persons, including persons who potentially could be targets of terrorist or other attacks involving rockets powered by large APCP rocket motors.

Access to large unregulated amounts of APCP poses a threat to homeland security and U.S. transportation systems because the explosive material could be used against U.S. buildings, transportation centers, or metropolitan areas. The rocket motors themselves are essentially packets of explosives that can be modified or used in such a manner as to create an effective weapon or explosive device. APCP would make an effective filler for a pipe bomb or other improvised explosive device. Permitting, licensing, and recordkeeping requirements make the explosive less attractive and less available to prohibited persons. All explosive materials present some safety hazard and this regulation serves to limit the hazards presented by unregulated use, possession, and storage of APCP.

In a post-September 11 environment, the Department believes it would be irresponsible to allow unregulated access to large quantities of explosive materials, particularly in configurations that can power the flight of large rockets capable of being outfitted with large warheads. Despite the safety efforts of NAR and Tripoli, the Department believes the potential acquisition and criminal and terrorist use of rocket motors containing more than 62.5 grams of propellant poses an unacceptable risk. Accordingly, the Department believes this rule is essential to protect the public and safeguard homeland security.

7. The Proposed Amendment Violates the Federal Explosives Law

Section 1101 of the Organized Crime Control Act of 1970 (Pub. L. 91–452, Title XI, October 15, 1970) states, in part:

> It is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, storage, or use of explosive materials for industrial, mining, agricultural, or other lawful purposes, or to provide for the imposition by Federal regulations of any procedures or requirements other than those reasonably necessary to implement and effectuate the provisions of this title.

Three commenters argued that the proposed amendment relating to model rocket motors violates the Federal explosives law because it imposes undue and unnecessary restrictions and burdens on the public. Following are excerpts from some of the comments:

[The proposed rule] is in fact in direct violation of this Section* * * [it] appears to be designed specifically to impose undue and unnecessary Federal restrictions and burdens on law-abiding citizens who have been enjoying an exciting yet safe and educational hobby. When one considers that those citizens * * * have over the last forty years the most extraordinary safety record that might be imagined, and have not only presented no danger to the public, but in fact have provided significant public benefit both economic and educational, it is clear that any attempt to impose additional restraints and regulations is not in the best interests of the public. (Comment No. 834)

BATFE regulation of hobby rocketry violates the direction of Congress by placing unnecessary federal restrictions and burdens on law-abiding citizens with respect to the acquisition, possession, storage, and use of APCP and other materials necessary to pursue the lawful hobby of rocketry. Most hobbyists will be unable to meet the storage requirements for a LEUP [low explosives user permit], and will be unable to acquire motors containing greater than 62.5 grams of propellant. (Comment No. 934)

[T]here is no way to argue that the proposed changes regarding rocket motors would be in keeping with the spirit of section SEC. 1101 of the law. Requiring an LEUP to purchase and store hobby rocket motors will end the sport for many who currently enjoy flying rockets. Especially with the requirements imposed not only by the application, but the need to have a storage magazine for a non-explosive material is burdensome at best, and prohibitory for the majority fliers. The cost of the permit and magazine represent a substantial outlay and will certainly cause many to abandon the hobby. (Comment No. 1521)

Department Response

These comments appear to be based on the misconception that the final rule would "impose" the requirements of 27 CFR part 555 on rocket motors containing more than 62.5 grams of propellant. The Department's view is that this characterization of the rule is incorrect. The Department's position is that APCP is properly classified as an explosive and, in the absence of an exemption, the requirements of 27 CFR part 555 apply to all rocket motors, regardless of the quantity of propellant. As stated above, the final rule formally implements ATF's long-standing policy of exempting from part 555 rocket motors containing 62.5 grams or less of propellant. If this exemption did not exist, the consequences outlined in the comments, if accurate, would be more pronounced because there would be no exemption whatsoever for hobby rocket motors of any size.

The primary purpose of the Federal explosives law, as expressed by Congress, is to protect interstate and foreign commerce and to reduce the hazards associated with the misuse of explosive materials. Therefore, this goal is the basis for all regulatory action undertaken by the Department. The Department regulates only to the extent that it is "reasonably necessary to implement and effectuate the provisions of this title." The Department has considered the submitted comments. However, it does not believe that the proposed amendment exceeds the scope of the law.

As previously discussed, APCP does not generally function by detonation, but by deflagration. Therefore it has been classified as a low explosive pursuant to ATF's implementing regulations. The Department must strike a balance between its obligation to regulate APCP and Congress's intent to avoid unnecessarily burdening industry, mining, agriculture or other lawful users of explosives. The proposed amendment comports with the congressional intent in that the exemption allows for the unregulated, lawful use of an explosive in an amount that is unlikely to endanger interstate or foreign commerce

or the public at large. Therefore, the limitation within the exemption is reasonable.

The legislative history for Title XI references items that are not intended to be regulated by the Federal explosives laws and provides guidance to the agency with regard to how to implement exemptions. Specifically, the Judiciary Committee of the United States House of Representatives stated in its report that "the term 'explosives' does not include fertilizer and gasoline, nor is the definition intended to include propellant actuated devices or propellant actuated industrial tools used for their intended purposes." (See H.R. Rep. No. 91–1549, at 35 (1970), reprinted in 1970 U.S.C.C.A.N. 4007, 4041.) Therefore, it appears that Congress considered the impact of the law on industry and other lawful users, yet did not limit ATF's mandate to regulate APCP, even when used by law-abiding hobbyists. Since 1970, Title XI has been amended a number of times. However, Congress has never added to the laws any additional exemptions related to hobbyists or APCP. (See Pub. L. 93–639, section 101, 88 Stat. 2217 (1975); Pub. L. 104–132, Title VI, section 605, 100 Stat. 1289 (1996); Pub. L. 107–296, Title XI, Subtitle B, section 1112(e)(3), Subtitle C, section 1126, 116 Stat. 2276, 2285 (2002).) The Department notes that very few explosives are given any sort of exemption from the Federal explosives controls and that, in exempting motors containing 62.5 grams or less of propellant, ATF is, indeed, following Congress's mandate to balance the rights of law-abiding citizens to have access to explosives with the important safety and security concerns at issue.

Most recently, Congress addressed the ongoing serious threat posed by terrorists who seek to attack America on its own soil. In enacting the Safe Explosives Act, Congress took into consideration the fact that terrorists have used explosives to attack the World Trade Center in 1993, destroyed the Murrah Federal Building in Oklahoma City in 1995, attempted to detonate a "shoe bomb" on an aircraft in 2002, and planned to detonate a "dirty bomb"—a mixture of common explosives and radioactive materials, in a United States metropolitan area in 2002. (House Report No. 107–658; 107th Cong. 2d Session Sept. 17, 2002). Congress took steps to prevent further attacks against Americans and enacted legislation that requires all persons acquiring explosives to obtain a permit from ATF.

The legislative history for the Safe Explosives Act indicates Congress's concern with terrorist use of explosives and indicates that the Department should implement the provisions of the Federal explosives laws with homeland security as a paramount concern. The regulatory amendment embodied by this final rule, establishing a limited exemption for rocket motors containing 62.5 grams or less of explosive material, is consistent with the purposes of Title XI and the Safe Explosives Act. It balances the needs of legitimate law-abiding rocketry enthusiasts against the need to prevent acts of terrorism using explosives and it represents one of the very few instances in which an exemption from the Federal explosives controls has been deemed appropriate, either by Congress, the Department of the Treasury, or the Department of Justice.

8. The Proposed Regulation Fails To Recognize the Economic Effects on Small Businesses as Required Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires an agency to give particular attention to the potential impact of regulation on small businesses and other small entities. Approximately 200 commenters contended that the proposed rule, if adopted, would result in reduced participation by sport rocket hobbyists which, in turn, would have a negative effect on small businesses.

AeroTech, Inc. is a manufacturer and supplier of composite propellant rocket motors, as well as a supplier of mid-power rocket kits and related products. In its comment (Comment No. 799), the manufacturer contended that the proposed rule would have a significant impact on small businesses—

> AeroTech is a small business with 10 employees, and derives approximately 50–60% of its revenue from rocket motors that would be regulated under the proposed rule. It is expected that revenues from the sale of these motors will be drastically reduced as a result of hobbyists unwilling or unable to comply with the licensing and/or storage requirements mandated by the proposed rule. This would have a devastating effect on the ability of AeroTech to remain in business. AeroTech is aware of dozens of other small businesses that will be adversely affected by the proposed rule to a greater or lesser extent.

In its comment, NAR stated that it maintains a database of manufacturer contact information for the sport rocketry hobby and from that database it estimates that, at any given time, there are 200 commercial entities providing support to model rocketeers nationwide in the form of materials, parts, motors, and launch accessories. According to the commenter, assuming that each such manufacturer realizes annual sales of $50,000 to the hobby, those commercial entities provide an annual economic benefit to the U.S. economy of approximately $10 million. Based on its information, NAR stated that AeroTech estimates a loss of 30 to 40 percent of its market as a result of the proposed regulations. NAR went on to state that "[a]ssuming a similar drop in sales will occur for all other manufacturers supplying the rocketry hobby, NAR estimates that the annual small business economic impact resulting from the NPRM is approximately $4 million."

Following are excerpts from other commenters who also argued that the proposed regulation would have a significant impact on small entities:

> To the extent that new regulations are imposed, making the purchase of such motors [motors exceeding 62.5 grams of propellant] more difficult, the vast majority of these adults currently enjoying the hobby will stop. The dollars spent on high-power rocketry products will mostly stop * * * the small-business distributors and hobby shops that rely upon these products will also quickly give up and close, as such small businesses focus their efforts and receive most of their sales from high-power rocketry. (Comment No. 1417)

> [O]ur * * * hobby evolved into Total Impulse Rocketry. It's just a very small business that makes recovery harnesses and harness protectors for the high power rocketry market. If the proposed rules concerning the 62.5 gram limit on motors go into effect, many of our fellow rocketeers will be unable to meet the storage requirements and will drop out of the hobby * * * Our business and many others just like us will be severely impacted or forced to close our doors due to the resulting decrease in sales. (Comment No. 1436)

> [T]he [proposed] exemption for model rocket motors will have a significant impact on my business. I design and manufacture model rocket kits. The rockets made from these kits use these [greater than 62.5 grams propellant] motors. A[t] least half my customers will be required to obtain a license in order to continue using the kits they have already purchased. It is unlikely that they will buy any more kits in the future. Many of them will find the licensing process more trouble than it is worth and * * * in some cases [will] get out of the model rocket hobby entirely. This will lead to a significant drop in sales. (Comment No. 1449)

> There is an entire industry built up around the manufacture and distribution of APCP motors—and also larger hobby rocket kits, parachutes, and electronic devices to fly as payloads and flight instrumentation. I maintain that not only the rocket motor manufacturers would be hurt by this [proposed] regulation, but also the distibutors [sic] and small businesses that depend on selling the larger rocket kits and other materials that we buy to fly our rockets* * * The people that manufacture and sell these other parts (mostly small businesses) would also feel a huge financial impact. (Comment No. 1613)

Department Response

The commenters' contention that the proposed rule, if adopted, will have a negative effect on small businesses is based on their assumption that there will be reduced participation in the hobby by sport rocket hobbyists. Many commenters argued that the permitting, storage, and other requirements for rocket motors containing more than 62.5 grams of propellant are overly burdensome for the average sport rocket hobbyist and, as such, many will choose to leave the sport. In that regard, NAR stated the following:

> It has been estimated that approximately 3000 individuals currently participating in the rocket hobby will stop doing so, and hundreds more potential new participants will decline to get involved, as a direct result of ATFE's positions reflected in the NPRM* * * . NAR estimates membership in its various sections across the country will decline anywhere between 10 and 80 percent (and the Tripoli Rocketry Association estimates a 40 percent decline in membership).

These comments appear to be based on the misconception that the final rule would "impose" the requirements of 27 CFR part 555 on rocket motors containing more than 62.5 grams of propellant. The Department's view is that this characterization of the rule is incorrect. The Department's position is that APCP is properly classified as an explosive and, in the absence of an exemption, the requirements of 27 CFR part 555 would apply to all rocket motors, regardless of the quantity of propellant. As stated above, the final rule formally implements ATF's long-standing policy of exempting from part 555 rocket motors containing not more than 62.5 grams of propellant. If this exemption did not exist, the consequences outlined in the comments, if accurate, would be more pronounced because there would be no exemption whatsoever for hobby rocket motors of any size.

The Department disagrees with the commenters' assertion that the proposed rule, if adopted, will result in significant reduction in participation by sport rocket hobbyists which, in turn, will have a negative effect on small businesses. By contrast, the result of the exemption would be to lessen the burden of complying with requirements of the Federal explosives laws and to encourage participation in sport rocketry. Without the exemption, all rocket motors and all persons who acquire them would be required to comply with the permit, storage, and other requirements of Federal law. Likewise, without the exemption, all retailers, hobby, game and toy stores that distribute and store rocket motors containing not more than 62.5 grams of explosive would be obligated to obtain Federal explosives licenses and comply with all regulatory, recordkeeping and inspection requirements. As stated previously, APCP has been regulated under the Federal explosives controls since 1971. Thus, requirements to comply with the law when acquiring, transporting, selling or storing non-exempt rocket motors is nothing new, and many persons who have acquired non-exempt motors without obtaining a Federal permit and who fail to store them properly have committed a crime. Moreover, a number of commenters indicates they have acquired large rocket motors and transported them across State lines for rocket shoots without obtaining a Federal license or permit. Such transportation violates Federal law now and violated the law prior to enactment of the Safe Explosives Act. Again, the exemption embodied by this final rule is intended to provide some relief to rocketry enthusiasts while taking into account the clear mandate of Congress that explosives be effectively regulated.

Moreover, the burden of complying with the law and regulations for non-exempt rocket motors can be minimized through participation in rocketry clubs. Comments indicate that a significant number of rocket hobbyists belong to such organizations. ATF has recently advised rocket clubs that, if they hold a valid Federal explosives user permit, they may sponsor rocket launches and provide rocket motors to club members. A club "member," as defined under the club's bylaws establishing club membership, may participate in the rocket launch without having an individual permit so long as the member is not prohibited under Federal law from possessing explosives. With respect to storage, ATF has advised rocketry clubs that any unused rocket motors must be stored in either a club magazine or that the club must arrange for storage with another licensee or permittee (contingency storage).

Under this procedure, sport rocketry hobbyists may continue to participate in rocket launches using rocket motors containing more than 62.5 grams of explosive propellant without having to obtain an individual Federal permit or explosives magazine to store their rocket motors. All members of the club can share in the cost of a single permit and storage magazine, reducing the cost to an insignificant amount. Additionally, this final rule will allow retailers such as toy and game stores and hobby shops to continue to sell smaller rocket motors without obtaining a license, maintaining records applicable to distribution of explosives, or being subject to ATF inspection. Accordingly, the Department does not anticipate that the rule will cause a significant reduction in participation by rocket hobbyists or have a significant impact on small businesses.

9. The Proposed Regulation Is a "Significant Regulatory Action" Under Executive Order 12866

Under Executive Order 12866, a Federal agency must determine whether a regulatory action, which includes notices of proposed rulemaking, is "significant" and therefore subject to review by the Office of Management and Budget and the analytical requirements of the executive order. The executive order defines "significant regulatory action," in part, as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities. In Notice No. 968, ATF stated that the proposed rule was not a significant regulatory action and, therefore, a Regulatory Assessment was not required.

Thirty commenters did not agree with ATF's assessment and contended that the proposed regulation, with respect to hobby rocket motors, is a significant regulatory action. NAR stated that the proposed exemption would "significantly reduce the market for rocket motors containing APCP because rocketeers will be unwilling or unable to purchase such items." According to the commenter, it has been estimated that approximately 3,000 individuals currently participating in the sport rocketry hobby will stop doing so and many more potential new participants will decline to participate in the hobby. The commenter went on to state the following:

> NAR estimates membership in its various sections across the country will decline anywhere between 10 and 80 percent (and the Tripoli Rocketry Association estimates a 40 percent decline in membership)* * * In addition, manufacturers, distributors and retailers of rocket motors containing APCP will not only suffer the financial impact associated with less purchases by rocketeers, but in addition they will be unable or unwilling to economically comply with ATFE's regulations and remain in business.

In its comment, NAR provided information relating to local economics, small businesses, and magazine cost requirements. Based on that information, the commenter estimated

that the total impact of the proposed regulation on those participating in the sport rocketry hobby, as well as those benefiting from the hobbyists' participation, exceeds $23 million.

Other commenters also argued that the proposed regulation is a significant regulatory action:

> [T]he NPRM will adversely impact the entire hobby rocketry industry because of network effects. By diminishing the high power sector of the hobby, overall cash flows to vendors of mid-power and low-power rockets will be reduced. This will cause a contraction in the entire industry as high power vendors go out of business and can no longer serve other sectors of the hobby. Mid-power and low-power flyers will thus have less choice and product availability. (Comment No. 882)

> Sport rocketry is unique in that your proposed rules will apply not only to the vendors that provide motor reloads and supplies to the hobby but also to most of their customers. A majority of the members of both national sanctioning bodies of sport rocketry * * * fly motors containing APCP grains over 62.5g. More than half of all motors currently available will become regulated* * * All of the companies that manufacture and sell APCP motors and supplies * * * are relatively small businesses and any further impact will put most of these companies out of business. (Comment No. 1321)

> I normally fly rockets in a three state area * * * so I would need to purchase the more expensive LEUP at $100. In addition[,] the meets where I fly my rockets do not typically have vendors on the site, so I would have to purchase a type 4 magazine ($200) so that I could purchase them ahead of time and to store them. I would not be able to store the magazine in my garage since it is less the [sic] 75 feet from the living quarters of my neighbor, so I would have to build a storage shed at a cost of at least $1500. This would bring my total cost to comply with the new proposed regulation to $1800. I typically only fly two or three high power models per year at a cost of less than $100. The effect of the new [proposed] regulation would force me to spend 18 times what I normally spend on these motors. (Comment No. 1424)

> Based on the costs to comply with proposed storage requirements, user permits and local launch impacts, I estimated the total impact of the [proposed] regulation on the rocketry community would exceed $20 million annually. (Comment No. 1527)

> The impact on individual hobbyist[s] and to the hobby industry could be devastating economically, if the proposed rule's go into effect* * * it would force many of the current participants to drop out due to the excessive requirements forced on the hobby. Many of the small businesses would not be able to stay in business also due to the added requirements. Hundreds of hobbyist[s] and their family's travel * * * each year * * * to regional or national launches. National launches bring thousands of dollars into the local economy around the launch. This [proposed] regulatory action will have significant economic impact on both sport rocketry enthusiasts and APCP motor manufacturers and vendors. (Comment No. 1653)

Department Response

As stated previously, the result of this final rule will be to mitigate the impact of the Federal explosives law on sport rocketry. A strict reading of the statute without the establishment of a regulatory exemption would result in a far greater economic impact on rocketry hobbyists. Moreover, the Department maintains that the proposed rule with respect to model rocket motors is not a significant regulatory action and will not have a significant economic impact. The commenters' assertion that the proposal will have a significant impact on the economy is based on their assumption that there will be a reduction in participation by rocketry hobbyists.

NAR estimated that the total impact of the proposed regulation on those participating in the sport rocketry hobby, as well as those benefiting from the hobbyists' participation, exceeds $23 million. The Department believes that this figure is excessive and unrealistic. NAR's estimate is based, in part, on its contention that 3000 individuals currently participating in the rocketry hobby will stop doing so. However, as explained in the preceding section, the Department believes that most rocket hobbyists will continue to participate in the sport, whether through rocketry clubs or otherwise. Additionally in this regard, it bears noting that this final rule merely formalizes ATF's existing (and long-standing) policy of exempting rocket motors containing no more than 62.5 grams of explosive material.

NAR's estimate is also based on its contention that "a minimum of 6,000 rocketeers will be forced to obtain a permit from the ATFE [approximately $200] and to purchase a storage magazine for his/her rocket motors [approximately $300] in order to comply with the proposed regulations contained in the NPRM." The Department also finds this figure to be excessive. As explained earlier, the comments indicate that many rocketeers belong to a rocket club. ATF has advised rocket clubs that if they obtain a Federal permit and provide storage for the rocket motors, the individual club members would not have to obtain a permit or purchase an explosives magazine to store their rocket motors. Accordingly, the Department believes that only a small percentage of rocketeers will be purchasing explosives magazines, relying instead on shared storage facilities of rocketry clubs.

NAR also argued that the 6,000 rocketeers would need to purchase two ½-inch diameter locks for their explosives storage magazine, at a cost of $2,500. Based on NAR's estimate, the total cost of the locks for 6,000 magazines would be $15,000,000. However, ½-inch diameter locks are not required under the current regulations. The cost of a ⅜-inch diameter lock, which is the type of lock currently required by regulation, is approximately $28.

NAR further estimated that the total impact of the proposed regulation on local economics and small businesses to be approximately $8.8 million annually. Again, this figure is based on NAR's contention that the proposed rule, if adopted, will result in a significant reduction in participation by model rocket hobbyists. As explained above, the Department believes that adoption of the proposed rule will result in only a small number of rocket hobbyists leaving the sport.

B. Commenters' Concerns Regarding ATF's Proposal Relating to Model Rocket Motors and Model Rocket Propellant

1. Adoption of the Proposed Rule Will Result in Overly Burdensome Federal Requirements for Sport Rocketry Hobbyists

If the proposed amendment is adopted, model rocket motors containing more than 62.5 grams of propellant and reload kits that can be used in the assembly of a rocket motor containing more than 62.5 grams of propellant will be subject to the permitting, storage, and other requirements of Federal explosives law and the regulations in part 555. Approximately 150 commenters argued that the compliance requirements for rocket motors containing more than 62.5 grams of propellant are overly burdensome for the average sport rocket hobbyist and, as such, many will choose to leave the sport. The following is a representative sample of the commenters' views:

> The cost of a storage magazine is very prohibitive to the average rocket hobbyist and is way out of proportion to the cost of the motor being stored. For example, an H128W motor from Aerotech Inc. * * * has a retail cost of $12.50. * * * this motor would be regulated and the hobbyist must store it in a type 4 low explosives magazine. The least expensive type 4 magazine that I have been able to find is one offered * * * for $194.95 plus a shipping cost of $25.00. This is a total cost of at least $219.95 to store a $12.50 motor. (Comment No. 69)

> Subjecting rocket motors containing more than 62.5 grams of propellant to BATFE

explosives regulations would be onerous and burdensome. In addition to the cost of the permit, fingerprinting and background checks, there is also the problem of storage. BATFE would require APCP and other hobby rocketry materials to be stored in an explosives magazine far from any building or road. For most people this is a physical impossibility * * * (Comment No. 331)

The BATF requirements for permitting & storage cannot be met by a majority of these hobbyists, since they do not have access to a BATF-approved magazine, nor can they meet the BATF requirements for having such a magazine on their premises. (Comment No. 812)

Most model rocket hobbyists are not going to be willing to go through the process of obtaining a Low Explosives User Permit (LEUP) to be able to continue to use the APCP rocket motors * * * The paperwork effort and intrusive nature of the permitting process (background check including photographs, fingerprints, and interviews) and recordkeeping requirements * * * will cause most amateurs to drop out of the hobby. (Comment No. 954)

Under the new proposed regulations * * * model rocketry hobbyists, educators, and students will have to obtain an BATFE permit to buy a consumer rocket motor. Even the simplest permit under the law will require the hobbyist to be subjected to a background check by the BATFE, which includes fingerprints, photographs and interviews. The law also requires permit holders to keep records that can be inspected by BATFE agents. Since these records will most likely be kept in the permit holder's home, it will open their home to a visit by the BATFE. The response by many Americans to these new restrictions will be to drop out of rocketry * * * (Comment No. 1544)

A significant, and debilitating for the hobby, side effect of the proposed rule * * * is that storage will be required for all but very small APCP motors. Storage requirements will cause this hobby to wither over the next few years as older rocketeers leave the hobby and new enthusiasts find the regulatory hurdles far too steep to clear. Many, likely most, hobbyists will not be able to secure storage for their motors * * * (Comment No. 1614)

Department Response

These comments appear to be based on the misconception that the final rule would "impose" the requirements of 27 CFR part 555 on rocket motors containing more than 62.5 grams of propellant. The Department's view is that this characterization of the rule is incorrect. The Department's position is that APCP is properly classified as an explosive and, in the absence of an exemption, the requirements of 27 CFR part 555 would apply to all rocket motors, regardless of the quantity of propellant. As stated above, the final rule formally implements ATF's long-standing policy of exempting from part 555 rocket motors containing 62.5 grams or less of propellant. If this exemption did not exist, the consequences outlined in the comments, if accurate, would be more pronounced because there would be no relief at all for hobby rockets.

The Department recognizes that some individuals wishing to obtain a Federal explosives license or permit may not be able to do so based solely upon the individual's inability to meet the storage requirements stipulated under 27 CFR part 555, subpart K. The Department also recognizes that some individuals may feel that the Federal licensing and permitting requirements are too intrusive and may decide to discontinue their participation in rocketry rather than obtain a Federal explosives license or permit. The exemption recognized in this final rule should make it easier for hobbyists to comply with the law, and the Department notes there are a number of resources and alternatives available to rocket motor enthusiasts which will likely prevent any drastic drop in participation.

Off-Site Storage: The Department believes that many individuals will continue to participate in the sport because ATF has approved, in certain circumstances, the storage of explosive materials at a location other than the premises address recorded on the permit or license. Off-site storage of explosive materials is permitted so long as the applicant, licensee, or permittee notifies ATF of the storage location. This location must be in compliance with the tables of distances requirements in the regulations, and the magazine must be in a location that can be visually inspected once every seven days.

Contingency Storage: Participation may not depreciate as dramatically as projected by rocket hobbyists because ATF will allow industry members to have contingency storage. Upon approval from ATF, contingency storage allows an individual to arrange to have his explosive materials stored at the premises of another Federal explosives licensee or permittee. Approval is generally granted to an applicant so long as the magazine is located so it is readily accessible to all individuals utilizing the magazine and the applicant has written approval from the owner of the magazine.

Contingency storage could allow several hobbyists to pool their resources to obtain a single magazine in which to store explosives and to obtain an acceptable location to place their magazine. In addition, some licensees and permittees have already rented out space in their magazines to provide a location for an applicant's contingency storage. Each of these options is a viable way in which contingency storage might be utilized for those who cannot obtain a location to store explosive materials.

Storage by Variance: Along with off-site and contingency storage, hobbyists can apply for a variance from the storage regulations. Variances may be available to applicants who are able to support a means of storing the explosive materials in a manner substantially equivalent to the requirements outlined in the regulations. For instance, ATF may approve a variance for the storage of rocket motors inside attached garages. Those individuals meeting certain conditions outlined in the variance, such as a requirement to provide proof of approval from State or local officials, may continue to store rocket motors at their licensed premises.

Clubs: Membership in a "rocketry club" will also limit the need for individual permits thereby reducing the regulatory obligations imposed on individual hobbyists. ATF has informed rocketry clubs that club members can participate in club shoots without having to obtain their own Federal explosives license or permit. The club is the entity responsible for obtaining the Federal explosives license or permit, for obtaining the approved storage locations and magazines, and for ensuring that club members do not fall into any of the prohibited persons categories. The individual club member may then receive explosive materials on behalf of the club while participating at launches under the appropriate club supervision.

Students/Educators: Finally, the sport will not see a dramatic loss in the participation of students and educators at public schools and public universities as they will continue to be exempt from the requirements of obtaining a Federal explosives license or permit pursuant to 18 U.S.C. 845(a)(3) and 27 CFR 555.141(a)(3). The law and its implementing regulation exempt the transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or political subdivision thereof. This exemption allows public schools or public universities to obtain rocket motors of any size without a license or permit. These institutions must, however, continue to comply with all storage requirements for explosive materials and cannot knowingly allow a prohibited person to receive or possess explosive materials.

2. The Wording of the Proposed Regulation Effectively Bans All Reload Kits

The proposed regulation limits the exemption for motor reload kits to those

"capable of reloading no more than 62.5 grams of propellant into a reusable motor casing." Several commenters argued that the proposed wording effectively bans all reload kits for reusable motor casings, even those using 62.5 grams or less of propellant. The following excerpts were taken from the comments:

After all, it is physically possible to take several reload kits, each intended to be used in a motor containing 62.5 grams or less of propellant, and to combine them into a larger motor. Thus, by the wording of this proposed 'exemption', you are effectively banning all reload kits. (Comment No. 30)

[T]he term 'capable of reloading more than 62.5 grams into a single casing' could be interpreted to eliminate all reloadable rocket motors. If a reloadable rocket motor was designed to use one and only one 10 gram APCP slug, with this wording, this reload kit could still be considered subject to regulation as the BATFE could determine that someone could create a motor casing to accommodate 7 of this fictional slug, making a motor with 70 grams total propellant weight. In addition, many commercial rocket motors that are used safely at high power rocket launches are composed of multiple 62.5 gram or less slugs. This wording would regulate all of those motors. (Comment No. 286)

It will always be theoretically possible for someone to take the propellant grains from several reload kits intended for use in a motor casing containing 62.5 grams or less of propellant, and place all of them into a larger motor casing. Because there is no practical way to prevent this possibility, all reload kits are 'capable' of reloading more than 62.5 grams of propellant into a reusable motor casing. (Comment No. 749)

The way the proposed change is worded, it would regulate all reloadable motors, regardless of size, since someone could always produce a case capable of holding say 13 chunks of 5 grams each. Most of my 29mm reload kits are under 62.5g, but they could be loaded into a very long 29mm casing that they are not designed to be used in. Even a case of 13mm reload slugs could be crammed into a 54mm casing. It wouldn't work, but would be over 62.5g and thus regulated by this rule. (Comment No. 889)

You only need to look at this hypothetically to see the problem of this rule: If a consumer had 63 kits, each weighing only 1 gram, they could possibly be assembled in a reload casing. So even 1 gram of ammonium perchlorate composite propellant would not be exempt. (Comment No. 1195)

Department Response

The Department has reviewed the comments that claim that the regulation effectively bans all reload kits. The Department does not believe that this concern is warranted or valid. First, the rule does not "ban" rocket motors or reload kits. Rather, the rule allows persons to acquire without regulation rocket motors containing 62.5 grams or less of propellant and reload kits designed to enable the assembly of motors containing 62.5 grams or less of propellant. Rocket motors and reload kits exceeding these parameters may still be lawfully acquired by obtaining a Federal permit and complying with the storage, recordkeeping, and other provisions of the law and regulations. Thus, using the term "ban" to refer to this final rule is inappropriate and misleading.

Presently, ATF is aware of only a small number of commercially available reload kits that contain propellant modules designed to be combined to exceed the 62.5-gram total propellant weight within a single sport rocket casing. In these kits, the individual propellant modules each contain 62.5 grams of propellant or less; however, the kits are subject to the permitting/licensing and storage requirements of the Federal explosives law because they are designed to be stacked together within a re-usable casing designed to hold more than 62.5 grams of propellant. There are other reload kits on the market that are designed solely to be used in the assembly of rocket motors that contain no more than 62.5 grams of propellant per assembled motor. These reload kits will remain exempt under this final rule.

Many of the scenarios offered by commenters refer to hypothetical possibilities as opposed to actual products used or available to rocket hobbyists. For instance, ATF is unaware of any rocket casing that accepts seven 10-gram slugs of APCP, resulting in 70 grams of total propellant weight. However, if such a kit were to be designed it would be subject to regulation.

ATF recognizes that reload kits can provide rocketry enthusiasts with a cost-effective means to enjoy their hobby. Accordingly, ATF has included within the scope of the 62.5-gram exemption reload kits that are designed to enable the assembly of motors containing 62.5-grams or less explosive material. Hobbyists and manufacturers of rocket motors should, however, be aware that this final rule does not provide a "loophole" affording exempt treatment for reload kits (e.g., the AeroTech "Easy Access" kit) that, although containing propellant modules no larger than 62.5 grams, are designed to allow more than one of these propellant modules to be combined in a fully assembled motor containing a total of more than 62.5 grams of propellant. Logic dictates that if single-use motors containing more than 62.5 grams are not exempt under this final rule, reload kits designed to enable the assembly of such motors must also be subject to regulation.

3. The Proposed Regulation Limits the Scope of the Exemption to "Importation and Distribution"

The wording of the proposed regulation limits the exemption to "importation and distribution." Several commenters contended that the proposal is too restrictive and that rocket motors containing 62.5 grams or less of propellant should be exempt from all of the requirements in part 555. One commenter, NAR, pointed out that the current language in 27 CFR 555.141(a)(7) includes importation, distribution, and storage. The commenter went on to state the following:

[T]he NPRM has dropped the reference to 'storage' from the introductory text for exemptions in Section 55.141(a)(7). To the degree that the deletion was purposeful, ATFE has severely limited its exemptions by requiring compliance with storage requirements even where compliance with importation and distribution requirements is not necessary. Clearly such a result represents an unnecessary and undue burden on many retail establishments distributing and selling these items. To the degree the deletion was inadvertent, the reference to 'storage' should be re-inserted when the final rule is issued.

Other commenters raised similar concerns:

The exempted materials should be considered non-explosive for all legal purposes, not just importation and distribution * * * rocket hobbyists need to be free to buy, sell, ship, store, transport, and use rocket propellants, and the manufacturers and dealers need to be free to make, buy, ship, store, transport and sell them. (Comment No. 30)

The current language of 27 CFR 555.141(a)(7) explicitly exempts storage as well. Requiring storage for these items [rocket motors containing up to 62.5 grams of propellant] will impose a significant burden on the entire supply chain and make thousands (millions?) who currently possess these items criminals. (Comment No. 1330)

Department Response

The Department has reviewed the comments that question the exclusion of storage from the exemption language. It was not the intention of the proposed rule to impose storage requirements on hobby rocket motors containing 62.5 grams or less of propellant. Historically, ATF's policy has been to exempt the smaller rocket motors from all regulations applicable to other explosives. This final rule was intended to clarify that long-standing policy. Therefore, in this final rule, the language has been revised to clarify that the designated rocket motors are exempt from all the requirements of 27 CFR part 555.

4. Increased Regulation of Model Rocket Engines Will Limit the Availability and Drive Up the Already High Price of Rocket Motors

Several commenters contended that many hobby rocketry enthusiasts will leave the hobby if the proposed regulation is adopted, resulting in limited availability of rocket motors and higher prices for them. Excerpts from some of the comments follow:

As a result of members leaving the hobby, these [proposed] regulations will have a very significant negative economic impact on the companies that manufacture, distribute, and sell hobby rocket motors. Prices will rise for these motors since demand and volume will be significantly reduced. Higher prices will hurt the average hobbyist * * * (Comment No. 69)

By imposing limits that only allow less than 62.5 grams of 'total' propellant, rocketeers, who are not currently permitted, will be unable to purchase and fly the vast majority of mid to high power rockets * * * This will in turn lower the demand for these types of motors and will in turn drive the prices up for those of us that have the ability to purchase, store and use * * * those manufactures [sic] and businesses that provide these products * * * will have to lower their inventory levels, manufacturing component commitments, and raise their prices overall just to stay in business at a reduced revenue level. (Comment No. 896)

A majority of hobbyists can not * * * and many will not * * * qualify for a LEUP; those hobbyists have stopped purchasing rocket motors * * * Almost overnight the few small dealers and manufacturers have seen their small profit margins disappear. As demand drops, prices will rise to the point where the typical hobbyist will not be able to afford it. (Comment No. 1536)

A reduction * * * in participation would also negatively impact those who keep going with the hobby. As with any other consumer product, as rocket motor production increases, prices decrease. Unfortunately, the opposite is also true and the remaining consumers of APCP rocket motors would be forced to bear the added cost. This will also result in decreased participation. (Comment No. 1607)

Department Response

The Department has considered the commenters' concerns about potentially inflated costs associated with high power rocket motors. These comments appear to be based on the misconception that the final rule would "impose" the requirements of 27 CFR part 555 on rocket motors containing more than 62.5 grams of propellant. The Department's view is that this characterization of the rule is incorrect. The Department's position is that APCP is properly classified as an explosive and, in the absence of an exemption, the requirements of 27 CFR part 555 apply to all rocket motors, regardless of the quantity of propellant. As stated above, the final rule formally implements ATF's long-standing policy of exemption from part 555 rocket motors containing not more than 62.5 grams of propellant. If this exemption did not exist, the consequences outlined in the comments, if accurate, would be more pronounced because there would be no relief for hobby rockets at all.

Moreover, the Department does not believe the concerns outweigh the safety and homeland security threats that would be posed by the unregulated sale of large rocket motors. Additionally, the concern is not supported by facts.

Federal controls applicable to rocket motors containing more than 62.5 grams of propellant and on reload kits enabling persons to construct motors containing more than 62.5-grams of propellant are reasonable in scope. The controls were applicable to motors containing more than 62.5 grams of propellant prior to the proposed rule. Therefore, any perceived shift in market prices associated with this proposal is simply a result of hobbyists coming into compliance with ATF's long-standing policy and with the expanded permitting requirements imposed by Congress under the Safe Explosives Act. Likewise, ATF has not been provided with any information to support the contention that affected hobbyists are quitting their hobby due to the cost of compliance.

In fact, the Department has identified a number of resources and alternatives that will reduce the regulatory obligations of individual hobbyists. These alternatives should limit any projected decrease in the number of hobby participants thereby lessening the overall impact on the commercial market.

5. Subjecting Rocket Motors Containing More Than 62.5 Grams of Propellant to Permitting and Storage Requirements Would Be Onerous and Burdensome

Approximately 80 commenters argued that subjecting rocket motors containing more than 62.5 grams of propellant to the permitting and storage requirements of Federal explosives and regulations would be unduly burdensome. The commenters expressed concern regarding the costs associated with obtaining a Federal permit, *e.g.*, fingerprinting and background check, and the problems involved in providing proper storage for the rocket motors. The following excerpts represent the views of most commenters:

The regulations you proposed in this NPRM will eliminate my ability to participate in high power hobby rocketry. All of the rocket motors I have used in the past few years and those I prefer to use would be regulated under this proposed regulation. In order to continue to use them, I would be required to obtain a * * * low explosives user permit * * * Since I currently live in a multiple family dwelling, I would not be eligible to have a magazine for motor storage, a requirement to obtain a low explosives user permit, and thus would not be able to fly motors above your proposed 62.5 gram limit. (Comment No. 286)

[M]ost of us do not have the required storage facilities for our motors. Current storage requirements are an outbuilding 100 feet from any other building. And if we can't store our motors * * * I don't know how we are going to fly. (Comment No. 732)

All High Power flyers will have to obtain a permit to continue their sport under the proposed regulations. The lower cost intrastate [limited] permit is useless in many states where there are no High Power Motor retailers. The full LEUP is the only viable option under the proposed regulations and the economic impact can be severe. The increase in the permit fee is a very small part of the increase. The requirement for storage is where virtually all of the expenses are. (Comment No. 895)

Storage is the most burdensome part of the regulatory requirements for individuals to meet. Many people who engage in model rocketry live in homes which are not able to meet the storage requirements (such as Townhouse[s], Apartments and areas of cities where homes are located close together). (Comment No. 969)

Subjecting rocket motors containing more than 62.5 grams of propellant to BATFE explosives regulations would be onerous and burdensome. In addition to the cost of the permit, fingerprinting and background checks, there is also the problem of storage. BATFE would require APCP and other hobby rocketry materials to be stored in an explosives magazine far from any building or road. For most people this is a physical impossibility * * * 'Contingent storage' via a second party is not a solution either, as it is often unavailable. (Comment No. 1034)

Department Response

The Department objects to characterization of this rule as "subjecting" rocketry hobbyists to requirements of the law. As stated previously, this rule merely clarifies ATF's long-standing policy exempting certain rocket motors containing 62.5 grams or less of propellant from the requirements of part 555. Without this exemption, rocketry hobbyists would be required to obtain a Federal permit and abide by all the requirements of the law and regulations for all rockets and reload kits.

In addition, the Department contends that the time and costs of obtaining a "user permit" (UP) or a "limited permit" for users of rocket motors or reload kits containing more than 62.5 grams of APCP, as well as the cost of obtaining an approved storage

magazine, do not impose an excessive burden on individuals.

In amending regulations to implement provisions of the Safe Explosives Act (**Federal Register**, March 20, 2003, 68 FR 13777), ATF estimated the time and cost for 20,000 unlicensed individuals to obtain a "limited permit." ATF estimated that the total amount of time it would take an individual to complete a Federal explosives license or permit application is approximately 1.5 hours. The time spent on inspecting the qualification documents, business premises, and storage magazines is approximately 2 hours.

ATF also estimated the total cost imposed on an individual applying for a "user permit" or a "limited permit." First, there would be the cost of each permit, which is $25 per year for a "limited permit" and $100 for 3 years for a LEUP. The cost of photographs for an individual was estimated at $1.50; fingerprints for individuals were estimated at $10.00. ATF estimated the cost for the time it would take to complete the application as $19.50, based upon a mean hourly wage of $13. Finally, ATF estimated the total cost for the time spent by the individual during an ATF application inspection at $34, based upon a mean hourly wage of $17.

Based on these figures, ATF was able to conclude that the total cost and amount of time spent on applying for a Federal explosives permit would be an estimated $90.00 to $164.50 and 3.5 hours per applicant. The Department contends that this amount of time and cost is not disproportionately burdensome, especially when considering the benefits to public safety and security.

The Department does recognize that the cost of a storage magazine is significant when compared to the cost of a single rocket motor. However, most rocket motor enthusiasts store more than a single rocket motor in a magazine. In addition, there are alternative means of storing rocket motors. Contrary to the views expressed by some commenters, contingency storage is a viable option for hobbyists. Contingency storage would allow several hobbyists to pool their resources together to obtain a single magazine to store explosives and to obtain an acceptable location to place their magazine. It also allows individuals who might otherwise be prohibited from storing at their licensed location, possibly due to State or local requirements, to store in a magazine at a location provided by another licensee or permittee.

Furthermore, rocketry enthusiasts may join or form rocketry clubs. These clubs are responsible for obtaining all appropriate licenses or permits, as well as storage. The club members may incur the cost of membership dues, but as members they may participate in their hobby without having to individually comply with storage, licensing, or permitting requirements. Sharing the cost of compliance will dramatically reduce the cost and burden to any individual club member.

6. The Proposed Regulation Places an Undue Burden on Adult Sport Rocketry Hobbyists

Approximately 110 commenters expressed a concern that the proposed regulation places an undue burden on adult rocketry hobbyists because most adults in the hobby use motors that contain more than 62.5 grams of propellant. Following are excerpts from some of the comments:

> The point I am trying to make here is it [is] the adults that drive the hobby. Approximately 56% of all consumer hobby rocket motors sold are above the 62.5 gram propellant weight exemption proposed by the ATFE. If this rule is enforced most adults participating in the hobby will drop out. Few parents will want to be subjected to paying for an explosive permit fee, background checks, fingerprinting, and possible ATF inspections. (Comment No. 769)
>
> The proposed 62.5-gram propellant weight limit in the NPRM will have detrimental effects on the hobby. It will subject about 5000 high power rocket flyer hobbyists in the United States to a series of regulations that will stifle the growth and adult participation in this hobby. Many current adult flyers that were involved with this hobby as middle and high school students have returned to this hobby because of the high power aspects. (Comment No. 801)
>
> [M]ore than 90 percent of the rockets that I currently fly contain between 125 and 1000 grams of APCP * * * Most of the individuals involved in high-power rocketry devote the greater part of their efforts to flying rockets that use more than 62.5 grams of propellant. There are currently approximately 5,000 such individuals certified by NAR and/or TRA who routinely fly rockets that fall into this category. (Comment No. 924)
>
> While most minors fly these types of motors [under 62.5 grams propellant weight] the majority of adult hobbyists do not * * * The 62.5g rule was made by CSPC to protect minors from injury. I agree that this threshold is a good limit for minor[s], but for minors only. (Comment No. 999)
>
> Although most of the rocket motors burnt are not affected by this [proposed] regulation, it is often the adults who are burning the larger motors that coordinate the launches for the younger generation. Placing this unnecessary burden on them will drive them out of the hobby * * * (Comment No. 1008)

Department Response

These comments appear to be based on the misconception that the final rule would "impose" the requirements of 27 CFR part 555 on rocket motors containing more than 62.5 grams of propellant. This characterization of the rule is incorrect. The Department's position is that APCP is properly classified as an explosive and that, in the absence of an exemption, the requirements of 27 CFR part 555 apply to all rocket motors, regardless of the quantity of propellant. As stated above, the final rule formally implements ATF's long-standing policy of exempting from part 555 rocket motors containing not more than 62.5 grams of propellant. If this exemption did not exist, the consequences outlined in the comments, if accurate, would be more pronounced because there would be no relief for hobby rockets at all.

ATF as well as other Federal agencies, including the Consumer Product Safety Commission and the Department of Transportation, have long considered rocket motors containing no more than 62.5 grams of propellant to be exempt from Federal regulations. For years, many rocketry enthusiasts had also accepted this threshold, obtaining user permits for interstate transfers of rocket motors containing more than 62.5 grams of propellant. It was only after the SEA was enacted in 2002, with its requirement for licenses or permits on intrastate purchases, that the rocketry groups began to contend that the 62.5-gram threshold was too burdensome.

The 62.5-gram threshold was based on the historical acceptance of this amount of explosive material as suitable for "toys." Anything above this amount cannot reasonably be classified as a toy. As explained previously, a result of this exemption is the mitigation of the burden of complying with the law for rocket motors that do not pose a significant threat to public safety and homeland security. The fact that most of the rockets containing propellant in excess of 62.5 grams are acquired by adults is irrelevant. The Department believes that limiting the exemption to motors at or under the 62.5-gram threshold is reasonable and necessary to prevent unregulated access to dangerous quantities of explosives by criminals and terrorists-most of whom are adults.

7. The Limited Permit Is Not Practical for Sport Rocketry Hobbyists

The Federal explosives law requires that all persons receiving explosives on and after May 24, 2003, obtain a Federal permit. A "user permit" is necessary only if the holder transports, ships, or receives explosive materials in interstate or foreign commerce. The fee for a user permit is $100 for a three-year period and $50 for each three-year renewal.

The "limited permit" authorizes the holder to receive explosive materials only within his State of residence on no more than 6 separate occasions during the one-year period of the permit. The fee for an original limited permit is $25 for a one-year period and $12 for each one-year renewal.

Fifty-five commenters argued that the limited permit is not a viable option for sport rocketry hobbyists, citing various reasons:

'Limited' permits cannot be used by most hobby racketeers [sic], as dealers are out of state and the 'Limited' permit is restricted to resident in-state purchases. Rocketeers must get a LEUP [limited explosives user permit] costing $100. (Comment No. 323)

The use of the ATF's new limited [permit] * * * while a step in the right direction will not serve most users largely because most of us currently need to order supplies out of state, as there are a limited number of vendors nationwide and very few of us have the luxury of an in state vendor. (Comment No. 737)

The 'limited' permit proposed by ATFE is useless or of limited usefulness for the vast majority of rocket flyers, as it only allows a maximum of 6 purchases per year, and only allows in-state purchase and use. Most rocket clubs hold launches at least monthly (some much more often), and there simply are no dealers of high power rocket motors in most states. Most high power rocket motor sales are done through dealers in other states, either by mail order, or from dealers who travel to launch events held in other states. Also, rocket flyers frequently travel to launch events held in other states. (Comment No. 749)

The limited permit has very limited usefulness because it does not allow fliers to fly out of state, it unrealistically limits motor purchases, and it causes problems for transportation and storage. (Comment No. 778)

The new six purchases per year intrastate limited permit is of little use, since most hobbyists do not have both a launch site and dealer in their home state. (Comment No. 840)

Department Response

Commenters pointing out the limitations of the Limited Permit fail to recognize the benefits of this rule to sport rocketry. This rule clarifies ATF's long-standing policy exempting certain rocket motors containing 62.5 grams or less of propellant from the requirements of part 555. Without the exemption, all persons acquiring rocket motors would be required to obtain a permit and comply with all other requirements of Federal law.

An alternative to the limited permit is the user permit (UP), which allows for unlimited interstate purchases of explosive materials for a period of up to three years. The UP also permits those individuals attending out-of-state launches to purchase rocket motors interstate, or to transport explosive materials from state to state. The UP is useful in instances in which there are no model rocket motor dealers in the hobbyist's state, since it allows the hobbyist to purchase non-exempt rocket motors outside of his state of residence and receive the motors in his own state as long as the purchase complies with other Federal, State, or local laws. The cost of the UP is only slightly higher than the cost of a limited permit. The limited permit application fee is $25 per year with a renewal feel of $12 per year. The full price of a UP for 3 years is $100 for the initial three-year permit (averaging out to $33.33 per year), with a renewal fee of $50 every three years thereafter (average of $16.67 per year).

8. Sport Rocketry Hobbyists May Not Be Able To Comply With State and Local Requirements

Approximately 40 comments contended that under the proposed regulation rocketry hobbyists would need to obtain permission from State and local authorities to store rocket motors containing more than 62.5 grams of propellant. The commenters argued that obtaining such permission is often difficult or impossible in many areas. The following excerpts are representative of the commenters' concerns:

BATFE regulation of hobby rocket materials would also require users to get the permission of state and local authorities for storage of 'explosives'—something that is often difficult or impossible in many areas. In some cases, users would be required to undergo training in the use and storage of high explosives. (Comment No. 333)

Many, likely most, hobbyists will not be able to secure storage for their motors because APCP has been misclassified as an explosive and, quite naturally, most cities are reluctant to allow storage of explosives in a residence. (Comment No. 824)

Most of the hobbyists I know cannot meet storage requirements because they live in an apartment or condominium or live in a city that won't allow 'explosives' to be stored in a residential area, and therefore most of them cannot get a permit. (Comment No. 1065)

Department Response

The statutory criteria for issuance of a Federal explosives license or permit do not require applicants to comply with or certify compliance with requirements of State or local law. The only aspect of Federal regulation that is conditioned upon compliance with State and local law is ATF's granting of storage variances. As stated in ATF Ruling 2002–3, Indoor Storage of Explosives in a Residence or Dwelling (approved August 23, 2002), ATF will approve variances to store explosives in a residence or dwelling upon certain conditions including, but not limited to, receipt of a certification of compliance with State and local law, and documentation that local fire safety officials have received a copy of the certification. ATF has issued numerous variances permitting storage of explosive materials, particularly APCP, in a residence or dwelling.

9. ATF's Definitions and Classifications of Explosives Are Not Consistent With Those of Other Federal Agencies and International Agreements

Several comments argued that there should be some consistency among Federal agencies with respect to the definitions and classifications of explosives. Following are some of the arguments raised by the commenters:

[T]he definitions and classifications [of explosives] should agree with other federal agencies and international agreements such as the United States Department of Transportation, the Bureau of Explosives, and UN standards. Ammonium perchlorate, and rocket motors definitions and classifications should be regulated by * * * [ATF] as it has been by the United States Department of Transportation, the Bureau of Explosives, and UN standards in the BOE–600 Hazardous Materials Regulations of the Department of Transportation since around WW 1. (Comment No. 907)

The APCP formulations in the geometric configurations available to the hobby rocketry community do not meet the U.S. Government specified characteristics of low explosive materials when evaluated by approved U.S. Government explosive testing laboratories and by the Department of Defense (DOD). (Comment No. 1044)

The Department of Transportation has labeled APCP as a flammable solid and has granted an emergency revision to DOT exemption DOT–E 10996 that allows the shipment of articles covered by the exemption (certain rocket motors and reload kits normally classified as division 1.3C explosives). (Comment No. 1052)

It seems odd to me that two different branches of government choose to have such differing opinions on the same substance. I believe that the definition of 'toy propellant devices' use[d] by DOT [is] more accurate when talking about hobby rocket motors. (Comment No. 1362)

[I]t appears that BATFE is backing off from its early laudable efforts to coordinate its regulations with those of other governmental and quasi-governmental regulatory bodies. For example, BATFE specifically declines to recognize or adopt even portions of NFPA codes * * * BATFE has in the current NPRM eliminated several helpful references to UN codes, and * * * BATFE is proposing to adopt definitions of terms and regulatory limits that are different from, and will inevitably interfere or even conflict with, those used by FAA and DOT. (Comment No. 1622)

Department Response

The Department has considered the comments regarding differing classifications and definitions used by other Government agencies. However, it does not believe the proposed amendment would result in inconsistency among Government agencies because different Federal statutes serve different purposes.

APCP, being a deflagrating propellant, is considered an explosive and classified under ATF regulation as a "low explosive."

The National Fire Protection Association (NFPA) has adopted a definition of "explosives" that is the same as the statutory definition set forth in 18 U.S.C. 841(d). "Explosives" as classified in 18 U.S.C. 841(d) are "* * * any chemical compound[,] mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters." Moreover, the NFPA's classification of "low explosives" is consistent with that in 27 CFR 555.202(b). In its "Fire Protection Handbook," NFPA has included propellants in its listing of "types of explosive," and states that black powder, smokeless powder, and solid rocket fuels fall into the category of "low explosives/propellant." Furthermore, in its "Code of High Power Rocketry," NFPA uses the same criteria for the storage of rocket motors that mirror the requirements of the table of distances for low explosives that are addressed in 27 CFR part 555.

DOT classifications sometimes differ from ATF because the two agencies use different standards to make their explosives classifications. DOT uses standards that are based primarily on the controls for the transportation, storage, packaging, and shipping safety. For example, when packaging will reduce the likelihood of mass explosion, DOT will assign a "lower" hazard classification (triggering less stringent transportation requirements). DOT's standards are such that the same explosive material can be classified differently in different circumstances, based solely upon its packaging. ATF's classifications are static and are based upon the material itself, not the safety of its packaging. Likewise, the United Nations (UN) uses classifications for explosives that are designed to ensure the harmonization of transportation of hazardous materials in global commerce. These classifications serve to facilitate commerce while maintaining safety standards that can be adhered to throughout the world. This goal differs significantly from that of ATF. ATF's classifications are designed to maximize public safety and protect interstate and foreign commerce against interference and interruption from the misuse of explosive materials. Therefore, although there are some distinctions in classification among Federal agencies, they should not be viewed as inconsistencies.

10. The Proposed Exemption Would Not Apply to Rocket Motors Containing Multiple Segments up to 62.5 Grams of Propellant Each, but Whose Total Combined Weight Is More Than 62.5 Grams

One commenter (Comment No. 18) expressed concern that the proposed regulation would not exempt rocket motors containing multiple segments having no more than 62.5 grams of propellant each, but whose total combined weight in the motor is more than 62.5 grams. The commenter contended that the proposed exemption should apply to all model rocket motors whose segment weight is less than 62.5 grams, regardless of the number of segments, citing various reasons including: The proposed rule does not make sense—there is no difference between purchasing or selling three separate motors each containing 62.5 grams of propellant and one motor reload with three segments, each weighing 62.5 grams; a 62.5 gram per segment exemption is self-limiting, i.e., it becomes impracticable from a physics point of view for rocket motors to have more than a certain number of segments that are limited to 62.5 grams, and; the proposed exemption will encourage clustering of smaller motors to achieve the effect of a larger motor-this is not a good practice because it relies on simultaneous ignition of the motors.

Department Response

All reload kits and propellant modules that can be used only in the assembly of rocket motors that contain a total of no more than 62.5 grams of propellant per assembled motor are exempt from regulation under this final rule. This exemption applies to single-use motors containing 62.5 grams or less of explosive material and to reload kits that are designed solely to create motors containing 62.5 grams or less of APCP per assembled motor. The range and power of rockets powered by the smaller rocket motors would not be as useful to terrorists or other criminals in constructing weapons designed to serve as delivery systems for explosive, chemical, or biological weapons. An individual purchasing larger rocket motors may assemble a large rocket motor that is capable of carrying explosive warheads or other dangerous payloads long distances.

The Department believes that the regulation of single-use motors containing more than 62.5 grams of propellant and reload kits and propellant modules designed to enable the assembly of such large motors can protect public safety by preventing the misuse of these motors. Also, the Department has determined that this threshold affords a reasonable balance between the need to prevent terrorists and other criminals from acquiring explosives and the legitimate desire of hobbyists to have access to explosives for lawful use.

11. The Proposed Exemption Does Not Appear to Include Bulk Packs of Rocket Motors

One commenter (Comment No. 59) inquired whether the proposed exemption applied to bulk packs of rocket motors where each motor contains no more than 62.5 grams of propellant. The commenter stated that he purchases bulk packs of rocket motors for his students who are in a model rocket club. He explained that the bulk packs usually contain 24 motors and that each individual motor contains 5.6 grams of propellant, resulting in a total propellant weight of 134 grams (5.6 × 24). Because the total weight of the bulk pack exceeds 62.5 grams, the commenter is concerned that bulk packs of rocket motors would not be included in the proposed exemption.

Department Response

As stated previously, any person purchasing explosives, including non-exempt rocket motors, for use at a public educational institution, is exempt from the permit provisions of the Federal explosives laws. State and local institutions would be required to store rocket motors in compliance with the law and regulations and could not knowingly allow prohibited persons to receive or possess explosive materials.

Persons purchasing rocket motors for a private school would not be exempt from the permit requirements of the law. However, if the "bulk packs" referred to by Comment No. 59 are non-stackable, fully-assembled single-use motors, each of which contains no more than 62.5 grams of propellant, then such "bulk packs" would fall within the exemption of the regulations, no matter how many motors are contained in the package. Accordingly, the commenter's concerns are misplaced.

12. The Proposed Regulation Should Be Amended To Include Other Explosives

As indicated, many commenters argued that the proposed regulation is too restrictive and would have a negative effect on hobby rocketry. Approximately 175 comments recommended specific changes to the proposed regulation. For example, many commenters stated that the proposed regulation should be revised to exempt from regulation model rocket motors consisting of ammonium perchlorate composite propellant, black powder, or non-detonable rocket propellant and designed as single-use motors or as reload kits, as well as commercially manufactured black powder in quantities not to exceed two pounds, safety and pyrotechnic fuses, quick and slow matches, electric matches and igniters when used in model rocket motors. This suggestion is similar to the proposals contained in Senate Bill 724, introduced during the 108th Congress by Senator Michael Enzi.

Other commenters argued that there should be an exemption for black powder in small quantities, e.g., two pounds, for use in model rocket ejection systems, i.e., to deploy the parachute. Two commenters recommended that the proposed regulation be revised to exempt model rocket motors designed as single use and reload kits consisting of APCP, black powder, or other similar propellant purchased for hobby and educational use by persons (and organizations) who have successfully completed the certification processes offered by the National Association of Rocketry, Tripoli Rocketry Association, or similar organizations.

Two other commenters suggested that the proposed regulation should be revised to exempt any size rocket motor or propellant reload, except those materials which present such a hazard of accidental explosion as to be suitable for classification as "UN Class 1 Division 1.1 or 1.2 Hazardous materials," or any material used as a propulsive or explosive charge in a rocket that qualifies as a "destructive device" as defined in 18 U.S.C. 44.92(a)(4)(iii). One commenter recommended that the proposed regulation be revised to exempt model rocket motors classified by the Department of Transportation as Class 1.4 explosives, since United Nations hazard Class 1.4 replaces the former Class C explosive designation. Another commenter stated that the proposed regulation needed to be revised to clarify the phrase "or other similar low explosives." The commenter stated that it was not clear whether the word "similar" means similar in chemical composition, method of operation, or similar in ability to lift large payloads.

Department Response

The Department has considered the comments that request the proposal be amended. Based upon the present language of Federal explosives law, the Department does not believe that the proposed regulation should be amended in the manner suggested by the commenters.

ATF is familiar with the commenters' proposed language that seeks to establish additional exemptions: Model rocket motors consisting of ammonium perchlorate composite propellant, black powder, or non-detonable rocket propellant and designed as single-use motors or as reload kits, as well as commercially manufactured black powder in quantities not to exceed two pounds, safety and pyrotechnic fuses, quick and slow matches, electric matches and igniters when used in model rocket motors. This suggestion mirrors language in Senate Bill 724, introduced by Senator Michael Enzi in March 2003. The bill was not enacted and will have to be reintroduced before Congress may consider it. The Department believes that expanding the current exemption, even for the sole purpose of hobby rocketry, will harm homeland security by providing terrorists and other criminals with unrestricted access to rocket motors containing large amounts of explosive material. The Department believes this to be an unnecessary and unacceptable risk in the current security environment. Moreover, allowing exemptions only for fuses and igniters, as opposed to non-exempt rocket motors, would be impossible to implement, as the same types of fuses and igniters are used for both large and small rocket motors, as well as commercial explosives and blasting operations. Additionally, there would be no mechanism to ensure that only rocketry hobbyists or others with lawful intentions will be able to avail themselves of the exemption. If the exemption were to be expanded as suggested by the commenters, it would become very easy for terrorists or other criminals to acquire large rocket motors, fuses, igniters, and other materials for use in bombs and/or for use in rockets.

The proposal to include an exemption for up to two pounds of black powder for use in model rocket ejections is not being adopted in this final rule. As explained previously, the exemption for black powder was enacted by Congress and not as a regulatory exemption. The Department declines to add this exemption to the final rule. Accordingly, the Department recommends that commenters on this issue seek legislation.

The Department also believes it is unnecessary to revise the language in the regulation to clarify the meaning of "or other similar low explosives." In the context of this regulation, this language refers to rocket propellants classified as low explosives that perform in a similar manner to those specifically listed as low explosives, i.e., ammonium perchlorate composite propellant and black powder. To the extent the commenter is suggesting that the Department list each and every low explosive propellant that could conceivably be used in rockets, the Department believes this would create an unnecessarily lengthy regulatory exemption that would not improve its clarity. It is not the purpose of the regulations to address each and every chemical compound that might be used in a rocket motor and that performs in a manner similar to those explosives listed in the regulation. The propellants that are specifically listed are those currently used in commercially available rocket motors. It is unnecessary to list each and every possible low explosive that may be used now or in the future as rocket propellants. Any person wishing a determination on a particular rocket propellant and whether it fits within the exemption may submit a written request for a letter ruling to ATF's Arson and Explosives Programs Division.

The purpose of the Federal explosives controls, as expressed by Congress, is to "protect interstate and foreign commerce against interference and interruption by reducing the hazard to persons and property arising from misuse and unsafe or insecure storage of explosive materials." In 2002, with the enactment of the Safe Explosives Act, Congress also extended ATF's permitting authority to require all persons wishing to obtain explosives to obtain permits thereby allowing ATF to perform background checks on all applicants. The legislation sought to ensure proper handling and storage procedures and prevent mishandling and misuse of explosives. House Report No. 107–658 107th Cong. 2d Sess. Sept. 17, 2002. The Department believes the controls imposed by this final rule are reasonable and consistent with the purposes of the 1970 Act and the congressional intent expressed with passage of the SEA.

VII. Request for Hearings

Fifteen (15) comments requested that ATF hold public hearings on the proposed regulations set forth in Notice

No. 968. Most commenters contended that holding public hearings would provide the explosive and model rocketry industries an opportunity to present additional information regarding the complex proposals made in the proposed rule. They further stated that such hearings would provide other interested parties, including model rocket hobbyists, an opportunity to present their views "and allow time for BATFE to respond to our questions."

Generally, ATF's public hearings are conducted to permit the public to participate in rulemaking by affording interested parties the chance to present oral presentation of data, views, or arguments. After careful consideration, the Director has determined that the holding of public hearings with respect to the model rocket proposal is unnecessary and unwarranted. First, while the Director acknowledges that the proposals made in Notice No. 968 were numerous and complex, this final rule addresses only the proposal relating to model rocket motors. In addition, most commenters who addressed the model rocket motor proposal expressed similar views and raised similar objections and concerns. As such, the Director believes that the holding of public hearings would not produce any new information on this issue. Finally, contrary to the views expressed by the commenters, the purpose of a public hearing is to afford the public the opportunity to participate in rulemaking by presenting data, opinions, etc. It is not the proper forum for responding to interested parties' questions.

A determination as to whether hearings will be held on the remaining proposals in Notice No. 968 will be made by the Director at a later date.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget. However, this rule will not have an annual effect on the economy of $100 million, nor will it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health, or safety, or State, local or tribal governments or communities. Accordingly, this rule is not an "economically significant" rulemaking as defined by Executive Order 12866.

This final rule is deregulating in nature. It merely clarifies ATF's long-standing position that hobby rocket motors containing 62.5 grams or less of explosive propellant are exempt from regulation. The exemption is intended to mitigate the impact of compliance with Federal law by allowing persons who acquire and store motors containing 62.5 grams or less of propellant to continue to enjoy their hobby on an exempt basis. The 62.5-gram exemption threshold covers the vast majority (more than 90 percent) of all rocket motors acquired and used by hobbyists in the United States. Thus, persons dealing in or acquiring motors containing no more than 62.5 grams of propellant will not be subject to the cost of obtaining a Federal license (e.g., an initial fee of $200 for obtaining a dealer's license for a 3-year period; $100 renewal fee for a 3-year period) or permit (an initial fee of $100 for obtaining a user permit for a 3-year period; $50 renewal fee for a 3-year period). Moreover, because of the exemption for rocket motors containing 62.5 grams or less of propellant, such persons are not subject to the storage requirements of Federal explosives law and regulations for their rocket motors. Without the 62.5 gram exemption, a typical rocket motor otherwise would be required to be stored in a type 4 magazine (costing approximately $300) because of the explosives contained in the motor. The cost for two ⅜-inch diameter shackle locks for the storage magazine is approximately $56.

Retailers who distribute the rockets will also avoid certain obligations that apply to the regulated explosives industry, such as storage standards, recordkeeping requirements, licensing and inspection by ATF.

Rocket motors containing more than 62.5 grams of propellant will continue to be regulated by ATF. ATF estimates that approximately 300 individuals currently participating in the rocketry hobby will stop doing so as a result of the final rule. ATF further estimates that approximately 60 rocketry hobbyists who use rocket motors containing more than 62.5 grams of explosive propellant will obtain a Federal permit and purchase a type 4 explosives magazine, while an additional 100 rocketry clubs will obtain a Federal permit and obtain an explosives magazine. ATF estimates that the total impact of the final rule is approximately $606,000. This figure is based on an examination of local economics, small businesses, and magazine and permitting requirements, as discussed below.

Local Economic Analysis

Based on historical data, NAR estimates that there are 1,000 model rocket launches annually, typically for a period of two days per launch, with each launch attracting 30 flyers. The commenter stated that an additional 60 participants would attend each launch as supporters, family members, or spectators. As a result of the proposed regulation, ATF estimates that there would be 10 percent fewer people attending each launch. Therefore, based on an average cost for meals and lodging, ATF estimates that the local economic impact associated with the proposed rule would be approximately $480,000 annually.

Small Business Analysis

In its comment, NAR stated that it maintains a database of manufacturer contact information for the rocketry hobby. From that database, the commenter estimates that, at any given time, there are 200 commercial entities providing support to model rocketeers nationwide in the form of parts, materials, motors, and launch accessories. Assuming each such manufacturer realizes annual sales of $50,000, NAR stated that those commercial entities provide an annual economic benefit to the U.S. economy of approximately $10 million. ATF does not anticipate the significant drop in participation that NAR assumes. As previously explained, the permitting and storage requirements are not so burdensome or expensive as to drive a large number of participants out of the hobby.

ATF estimates that the final rule will result in a drop in rocket motor and other rocketry-related sales of .5 percent, resulting in an annual small business economic impact of approximately $50,000.

Magazine and Permitting Cost Requirements

ATF estimates that 60 additional rocketry hobbyists and 100 rocketry clubs will obtain a permit from ATF and purchase a storage magazine for their high-power rocket motors. ATF estimates the permitting costs for the hobbyists and the rocketry clubs to be approximately $19,200, including the fee and photo and fingerprinting services. The cost of 160 type 4 explosives magazines is approximately $48,000 and the cost of two ⅜-inch diameter locks ($56) for the 160 magazines is $8,960. Collectively, for the 160 affected individuals/rocketry

clubs, the economic cost to comply with the permitting and storage requirements is approximately $76,160.

B. Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Attorney General has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988

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

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The Attorney General has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule clarifies ATF's long-standing policy exempting certain model rocket motors from the requirements of part 555. The rule provides an exemption from the requirements of part 555 for model rocket motors consisting of ammonium perchlorate composite propellant, black powder, or other similar low explosives; containing no more than 62.5 grams of total propellant weight; and designed as single-use motors or as reload kits capable of reloading no more than 62.5 grams of propellant into a reusable motor casing.

Without the exemption, all retailers, hobby, game and toy stores that distribute and store rocket motors containing not more than 62.5 grams of explosive would be obligated to obtain Federal explosives licenses and comply with all regulatory, recordkeeping and inspection requirements.

The Department believes that the final rule will not have a significant impact on small businesses. The 62.5-gram exemption threshold covers the vast majority (more than 90 percent) of all rocket motors acquired and used by hobbyists in the United States. Thus, persons dealing in or acquiring motors containing no more than 62.5 grams of propellant will not be subject to the cost of obtaining a Federal license (*e.g.*, an initial fee of $200 for obtaining a dealer's license for a 3-year period; $100 renewal fee for a 3-year period) or permit (an initial fee of $100 for obtaining a user permit for a 3-year period; $50 renewal fee for a 3-year period). Moreover, because of the exemption for rocket motors containing 62.5 grams or less of propellant, such persons are not subject to the storage requirements of Federal explosives law and regulations for their rocket motors. Without the 62.5 gram exemption, all rocket motors containing explosive material would be required to be stored in a type 4 magazine (costing approximately $300) with adequate locks (costing approximately $56). With the exemption, only motors with more than 62.5 grams of propellant must be stored in compliant magazines and appropriately secured.

The Department estimates that approximately 300 high-power rocketry hobbyists currently participating in the sport will stop doing so as a result of the final rule. Based on the comments, this figure represents approximately three percent of the total number of rocketry hobbyists who use rocket motors containing more than 62.5 grams of explosive propellant.

The Department believes that the impact on small businesses as a result of reduced participation in the rocketry hobby will be minimal. In its comment, NAR estimated that at any given time there are 200 commercial entities providing support to model rocketeers nationwide in the form of parts, materials, motors, and launch accessories. Assuming each such manufacturer realizes annual sales of $50,000, NAR stated that those commercial entities provide an annual economic benefit to the U.S. economy of approximately $10 million. As a result of the final rule, the Department estimates a drop in sales of .5 percent for small manufacturers supplying the rocketry hobby. Accordingly, the Department estimates the annual small business economic impact resulting from the final rule to be approximately $50,000.

E. 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, 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 on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

F. 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.

G. Paperwork Reduction Act

This final rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

Disclosure

Copies of the notice of proposed rulemaking (NPRM), all comments received in response to the NPRM, and this final rule will be available for public inspection by appointment during normal business hours at: ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–7890.

Drafting Information

The author of this document is James P. Ficaretta; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives.

List of Subjects in 27 CFR Part 555

Administrative practice and procedure, Authority delegations, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

Authority and Issuance

■ Accordingly, for the reasons discussed in the preamble, 27 CFR part 555 is amended as follows:

PART 555–COMMERCE IN EXPLOSIVES

■ 1. The authority citation for 27 CFR part 555 continues to read as follows:

Authority: 18 U.S.C. 847.

■ 2. Section 555.141 is amended by adding new paragraph (a)(10) to read as follows:

§ 555.141 Exemptions.

(a) * * *

(10) Model rocket motors that meet all of the following criteria—

(i) Consist of ammonium perchlorate composite propellant, black powder, or other similar low explosives;

(ii) Contain no more than 62.5 grams of total propellant weight; and

(iii) Are designed as single-use motors or as reload kits capable of reloading no more than 62.5 grams of propellant into a reusable motor casing.

* * * * *

Dated: August 7, 2006.

Paul J. McNulty,

Acting Attorney General.

[FR Doc. 06–6862 Filed 8–10–06; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–06–102]

RIN 1625–AA00

Safety Zone; R. Ozzie Wedding Fireworks Display, Manchester By The Sea, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the R. Ozzie Wedding Fireworks display on August 12, 2006 in Manchester By The Sea, MA, temporarily closing all waters in the vicinity of Manchester Bay and Manchester Harbor within a four hundred (400) yard radius of the fireworks barge located at approximate position 42°50.00′ N, 070°47.00′ W. This zone is necessary to protect the maritime public from the potential hazards posed by a fireworks display. The safety zone temporarily prohibits entry into or movement within this portion of Manchester Bay and Manchester Harbor during its closure period, unless authorized by the Captain of the Port, Boston, MA.

DATES: This rule is effective from 9 p.m. EDT on August 12, 2006 until 10:15 p.m. EDT on August 12, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01–06–102 and are available for inspection or copying at Sector Boston, 427 Commercial Street, Boston, MA, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Paul English, Sector Boston, Waterways Management Division, at (617) 223–5456.

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 because the logistics with respect to the fireworks presentation were not presented to the Coast Guard with sufficient time to draft and publish an NPRM. Any delay encountered in this regulation's effective date would be contrary to the public interest since the safety zone is needed to prevent traffic from transiting a portion of Manchester Bay and Manchester Harbor during the fireworks display and to provide for the safety of life on navigable waters.

For the same reasons, the Coast Guard finds, under 5 U.S.C. 553(d)(3), that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The zone should have a minimal negative impact on vessel transits in Manchester Bay and Manchester Harbor because vessels will be excluded from the area for only one and one quarter hours, and vessels can still safely operate in other areas of Manchester Bay and Manchester Harbor during the event.

Background and Purpose

The Ozzie Family is holding a fireworks display to celebrate a wedding. This rule establishes a temporary safety zone on the waters in the vicinity of Manchester Bay and Manchester Harbor within a four hundred (400) yard radius of the fireworks barge located at approximate position 42°50.00′ N, 070°47.00′ W. This safety zone is necessary to protect the life and property of the maritime public from the potential dangers posed by this event. It will protect the public by prohibiting entry into or movement within the proscribed portion of Manchester Bay and Manchester Harbor during the fireworks display.

Marine traffic may transit safely outside of the zone during the effective period. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to and during the effective period via marine information broadcasts and Local Notice to Mariners.

Discussion of Rule

This rule is effective from 9 p.m. EDT on August 12, 2006 until 10:15 p.m. EDT on August 12, 2006. Marine traffic may transit safely outside of the safety zone in the majority of Manchester Bay and Manchester Harbor during the event. Given the limited time-frame of the effective period of the zone, and the actual size of the zone relative to the amount of navigable water around it, the Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Public notifications will be made prior to and during 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 to be so minimal that a full Regulatory evaluation is unnecessary. Although this rule will prevent traffic from transiting a portion of Manchester Bay and Manchester Harbor during this event, the effect of this rule will not be significant for several reasons: Vessels will be excluded from the area of the safety zone for only one and one quarter hours; although vessels will not be able to transit the area in the vicinity of the zone, they will be able to safely operate in other areas of Manchester Bay and Manchester Harbor during the effective period; and advance notifications will be made to the local maritime community by marine information broadcasts and Local Notice to Mariners.

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 a portion of Manchester Bay and Manchester Harbor from 9 p.m. EDT on August 12, 2006 until 10:15 p.m. EDT on August 12, 2006. This safety zone will not have a significant economic impact on a substantial number of small entities for the reason described under the Regulatory Evaluation section.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Chief Petty Officer Paul English, Sector Boston, Waterways Management Division, at (617) 223–5456.

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 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, 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. This rule is categorically excluded under paragraph (34)(g), because the rule establishes a safety zone. 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. 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.T01–102 to read as follows:

§ 165.T01–102 Safety Zone; R. Ozzie Wedding Fireworks Display, Manchester By The Sea, MA.

(a) *Location.* The following area is a safety zone:

All waters in the vicinity of Manchester Bay and Manchester Harbor, from surface to bottom, within a four hundred (400) yard radius of the fireworks barge located at approximate position 42°50.00′ N, 070°47.00′ W.

(b) *Effective Date.* This rule is effective from 9 p.m. EDT on August 12, 2006 until 10:15 p.m. EDT on August 12, 2006.

(c) *Definitions.* (1) *Designated 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 Captain of the Port (COTP).

(2) *[Reserved]*

(d) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into or movement within this zone by any person or vessel is prohibited unless authorized by the Captain of the Port (COTP), Boston or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative 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 COTP or the COTP's designated representative.

Dated: August 1, 2006.

James L. McDonald,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. E6–13200 Filed 8–10–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 59

RIN 2900–AM42

Priority for Partial Grants to States for Construction or Acquisition of State Home Facilities

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) regulations regarding grants to States for construction or acquisition of State homes. This amendment is necessary to ensure that projects designed to remedy conditions at an existing State home that have been cited as threatening to the lives or safety of the residents receive priority for receiving VA grants in the future (including in fiscal year 2007).

DATES: *Effective Date:* This interim final rule is effective August 11, 2006. Comments must be received on or before October 10, 2006.

ADDRESSES: Written comments may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20042; fax to (202) 273–9026; or e-mail through *http://www.Regulations.gov.* Comments should indicate that they are submitted in response to "RIN 2900–AM42." All comments received will be available for public inspection in the Office of Regulations Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Frank Salvas, Chief, State Home Construction Grant Program (114), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, 202–273–8534.

SUPPLEMENTARY INFORMATION: Congress has authorized VA to provide grants to States for the construction and acquisition of State homes for the care of veterans. See 38 U.S.C. 8131–8137. The law mandates that VA use certain priorities in establishing a list of approved projects to receive funding. VA has used these priorities to establish the priority and subpriority groups that are set forth in 38 CFR 59.50. For instance, the top priority group is for projects from States that have made sufficient funds available for their projects. That group is divided into six sub-groups, which are (in order of priority): (1) Projects to remedy conditions found to threaten the lives or safety of patients (i.e., life safety projects that may include, for example, seismic concerns, egress, smoke barriers and fire walls, fire alarm and detection, or asbestos and other hazardous materials), (2) projects from States that have not previously applied for the construction or acquisition of a State nursing home, (3) projects from States that have a great need for new State home beds, (4) other projects for the renovation of a State home, (5) projects from States that have a significant need for new State home beds, and (6) projects from States that have a limited need for new State home beds.

Sometimes, States with higher-ranking applications within the top priority group deplete the available funding to the extent that VA is able to offer the State with the lowest-ranking application (for which grant funds are available) only a partial grant. Currently, 38 CFR 59.50(b) provides that if a State accepts a partial grant in a given fiscal year, that State's project will have the highest priority for funding in the next fiscal year. This provision was promulgated originally because States were hesitant to accept a partial grant if there was uncertainty of receiving sufficient grant funding in the next fiscal year. The existing regulation encourages States to accept a partial grant by giving them the highest priority for appropriated grant funds in the subsequent fiscal year. Without receiving the highest priority for appropriated grant funds, States offered a partial grant would likely turn it down, and the money would go to lower-priority projects.

VA foresees that the regulatory provision granting the highest priority for appropriated funds in the subsequent fiscal year to States accepting partial grants may render VA unable to meet its statutory obligations for prioritizing grant applications, especially for giving top priority to life safety projects. A revision is needed immediately due to the pendency of one large construction project from a State with "great" need which is in line to receive a partial grant this year and which would otherwise then consume all the funding expected for grants during fiscal year (FY) 2007. This would result in no available funds for grants for life safety projects during FY 2007, contrary to the statutory priority that is to be given those projects.

This rule changes the priority that a project receiving a partial grant may receive during the next fiscal year. Rather than receiving highest priority in the next fiscal year, a project receiving a partial grant would receive highest priority only with respect to 30 percent of the funds actually appropriated for grants. In other words, such a project would qualify to receive no more than 30 percent of the funds appropriated for this purpose. The partial-grant project could receive more funding but would have to compete for it without the advantage of any special priority. For example, a State seeking a grant for $160 million that has received a partial grant of $70 million in the 2006 fiscal year would qualify to receive up to 30 percent of the funds available to VA for the award of State home grants during FY 2007. If VA has $85 million available for State home grants for FY 2007, the partial-grant State would receive 30 percent of that amount ($25.5 million)

because of its highest priority as a partial-grant recipient. If the partial-grant recipient also ranks number 15 on the priority list with respect to the rest of the 70 percent of available funds, and the higher-ranked applicants seek only $45.5 million, the partial-grant recipient would be awarded an additional $14 million for a total of $39.5 million. This rule provides VA with the flexibility to set aside at least 70 percent of the grant funds for life safety projects consistent with the priority for such projects mandated by Congress. Based on past experience and our best estimates, we anticipate a 70-percent allocation would provide sufficient funds to cover anticipated life safety projects in FY 2007 and subsequent years. Life safety projects used 10 percent of available funds in FY 2004 and 5 percent of available funds in FY 2005, and will use about 34 percent of available funds in FY 2006. However, based on existing and recent life safety applications, and indications from States that more such applications will be submitted, we estimate that the demand for life safety projects in FY 2007 may require up to 70 percent of the available funds. At the same time, we believe a 30-percent allocation to partial-grant recipients in the following year will provide some incentive for States to accept a partial grant.

It is possible that there may be more than one partial-grant recipient in a given fiscal year. In the above example, another higher-priority applicant seeking a $25 million grant could receive the remaining $14 million from the 70 percent of the funds as a partial grant. Under this regulation, this partial-grant recipient would also receive priority over all other applicants for up to 30 percent of the funding that would be set aside for partial-grant recipients during the next fiscal year. To address this possibility, this regulation further prioritizes the partial-grant recipients on the priority list for the next fiscal year based on the date that VA first awarded a partial grant for the projects (the earlier the grant was awarded, the higher the priority given).

Administrative Procedure Act

In accordance with 5 U.S.C. 553(b)(3)(B), the Secretary of Veterans Affairs finds that there is good cause to dispense with the opportunity for prior comment with respect to this rule. The Secretary finds that it is impracticable, unnecessary, and contrary to the public interest to delay this regulation for the purpose of soliciting prior public comment. This action is consistent with the priorities established by Congress and is needed on an expedited basis because the current regulation may preclude VA from funding life safety projects during FY 2007. While it is important to give States receiving partial grants priority for continued funding, these regulations need to recognize the other priorities for awarding State home grants including the top priority for projects that protect the lives and safety of veterans residing in existing State homes. For the foregoing reasons, the Secretary of Veterans Affairs is issuing this rule as an interim final rule.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by the State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This amendment would have no such effect on State, local, and tribal governments, or on the private sector.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or more; creating a serious inconsistency or interfering with an action of another agency; materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. VA has examined the economic, legal, and policy implications of this interim final rule and has concluded that it is a significant regulatory action because it raises novel policy issues.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The rule will affect grants to States and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number and title for this rule are as follows: 64.005, Grants to States for Construction of State Home Facilities.

List of Subjects in 38 CFR Part 59

Administrative practice and procedure; Alcohol abuse; Alcoholism; Claims; Day care; Dental health; Drug abuse; Foreign relations; Government contracts; Grant programs-health; Grant programs-veterans; Health care; Health facilities; Health professions; Health records; Homeless; Medical and dental schools; Medical devices; Medical research; Mental health programs; Nursing homes: Reporting and Recordkeeping requirements; Travel and transportation expenses, Veterans.

Approved: June 23, 2006

R. James Nicholson,

Secretary of Veterans Affairs.

■ For the reasons stated above, the Department of Veterans Affairs amends 38 CFR part 59 as follows:

PART 59—GRANTS TO STATES FOR CONSTRUCTION OR ACQUISITION OF STATE HOMES

■ 1. The authority citation for part 59 continues to read as follows:

Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131–8137.

■ 2. Amend § 59.50 by revising paragraph (b) to read as follows:

§ 59.50 Priority List.

* * * * *

(b)(1) If a State accepts a partial grant for a project under § 59.80(a)(2), VA will give that project the highest priority for the next fiscal year within the priority group to which it is assigned (without further prioritization of that priority group) to receive up to 30 percent of the funds available for that year. Funds available do not include funds conditionally obligated in the previous fiscal year under § 59.70(a)(2).

(2) If, in a given fiscal year, more than one State previously accepted a partial grant under § 59.80(a)(2), these partial-grant recipients will be further prioritized on the priority list for that fiscal year based on the date that VA

first awarded a partial grant for the project (the earlier the grant was awarded, the higher the priority given). The partial-grant recipients, in aggregate, may receive up to 30 percent of the funds available for that year that would be set aside for partial-grant recipients.

* * * * *

[FR Doc. E6–13153 Filed 8–10–06; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R04–OAR–2005–TN–0007–200527(c) FRL–8208–9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Tennessee; Redesignation of the Montgomery County, Tennessee Portion of the Clarksville-Hopkinsville 8-Hour Ozone Nonattainment Area to Attainment; Correcting Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: This action corrects the effective date for the 8-hour ozone attainment designation for the Montgomery County, Tennessee portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area. The effective date for this attainment designation, which appears in title 40 Code of Federal Regulation (CFR) 81.343, was erroneously identified as October 24, 2005, in the Part 81 chart at the end of EPA's September 22, 2005, direct final redesignation rulemaking (70 FR 55559). This error is being corrected to reflect an effective date of November 21, 2005, for Montgomery County, Tennessee's 8-hour ozone attainment designation.

DATES: *Effective Date:* This correcting amendment is effective on August 11, 2006.

ADDRESSES: Copies of the documentation used in the action being corrected are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Egide Louis, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9240. Dr. Louis can also be reached via electronic mail at *louis.egide@epa.gov.*

SUPPLEMENTARY INFORMATION: On September 22, 2005 (70 FR 55559), EPA published a direct final rulemaking action approving the redesignation of the Montgomery County, Tennessee portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area to attainment status. In the "Dates" section and in section VIII of the September 22, 2005, action, EPA stated that the rule would be effective on November 21, 2005, unless EPA received adverse written comments by October 24, 2005. 70 FR 55559, 55566. However, in the part 81 chart at the end of the rulemaking action, EPA erroneously identified the effective date for the attainment designation as October 24, 2005, instead of November 21, 2005. (70 FR 55568). Today, we are correcting the effective date of the Montgomery County, Tennessee 8-hour ozone attainment redesignation that appears in 40 CFR 81.343, so that it correctly reflects the effective date of the redesignation rulemaking, which is November 21, 2005.

EPA has determined that today's action falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary or contrary to the public interest. Public notice and comment for this action are unnecessary because today's action to correct the effective date of the 8-hour ozone attainment redesignation for Montgomery County, Tennessee has no substantive impact on EPA's September 22, 2005, redesignation approval. That is, the correction of the 8-hour ozone attainment redesignation effective date makes no substantive difference to EPA's redesignation analysis as set out in our September 22, 2005, rule, and merely corrects an error made in that prior rulemaking. In addition, EPA can identify no particular reason why the public would be interested in being notified of the correction of this error or in having the opportunity to comment on the correction prior to this action being finalized, since this correction action does not change the redesignation approval and merely conforms the effective date of the attainment redesignation to coincide with the effective date of the redesignation rulemaking. See, 70 FR 55559, 55568.

EPA also finds that there is good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule merely corrects an inadvertent error by conforming the effective date of the 8-hour ozone attainment redesignation for Montgomery County, Tennessee to the effective date of EPA's rulemaking approving the redesignation. For these reasons, EPA finds good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely corrects an inadvertent error by conforming the effective date of the 8-hour ozone attainment redesignation for Montgomery County, Tennessee to the effective date of EPA's rulemaking approving the redesignation, and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely corrects an inadvertent error by conforming the effective date of the 8-hour ozone attainment redesignation for Montgomery County, Tennessee to the effective date of EPA's rulemaking approving the redesignation, and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded

mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule merely corrects an inadvertent error by conforming the effective date of the 8-hour ozone attainment redesignation for Montgomery County, Tennessee to the effective date of EPA's rulemaking approving the redesignation, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In addition, this rule does not involve technical standards, thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule also does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act (CAA), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 20, 2006.

A. Stanley Meiburg,

Acting, Regional Administrator, Region 4.

■ 40 CFR part 81 is amended as follows:

PART 81—[CORRECTED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.343, the table entitled "Tennessee_Ozone (8–Hour Standard)" is amended by revising the entry for "Clarksville-Hopkinsville, TN-KY: Montgomery County" to read as follows:

§ 81.343 Tennessee.

* * * * *

TENNESSEE—OZONE (8–HOUR STANDARD)

Designated area	Designation[a]		Category/classification	
	Date [1]	Type	Date [1]	Type
* * * *	*		*	*
Clarksville-Hopkinsville, TN-KY Area:				
Montgomery County	11/ 21/05	Attainment		
* * * *	*		*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. E6–13161 Filed 8–10–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0314; FRL–8085–3]

Copper Sulfate Pentahydrate; Tolerance Exemption in or on Various Food and Feed Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance exemption for residues of copper sulfate pentahydrate when applied in or on meat, fat and meat by-products of cattle, sheep, hogs, goats, horses, poultry, milk and eggs when applied as a bactericide/fungicide to animal premises and bedding.

DATES: This regulation is effective August 11, 2006. Objections and requests for hearings must be received on or before October 10, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0314. All documents in the docket are listed on the regulations.gov Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Marshall Swindell, AntimicrobialsDivision (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6341; e-mail: *swindell.marshall@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0314 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 10, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2005–0314, 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.

II. Background and Statutory Findings

In the **Federal Register** of December 21, 2005 (70 FR 75807) (FRL–7748–3), EPA issued a notice pursuant to section 408(d)(2) of Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–107) announcing the filing of a pesticide petition (PP 5F6982), by ArchAngel, LLC, 636 Hampshire St., Suite 208, Quincy, IL 62301. EPA did not receive any public comments in response to this petition. The petition requested that 40 CFR part 180 be amended to exempt from the requirement of a tolerance residues of the bactericide/fungicide copper sulfate pentahydrate when applied as a bactericide/fungicide in or on meat, fat and meat by-products of cattle, sheep, hogs, goats, horses, poultry, milk and eggs when applied as a bactericide/fungicide to animal premises and bedding. Various copper containing substances, including copper sulfate pentahydrate, have been exempted from tolerance requirements for numerous uses. 40 CFR 180.1021 exempts the listed copper compounds when applied, among other things, to growing crops as well as shellfish, meat, milk, poultry, eggs, and irrigated crops.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(c)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity,

completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by copper sulfate pentahydrate are discussed in this unit.

There is adequate information available to characterize the toxicity of the copper ion. Copper is ubiquitous in nature and is a necessary nutritional element for both animals (including humans) and plants. Copper is found naturally in the food we eat including fruits, vegetables, meats and seafood. It is found in the water we drink, the air we breathe and in our bodies themselves. Some of the environmental copper is due to direct modification of the environment by man such as mining and smelting of the natural ore. It is one of the elements found essential to life. The National Academy of Science establishes recommended daily allowances (RDAs) of vitamins and minerals for the diet. The RDA for copper ranges from approximately 400 micrograms per day (µg/d) in young children to 900 µg/d in adults. Additionally, over-the-counter dietary supplements containing copper at levels ranging from 0.33 milligram (mg) to 3 mg are available for individuals with low levels of copper. The copper ion is present in the adult human body with nearly two-thirds of the body copper content located in the skeleton and muscle. The liver is the primary organ for the maintenance of plasma copper concentrations.

Oral ingestion of excessive amounts of the copper ion from pesticidal uses including the proposed use is unlikely. Copper compounds are irritating to the gastric mucosa. Ingestion of large amounts of copper results in prompt emesis. This protective reflex reduces the amount of copper ion available for absorption into the human body. Additionally, at high levels humans are also sensitive to the taste of copper. Because of this organoleptic property, oral ingestions would also serve to limit high doses.

Only a small percentage of ingested copper is absorbed, and most of the absorbed copper is excreted. The human body appears to have efficient mechanisms in place to regulate total body copper. The copper ion occurs naturally in food and the metabolism of copper is well understood. The Agency has conducted a risk assessment in connection with the development and issuance of the Reregistration Eligibility Decision Document for Copper (EPA–HQ–OPP–2005–0558; Human Health Chapter). No endpoints of toxicology concern were identified for risk assessment purposes for a number of reasons. One of the foremost of these is the fact that copper is a required nutritional element for both plants and animals. Indeed, current available data and literature studies indicate that there is a greater risk from the deficiency of copper intake than from excess intake. Copper also occurs naturally in a number of food items including fruits, vegetables, meats and seafood. Although there is little known about the minimum levels of dietary copper necessary to cause evidence of adverse effect, this situation is likely due to the existence of an effective homeostatic mechanism that is involved in the dietary intake of copper and that protects man from excess body copper. Given that copper is ubiquitous and is routinely consumed as part of the daily diet, it is unlikely that with the current exposure pattern there would be any long term adverse effects.

Finally, sulfate has little toxic effect and is routinely used in medicine as a cathartic when combined with magnesium or sodium, the only adverse manifestation from this use being dehydration if water intake is concurrently limited.

IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide chemicals, the Agency considers the toxicity of the chemical in conjunction with possible exposure to residues of the chemical through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure, an exemption from the requirement of a tolerance may be established.

A. Dietary Exposure

Copper is ubiquitous in nature and is a necessary nutritional element for both animals (including humans) and plants. It is one of several elements found essential to life. The human body must have copper to stay healthy. In fact, for a variety of biochemical processes in the body to operate normally, copper must be part of our daily diet. Copper is needed for certain critical enzymes to function in the body. Actually, too little copper in the body can actually lead to disease.

1. *Food.* The main source of copper for infants, children, and adults, regardless of age, is the diet. Copper is typically present in mineral rich foods like vegetables (potato, legumes (beans and peas), nuts (peanuts and pecans), grains (wheat and rye), fruits (peaches and raisins), and chocolate in levels that range from 0.3 to 3.9 ppm. A single day's diet may contain 10 mg or more of copper. The daily recommended allowance of copper for adult nutritional needs is 2 mg. It is not likely that the approval of this petition would significantly increase exposure over that of the existing levels of copper.

2. *Drinking water exposure.* Copper is a natural element found in the earth's crust. As a result, most of the world's surface water and ground water that is used for drinking purposes contains copper. The actual amount varies from region to region, depending on how much is present in the earth, but in almost all cases the amount of copper in water is extremely low. Naturally occurring copper in drinking water is safe for human consumption, even in rare instances where it is at levels high enough to impart a metallic taste to the water. Residues of copper in drinking water are regulated under the Safe Drinking Water Act. A Maximum Contaminant Level Goal of 1.3 ppm has been set by the Agency for copper. According to the National Research Council's Committee on Copper in Drinking Water, this level is "set at a concentration at which no known or expected adverse health effects occur and for which there is an adequate margin of safety." The Agency believes that this level of protection would not cause any potential health problems, i.e. stomach and intestinal distress, liver and kidney damage and anemia. It is not likely that the approval of this petition would significantly increase exposure over that of the existing levels of copper.

B. Other Non-Occupational Exposure

Copper compounds have many uses on crops (food as well as non-food) and ornamentals as a fungicide.

Dermal exposure. Given the prevalence of copper in the environment, no significant dermal exposure increase above current levels would be expected from the non-occupational use of copper sulfate pentahydrate.

Inhalation exposure. Air concentrations of copper are relatively low. A study based on several thousand samples assembled by EPA's Environmental Monitoring Systems Laboratory showed copper levels ranging from 0.003 to 7.32 micrograms per cubic meter. Other studies indicated that air levels of copper are much lower. The Agency does not expect the air concentrations of copper to be significantly affected by the use of copper sulfate pentahydrate.

V. Cumulative Effects

The Agency believes that copper has no significant toxicity to humans and that no cumulative adverse effects are expected from long-term exposure to copper salts including copper sulfate pentahydrate. For the purposes of this tolerance action, EPA has not assumed that copper compounds have a common mechanism of toxicity with other substances.

VI. Determination of Safety for U.S. Population, Infants and Children

Copper sulfate pentahydrate is considered as Generally Recognized as Safe (GRAS) by the Food and Drug Administration (FDA). EPA has also exempted various copper compounds from the requirement of a tolerance when used as aquatic herbicides (40 CFR 180.1021). Copper compounds, including copper sulfate pentahydrate, are also exempt from the requirements of a tolerance when applied to growing crops when used as a plant fungicide in accordance with good agricultural practices (40 CFR 180.1021).

1. *U.S. population.* Copper is a component of the human diet and an essential element. In addition, no acute or chronic dietary end points were selected because no endpoints of toxicological concerns have been identified for risk assessment purposes. Use of copper sulfate pentahydrate is not expected to increase the amount of copper in the diet as a result of its use on growing crops and post harvest use.

2. *Infants and children.* Copper is also a component of the diet of infants and children and also an essential element of their diet. Since no endpoints of concern have been identified, EPA has not conducted a quantitative risk assessment for copper sulfate pentahydrate. The Agency has also determined that the special FQPA safety factor to protect infants and children was not needed since there are no toxicity endpoints or uncertainty surrounding exposure.

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm to the general population, including infants and children, from aggregate exposure to copper sulfate pentahydrate residues.

VII. Other Considerations

A. Analytical Method

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. Existing Tolerance Exemptions

Copper sulfate pentahydrate has been exempted from the requirement of a tolerance under 40 CFR 180.1021 (c) when applied to growing crops or to raw agricultural commodities after harvest.

C. International Tolerances

The Agency is not aware of any country requiring a tolerance for copper sulfate pentahydrate nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

VIII. Conclusions

Based on the information contained in the document, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of copper sulfate pentahydrate. According, EPA finds that the exemption for residues in or on meat, fat and meat by-products of cattle, sheep, hogs, goats, horses and poultry, milk and eggs when applied as a bactericide/fungicide to animal premises and bedding will be safe.

IX. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA). Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. The Agency hereby certifies that this rule will not have significant negative economic impact on a substantial number of small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food

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

X. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: August 3, 2006.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

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

PART 180—AMENDED

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

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

■ 2. Section 180.1021 is amended by revising paragraph (c) to read as follows:

§ 180.1021 Copper; exemption from the requirement of a tolerance.

* * * * *

(c) Copper sulfate pentahydrate (CAS Reg. No. 7758–99–8) is exempt from the requirement of a tolerance when applied as a fungicide to growing crops or to raw agricultural commodities after harvest, and as a bactericide/fungicide in or on meat, fat and meat by-products of cattle, sheep, hogs, goats, horses and poultry, milk and eggs when applied as a bactericide/fungicide to animal premises and bedding.

* * * * *

[FR Doc. E6–13082 Filed 8–10–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0542; FRL–8081–8]

Imidacloprid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all expressed as the parent in or on caneberry subgroup 13A; coffee, green bean; seed of: Black mustard, borage, crambe, field mustard, flax, Indian mustard, Indian rapeseed, rapeseed, safflower, and sunflower; atemoya, biriba, cherimoya, custard apple, ilama, soursop, and sugar apple; almond hulls, pistachio and tree nut group 14; pomegranate; banana; herbs subgroup 19A dried; and herbs subgroup 19A fresh. Interregional Research Project No. 4 (IR–4), requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective August 11, 2006. Objections and requests for hearings must be received on or before October 10, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0542. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; e-mail address: *madden.barbara@epa.gov.*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0542 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 10, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2005–0542, 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.

II. Background and Statutory Findings

In the **Federal Register** of March 22, 2006 (71 FR 14524) (FRL–7769–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 3E6543, PP 3E6561, PP 3E6738, PP 3E6760, PP 5E6920, PP 5E6921, PP 5E6922, PP 5E6923) by Interregional Research Project No. 4 (IR–4), 681 U.S. Highway No. 1 South, North Brunswick, NJ 08902–3390. The petitions requested that 40 CFR 180.472 be amended by establishing tolerances for residues of the insecticide imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, and its metabolites containing the 6-chloropyridinyl moiety, all expressed as imidacloprid in or on the raw agricultural commodities as follows: Caneberry subgroup 13A at 0.05 parts per million (ppm) (PP 3E6543); coffee at 0.6 ppm (PP 3E6561); seed of: Black mustard, borage, crambe, field mustard, flax, Indian mustard, Indian rapeseed, rapeseed, safflower, and sunflower at 0.05 ppm (PP 3E6738); atemoya, biriba, cherimoya, custard apple, ilama, soursop, and sugar apple at 0.2 ppm (PP 3E6760); almond hulls at 2.5 ppm; and pistachio and tree nut group 14 at 0.01 ppm (PP 5E6920); pomegranate at 0.7 ppm (PP 5E6921); banana at 0.6 ppm (PP 5E6922); herbs subgroup 19A dried at 62.0 ppm and herbs subgroup 19A fresh at 6.0 ppm (PP 5E6923).

Tolerances were later amended as follows: Coffee at 0.80 ppm (PP 3E6561); atemoya, biriba, cherimoya, custard apple, ilama, soursop, and sugar apple at 0.30 ppm (PP 3E6760); almond hulls at 4.0 ppm; and pistachio and tree nut group 14 at 0.05 ppm (PP 5E6920); pomegranate at 0.90 ppm (PP 5E6921); banana at 0.50 ppm (PP 5E6922); herb subgroup, 19A, herbs, dried at 48.0 ppm and herb subgroup, 19A, herbs, fresh at 8.0 ppm (PP 5E6923).

In addition to establishing tolerances, EPA is also deleting several established tolerances from the tables in § 180.472(a), (b), and (d) that are no longer needed as a result of this action. The tolerance deletions under § 180.472(b) are time-limited tolerances established under section 18 emergency exemptions that are superceded by the establishment of general tolerances for imidacloprid and its metabolites under § 180.472(a).

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for tolerances for combined residues of the insecticide imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, and its metabolites containing the 6-chloropyridinyl moiety, all expressed as imidacloprid in or on caneberry

subgroup 13A at 0.05 parts per million (ppm); coffee, green bean at 0.80 ppm; seed of: Black mustard, borage, crambe, field mustard, flax, Indian mustard, Indian rapeseed, rapeseed, safflower, and sunflower at 0.05 ppm; atemoya, biriba, cherimoya, custard apple, ilama, soursop, and sugar apple at 0.30 ppm; almond hulls at 4.0 ppm; pistachio and tree nut group 14 at 0.05 ppm; pomegranate at 0.90 ppm; banana at 0.50 ppm; herb subgroup, 19A, herbs, dried at 48.0 ppm and herb subgroup, 19A, herbs, fresh at 8.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by imidacloprid as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.epa.gov/fedrgstr/EPA-PEST/2003/June/Day-13/p14880.htm.*

B. Toxicological Endpoints

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

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

A summary of the toxicological endpoints for imidacloprid used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of June 13, 2003 (68 FR 35303) (FRL–7310–8), or at *http://www.epa.gov/fedrgstr/EPA-PEST/2003/June/Day-13/p14880.htm.*

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.472) for the combined residues of imidacloprid, in or on a variety of raw agricultural commodities. Meat, milk, poultry, and egg tolerances have also been established for the combined residues of imidacloprid. Risk assessments were conducted by EPA to assess dietary exposures from imidacloprid in food as follows:

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

The Dietary Exposure Evaluation Model - Food Commodity Intake Database (DEEM-FCID™) analysis evaluated the individual food consumption as reported by respondents in the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: An unrefined, acute dietary exposure assessment using tolerance-level residues and assuming 100 pecent crop treated (PCT) for all registered and proposed commodities was conducted for the general U.S. population and various population subgroups. Drinking water was incorporated directly in the dietary assessment using the acute (peak) concentration for surface water generated by the FQPA Index Reservoir Screening Tool (FIRST) model.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the DEEM-FCID™, which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 nationwide CSFII, and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A partially refined, chronic dietary exposure assessment using tolerance-level residues for all registered and proposed commodities, and PCT information for some commodities was conducted for the general U.S. population and various population subgroups. Drinking water was incorporated directly into the dietary assessment using the chronic (annual average) concentration for surface water generated by the FIRST model.

iii. *Cancer.* An exposure assessment related to cancer risk is unnecessary. The Agency has classified imidacloprid as a "Group E" chemical, no evidence of carcinogenicity for humans, by all routes of exposure based upon lack of evidence of carcinogenicity in rats and mice.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

For the acute assessment, 100 PCT was assumed for all registered and proposed commodities. For the chronic assessment, average weighted PCT information was used for the following commodities: Apple 30%; artichokes 5%; beets 15%; blueberries 10%; broccoli 35%; brussels sprouts 55%; cabbage 20%; cantaloupe 30%; carrots 1%; cauliflower 40%; celery 5%; cherries 5%; collards 10%; corn, field 1%; cotton 5%; cucumber 5%; eggplant 45%; grapefruit 5%; grape 30%; honeydew 10%; hops 90%; kale 30%; lemon 1%; lettuce, head 60%; orange 5%; peaches 5%; pear 10%; pepper 25%; potatoes 35%; pumpkin 5%; spinach 20%; squash 10%; strawberries 10%; sugarbeet 1%; sweet corn 1%; tangerine 10%; tomato 15%; watermelon 10%. A default value of 1% was used for all commodities which were reported as having 1 PCT.

EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available Federal, State, and private market survey data for that use, averaging by year, averaging across all years, and rounding up to the nearest multiple of 5% except for those situations in which the average PCT is less than 1. In those cases 1% is used as the average and 2.5% is used as the maximum. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the single maximum value reported overall from available Federal, State, and private market survey data on the existing use, across all years, and rounded up to the nearest multiple of 5%. In most cases, EPA uses available data from USDA/National Agricultural Statistics Service (USDA/NASS), Proprietary Market Surveys, and the National Center for Food and Agriculture Policy (NCFAP) for the most recent 6 years.

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

Based on the FIRST and screening concentration in ground water (SCI-GROW) models, the estimated environmental concentrations (EECs) of imidacloprid for acute exposures are estimated to be 36.0 parts per billion (ppb) for surface water and 2.09 ppb for ground water. The EECs for chronic exposures are estimated to be 17.2 ppb for surface water and 2.09 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model (DEEM-FCID™, Version 2.03). For acute dietary risk assessment, the peak water concentration value of 36.0 ppb was used to access the contribution to drinking water. For chronic dietary risk assessment, the annual average concentration of 17.2 ppb was used to access the contribution to drinking water.

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

Imidacloprid is currently registered for use on the following residential non-dietary sites: Granular products for application to lawns and ornamental plants; ready-to-use spray for application to flowers, shrubs and house plants; plant spikes for application to indoor and outdoor residential potted plants; ready-to-use potting medium for indoor and outdoor plant containers; liquid concentrate for application to lawns, trees, shrubs and flowers; ready-to-use liquid for directed spot application to cats and dogs. In addition, there are numerous registered products intended for use by commercial applicators to residential sites. These include gel baits for cockroach control; products intended for commercial ornamental, lawn and turf pest control; products for ant control; and products used as preservatives for wood products, building materials, textiles and plastics.

As these products are intended for use by commercial applicators only, they are not to be addressed in terms of residential pesticide handlers. The risk assessment was conducted using the following residential exposure assumptions: EPA has determined that residential handlers are likely to be exposed to imidacloprid residues via dermal and inhalation routes during handling, mixing, loading, and applying activities. Based on the current use patterns, EPA expects duration of exposure to be short-term (1–30 days). EPA does not expect imidacloprid to result in exposure durations that would result in intermediate-term or long-term exposure.

The scenarios likely to result in adult dermal and/or inhalation residential handler exposures are as follows:

- Dermal and inhalation exposure from using a granular push-type spreader;
- Dermal exposure from using potted plant spikes;
- Dermal exposure from using a plant potting medium;
- Dermal and inhalation exposure from using a garden hose-end sprayer (dermal and inhalation exposure from using a RTU trigger pump spray is expected to be negligible);
- Dermal and inhalation exposure from using a water can/bucket for soil drench applications; and
- Dermal exposure from using pet spot-on.

EPA has also determined that there is potential for short-term (1 to 30 days), post-application exposure to adults and children/toddlers from the many residential uses of imidacloprid. Due to residential application practices and the half-lives observed in the turf transferable residue study, intermediate-term and long-term post-application exposures are not expected. The scenarios likely to result in dermal (adult and child/toddler), and incidental non-dietary (child/toddler) short-term post-application exposures are as follows:

- Toddler oral hand-to-mouth exposure from contacting treated turf;
- Toddler incidental oral ingestion of granules;
- Toddler incidental oral ingestion of pesticide-treated soil;
- Toddler incidental oral exposure from contacting treated pet;
- Toddler dermal exposure from contacting treated turf;
- Toddler dermal exposure from hugging treated pet/contacting treated pet;
- Adult dermal exposure from contacting treated turf;
- Adult golfer dermal exposure from contacting treated turf;
- Adolescent golfer dermal exposure from contacting treated turf; and
- Adult dermal exposure from contacting treated pet;

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There is no quantitative or qualitative evidence of increased susceptibility of rat and rabbit fetuses to *in utero* exposure in developmental studies. There is no quantitative or qualitative evidence of increased susceptibility of rat offspring in the multi-generation reproduction study. There is evidence of increased qualitative susceptibility in the rat developmental neurotoxicity study, but the concern is low since:

i. The effects in pups are well-characterized with a clear NOAEL;

ii. The pup effects occur in the presence of maternal toxicity with the same NOAEL for effects in pups and dams; and,

iii. The doses and endpoints selected for regulatory purposes are protective of the pup effects noted at higher doses in the developmental neurotoxicity study. Therefore, there are no residual uncertainties for prenatal-/postnatal toxicity in this study.

3. *Conclusion.* There is a complete toxicity data base for imidacloprid and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X SF to protect infants and children should be reduced to 1X for the following reasons:

The toxicological data base is complete for FQPA assessment.

The acute dietary food exposure assessment utilizes existing and proposed tolerance level residues and 100 PCT information for all commodities. By using these screening-level assessments, actual exposures/risks will not be underestimated.

The chronic dietary food exposure assessment utilizes existing and proposed tolerance level residues and PCT data verified by the Agency for several existing uses. For all proposed uses, 100 PCT is assumed. The chronic assessment is somewhat refined and based on reliable data and will not underestimate exposure/risk.

The dietary drinking water assessment utilizes water concentration values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations which will not likely be exceeded.

The residential handler assessment is based upon the residential standard operating procedures (SOPs) in conjunction with chemical-specific study data in some cases and the Pesticide Handlers Exposure Database (PHED) unit exposures in other cases. The majority of the residential post-application assessment is based upon chemical-specific turf transferrable residue data or other chemical-specific post-application exposure study data. The chemical-specific study data as well as the surrogate study data used are reliable and also are not expected to underestimate risk to adults as well as to children. In a few cases where chemical-specific data were not available, the SOPs were used alone. The residential SOPs are based upon reasonable worst-case assumptions and are not expected to underestimate risk. These assessments of exposure are not likely to underestimate the resulting estimates of risk from exposure to imidacloprid.

E. Aggregate Risks and Determination of Safety

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

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to imidacloprid will occupy 26% of the acute population adjusted dose (aPAD) for the U.S. population, 18% of the aPAD for females 13 years and older, 54% of the aPAD for all infants 1 year old, and 67% of the aPAD for children 1–2 years old. EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to imidacloprid from food and water will utilize 11% of the chronic population adjusted dose (cPAD) for the U.S. population, 22% of the cPAD for all infants 1 year old, and 33% of the cPAD for children 1–2 years old. Based on the use pattern, chronic residential exposure to residues of imidacloprid is not expected. EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Imidacloprid is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for imidacloprid.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in worst-case aggregate MOEs of 320 for the general U.S. population and 170 for children 1–2 years old, the sub-population at greatest exposure. These

aggregate MOEs do not exceed the Agency's LOC for aggregate exposure to food, water and residential uses.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Intermediate- and long-term aggregate risk assessments were not performed because, based on the current use patterns, the Agency does not expect exposure durations that would result in intermediate- or long-term exposures.

5. *Aggregate cancer risk for U.S. population.* The Agency has classified imidacloprid as a "Group E" chemical, no evidence of carcinogenicity for humans, by all routes of exposure based upon lack of evidence of carcinogenicity in rats and mice. Imidacloprid is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available for determination of imidacloprid residues of concern in plant (Bayer Gas Chromatography/Mass Spectrometry (GC/MS) Method 00200) and livestock commodities (Bayer GC/MS Method 00191). These methods have undergone successful EPA petition method validations (PMVs), and the registrant has fulfilled the remaining requirements for additional raw data, method validation, independent laboratory validation (ILV), and an acceptable confirmatory method (High Performance Liquid Chromatography/Ultraviolet (HPLC/UV) Method 00357). The validated limit of detection (LOD) and limit of quantitation (LOQ) for the GC/MS Method 00200 are 0.01 and 0.05 ppm, respectively, in plant commodities. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

There are no established Mexican maximum residue limits (MRLs) for the proposed uses. There are established Codex MRLs for the sum of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, expressed as imidacloprid, in or on rapeseed at 0.05 ppm and banana at 0.05 ppm. In addition, there is currently Canadian MRLs for: 1-[(6-chloro-3-pyridinyl) methyl]-4,5-dihydro-*N*-nitro-1H-imidazol-2-amine, including metabolites containing the 6-chloropicolyl moiety in or on mustard, seed at 0.05 ppm, rapeseed (canola) at 0.05 ppm and pecans at 0.05 ppm. The Codex and Canadian MRLs for rapeseed (canola) is the same as the U.S. recommended tolerance for rapeseed, seed; and the Canadian MRL for pecans is the same as the U.S. recommended tolerance. However, the Canadian MRL for banana is not equivalent to the U.S. recommended tolerance as the available crop field trial data supported a higher tolerance level. Therefore, harmonization is not possible at this time.

V. Conclusion

Therefore, the tolerances are established for combined residues of the insecticide imidacloprid, 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, and its metabolites containing the 6-chloropyridinyl moiety, all expressed as imidacloprid in or on caneberry subgroup 13A at 0.05 ppm; coffee, green bean at 0.80 ppm; seed of: Black mustard, borage, crambe, field mustard, flax, Indian mustard, Indian rapeseed, rapeseed, safflower, and sunflower at 0.05 ppm; atemoya, biriba, cherimoya, custard apple, ilama, soursop, and sugar apple at 0.30 ppm; almond hulls at 4.0 ppm; pistachio at 0.05 ppm; tree nut group 14 at 0.05 ppm; pomegranate at 0.90 ppm; banana at 0.50 ppm; herb subgroup, 19A, herbs, dried at 48.0 ppm and herb subgroup, 19A herbs, fresh at 8.0 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR

67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: August 1, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.472 is revised to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

(a) *General.* Tolerances are established permitting the combined residues of the insecticide imidacloprid (1-[6-chloro-3-pyridinyl) methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, in or on the following food commodities:

Commodity	Parts Per Million
Acerola	1.0
Almond, hulls	4.0
Apple	0.5
Apple, wet pomace	3.0
Atemoya	0.30
Artichoke, globe	2.5
Avocado	1.0
Banana	0.50
Barley, grain	0.05
Barley, hay	0.5
Barley, straw	0.5
Beet, sugar, roots	0.05
Beet, sugar, tops	0.5
Beet, sugar, molasses	0.3
Biriba	0.30
Blueberry	3.5
Borage, seed	0.05
Caneberry, subgroup 13A	0.05
Canistel	1.0
Canola, seed	0.05
Cattle, fat	0.3
Cattle, meat byproducts	0.3
Cattle, meat	0.3
Cherimoya	0.3
Citrus, dried pulp	5.0
Coffee, green bean	0.80
Corn, field, forage	0.10
Corn, field, grain	0.05
Corn, field, stover	0.20
Corn, pop, grain	0.05
Corn, pop, stover	0.20
Corn, sweet, forage	0.10
Corn, sweet, kernel plus cob with husks removed	0.05
Corn, sweet, stover	0.20
Cotton, gin byproducts	4.0
Cotton, undelinted seed	6.0
Cotton, meal	8.0
Crambe, seed	0.05
Cranberry	0.05
Currant	3.5
Custard apple	0.30
Egg	0.02
Elderberry	3.5
Feijoa	1.0
Flax, seed	0.05
Fruit, citrus, group 10	0.7
Fruit, pome, group 11	0.6
Fruit, stone, group 12	3.0
Goat, fat	0.3
Goat, meat byproducts	0.3
Goat, meat	0.3
Gooseberry	3.5
Grape, juice	1.5
Grape, pomace (wet or dried)	5.0
Grape, raisin	1.5
Grape, raisin, waste	15.0
Grape	1.0
Guava	1.0
Herbs subgroup 19A, dried herbs	48.0
Herbs subgroup 19B, fresh herbs	8.0
Hog, fat	0.3
Hog, meat byproducts	0.3
Hog, meat	0.3
Hop, dried cone	6.0
Horse, fat	0.3
Horse, meat byproducts	0.3
Horse, meat	0.3
Huckleberry	3.5
Ilama	0.30
Jaboticaba	1.0
Juneberry	3.5
Leaf petioles subgroup 4B	6.0
Leafy greens subgroup 4A	3.5
Lettuce, head and leaf	3.5
Lingonberry	3.5
Longan	3.0
Lychee	3.0
Mango	1.0
Milk	0.1
Mustard, black, seed	0.05
Mustard, field, seed	0.05
Mustard, Indian, seed	0.05
Mustard, rapeseed, seed	0.05
Mustard, seed	0.05
Nut, tree, group 14	0.05
Oats, forage	2.0
Oats, grain	0.05
Oats, hay	6.0
Oats, straw	3.0
Okra	1.0
Passionfruit	1.0
Papaya	1.0
Pecans	0.05
Persimmon	3.0
Pistachio	0.05
Pomegranate	0.90
Potato, chip	0.4
Potato, waste	0.9
Poultry, fat	0.05
Poultry, meat byproducts	0.05
Poultry, meat	0.05
Pulasan	3.0
Rambutan	3.0
Rapeseed, seed	0.05
Rye, forage	2.0
Rye, grain	0.05
Rye, hay	6.0
Rye, straw	3.0
Safflower, seed	0.05
Salal	3.5
Sapodilla	1.0
Sapote, black	1.0
Sapote, mamey	1.0
Sheep, fat	0.3
Sheep, meat byproducts	0.3
Sheep, meat	0.3
Sorghum, forage	0.10
Sorghum, grain	0.05
Sorgum, stover	0.10
Soursop	0.30
Soybean, meal	4.0
Soybean, seed	1.0
Spanish lime	3.0
Star apple	1.0
Starfruit	1.0
Strawberry	0.50

Commodity	Parts Per Million
Sugar apple	0.30
Sunflower, seed	0.05
Tomato, paste	6.0
Tomato, pomace (wet or dried)	4.O
Tomato, puree	3.0
Vegetable, brassica leafy, group 5	3.5
Vegetable, cucurbit, group 9	0.5
Vegetable, fruiting, group 8	1.0
Vegetable, leaves of root and tuber, group 2	4.0
Vegetable, legume, except soybean, group 6	4.0
Vegetable, root and tuber, group 1, except sugar beet	0.40
Watercress	3.5
Watercress, upland	3.5
Wax jambu	1.0
Wheat, forage	7.0
Wheat, grain	0.05
Wheat, hay	0.5
Wheat, straw	0.5

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

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

(d) *Indirect or inadvertent residues.* Tolerances are established for indirect or inadvertent combined residues of the insecticide imidacloprid (1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine) and its metabolites containing the 6-chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, when present therein as a result of the application of the pesticide to growing crops listed in this section and other non-food crops as follows:

Commodity	Parts Per Million
Forage, fodder, and straw of Grain, cereal crop group (forage)	2.0
Forage, fodder, and straw of Grain, cereal crop group (hay)	6.0
Forage, fodder, and straw of Grain, cereal crop group (stover)	0.3
Forage, fodder, and straw of Grain, cereal crop group (straw)	3.0
Grain, cereal, group 15	0.05
Sweet corn, kernel plus cob with husks removed	0.05
Vegetable, foliage of legume, group 7	2.5
Vegetable, legume, crop group 6	0.3

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0366; FRL–8081–7]

Bifenthrin; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of bifenthrin in or on Vegetable, tuberous and corm, subgroup 1C; Brassica, leafy greens, subgroup 5B; turnip, greens; Pea and bean, dried shelled, except soybean, subgroup 6C; coriander, leaves; coriander, dried leaves; coriander, seed and okra. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). EPA is also deleting an existing time-limited bifenthrin tolerance that is no longer needed as a result of this action.

DATES: This regulation is effective August 11, 2006. Objections and requests for hearings must be received on or before October 10, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0366. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; e-mail address: *madden.barbara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA

procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0366 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 10, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0366, 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.

II. Background and Statutory Findings

In the **Federal Register** of May 10, 2006 (71 FR 27246) (FRL–8067–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP) 2E6451, 3E6882, 2E6492, 2E6423, and 4E6843 by Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. The petitions requested that 40 CFR 180.442 be amended by establishing tolerances for residues of the insecticide bifenthrin (2-methyl [1,1′-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate, in or on leafy brassica greens, subgroup 5B at 3.0 parts per million (ppm) and turnip greens at 3.0 ppm (2E6451); tuberous and corm vegetables, subgroup 1C at 0.1 ppm (3E2688); okra at 0.5 ppm (2E6492); dried shelled pea and bean (except soybean), subgroup 6C at 0.1 ppm (2E6423); and cilantro at 5.0 ppm (4E6843). That notice included a summary of the petition prepared by FMC, the registrant. There were no comments received in response to the notice of filing. The proposed tolerances were later amended as follows: Vegetable, tuberous and corm, subgroup 1C at 0.05 ppm (3E2688); Brassica, leafy greens, subgroup 5B at 3.5 ppm and turnip, greens at 3.5 ppm (2E6451); Pea and bean, dried shelled, except soybean, subgroup 6C at 0.15 ppm, coriander, leaves at 6.0 ppm, coriander, dried leaves at 25 ppm, and coriander, seed at 5.0 ppm (4E6843); okra at 0.5 ppm (2E6492). EPA is also deleting an established tolerance in 40 CFR 180.442(b) that is no longer needed, as a result of this action. The tolerance deletion under 40 CFR 180.442(b) is a time-limited tolerance established under section 18 emergency exemptions that is superceded by the establishment of a general tolerance for bifenthrin section 40 CFR 180.442(a). The revision to 40 CFR 180.442 is as follows: Delete the time-limited tolerance for sweet potato, roots at 0.05 ppm under 40 CFR 180.442(b). The tolerance for vegetable, tuberous and corm, subgroup 1C at 0.05 ppm that is being established includes sweet potato.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of bifenthrin (2-methyl [1,1′-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate on Brassica, leafy greens, subgroup 5B at 3.5 ppm; coriander, dried leaves at 25 ppm; coriander, leaves at 6.0 ppm; coriander, seed at 5.0 ppm; okra at 0.50 ppm; Pea and bean, dried shelled, except soybean, subgroup 6C at 0.15 ppm; turnip, greens at 3.5 ppm; and Vegetable, tuberous and corm, subgroup 1C at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by bifenthrin as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effectlevel (LOAEL) from the toxicity studies can be found at *http://www.epa.gov/fedrgstr/EPA-PEST/2003/April/Day-30/p10400.htm*.

B. Toxicological Endpoints

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

of the human population as well as other unknowns.

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

A summary of the toxicological endpoints for bifenthrin used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of April 30, 2003 (68 FR 23056) (FRL–7304–4).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.442) for the residues of bifenthrin (2-methyl [1,1'-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate in or on a variety of raw agricultural commodities. In addition, tolerances for livestock commodities have been established for the residues of bifenthrin (2-methyl [1,1'-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate in or on egg; milk fat; meat, fat, and meat byproducts (mbyp) of cattle, goat, hog, horse, poultry and sheep. Risk assessments were conducted by EPA to assess dietary exposures from bifenthrin in food as follows:

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

The Dietary Exposure Evaluation Model (DEEM-FCID(™), Version 2.03) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: A Tier 3, acute probabilistic dietary exposure assessment was conducted for all registered and pending food uses and drinking water. Anticipated residues (ARs) were developed based on 1998–2003 USDA's Pesticide Data Program (PDP) monitoring data, Food and Drug Administration (FDA) data, or field trial data for bifenthrin. ARs were further refined using percent crop treated (PCT) data and processing factors where appropriate.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID(™), Version 2.03), which incorporates food consumption data as reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A dietary exposure assessment was conducted for all registered and pending food uses and drinking water. Anticipated residues (ARs) were developed based on 1998–2003 USDA's Pesticide Data Program (PDP) monitoring data, Food and Drug Administration (FDA) data, or field trial data for bifenthrin. ARs were further refined using percent crop treated (PCT) data and processing factors where appropriate.

iii. *Cancer.* Bifenthrin was classified as a group "C" (possible human carcinogen). The Agency concluded that the chronic risk and exposure assessment, making use of the cPAD, to be protective of any potential carcinogenic risk. Therefore, no separate exposure assessment was conducted pertaining to cancer risk.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such Data Call-Ins for information relating to anticipated residues as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such Data Call-Ins will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

Artichokes at 10%, Blackberries at 20%, Broccoli at 1%, Cabbage at 10%, Cantaloupe at 15%, Cauliflower at 1%, Corn at 15%, Sweet corn at 15%, Cucumber at 5%, Brussel Sprouts at 1%, Dried Beans at 9%, Dried Peas at 9%, Grapes at 1%, Orange at 1%, Lettuce at 1%, Sweet peas at 5%, Pears at 1%, Nonbell Peppers at 5%, Potatoes at 39%, Honeydew melon at 55%, Pumpkin and squash at <15%, Raspberry at 65%, Spinach at 1%, Tomato at 5%, Watermelon at 5%, Nuts (almonds, pecan, and walnuts) at 1%, Hops at 63%, Green Beans at 25%, Sweet Bell Pepper at 5%, Okra at 47%, Strawberry at 15%, Cotton at <1%, Sorghum < at 1%, and Soybeans at <1%.

EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available federal, state, and private market survey data for that use, averaging by year, averaging across all years, and rounding up to the nearest multiple of five percent except for those situations in which the average PCT is less than one. In those cases <1% is used as the average and <2.5% is used as the maximum. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the single maximum value reported overall from available federal, state, and private market survey data on the existing use, across all years, and rounded up to the nearest multiple of five percent. In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), Proprietary Market Surveys, and the National Center for Food and Agriculture Policy (NCFAP) for the most recent 6 years.

EPA estimates projected percent crop treated (PPCT) for a new pesticide use by assuming that the PCT during the pesticide's initial 5 years of use on a specific use site will not exceed the average PCT of the market leader (i.e., the one with the greatest PCT) on that site over the three most recent surveys. Comparisons are only made among pesticides of the same pesticide types (i.e., the dominant miticide on the use site is selected for comparison with the new miticide). The PCTs included in the average may be each for the same pesticide or for different pesticides since the same or different pesticides may dominate for each year selected. Typically, EPA uses USDA/NASS as the source for the PCT data because they are publicly available. When a specific use site is not surveyed by USDA/NASS, EPA uses proprietary data and calculates the estimated PCT.

This estimated PPCT, based on the average PCT of the market leader, is appropriate for use in the chronic dietary risk assessment. This method of estimating a PPCT for a new use of a registered pesticide or a new pesticide produces a high-end estimate that is unlikely, in most cases, to be exceeded during the initial 5 years of actual use. The predominant factors that generally can be analyzed based on readily available information and that bear on whether the estimated PPCT could be exceeded are whether there are concerns with pest pressures as indicated in emergency exemption requests or other readily available information, whether the new pesticide controls a broader spectrum of pests than the dominant pesticide(s) and/or whether the new pesticide has a shorter pre-harvest interval (PHI).

All such relevant information currently available has been considered for bifenthrin on dry beans/peas, potatoes and okra, and it is unlikely that actual PCT for bifenthrin will exceed the estimated PPCT for bifenthrin on each of these three crops during the next five years mainly because of the relatively longer PHI of bifenthrin relative to each of the respective leading insecticides.

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

Based on the First Index Reservoir Screening Tool and Screening Concentrations in Groundwater models, the estimated environmental concentrations (EECs) of bifenthrin for acute exposures are estimated to be 0.014 parts per billion (ppb) for surface water and 0.00300 ppb for ground water. The EECs for chronic exposures are estimated to be 0.0140 ppb for surface water and 0.00300 ppb for ground water.

The estimated drinking water concentrations (EDWCs) for bifenthrin were calculated based on a maximum application rate of 0.5 lb ai/A/season. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model (DEEM-FCID(™), Version 2.03). For acute dietary risk assessment, the peak water concentration value of 0.0140 ppb was used to access the contribution to drinking water. For chronic dietary risk assessment, the annual average concentration of 0.0140 ppb was used to access the contribution to drinking water.

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

Bifenthrin is currently registered for both indoor and outdoor residential non-dietary sites. Adults are potentially exposed to bifenthrin residues during residential application of bifenthrin. Adults and children are potentially exposed to bifenthrin residues after application (post-application) of bifenthrin products in residential settings. Exposure estimates were generated for residential handler exposures, and potential post-application contact with lawn, soil, and treated indoor surfaces using the EPA's Draft Standard Operating Proceedures (SOPs) for Residential Exposure Assessment, and dissipation data from a turf transferable residue (TTR) study. These estimates are considered conservative, but appropriate, since the study data were generated at maximum application rates.

The risk assessment was conducted using the following residential exposure assumptions: Short- to intermediate-term dermal and inhalation exposures may occur for residential handlers of bifenthrin products. Although residential handler risks from inhalation exposures to bifenthrin gas/vapor are considered unlikely, since the vapor pressure of bifenthrin is low, inhalation exposure was assessed for aerosols/particulates during residential mixing, loading, and application of granular products. Adults and children may be potentially exposed to bifenthrin residues after application of bifenthrin products in residential settings. Short- and intermediate-term post-application dermal exposures for adults, and short- and intermediate-term post-application dermal and incidental oral exposures for children are anticipated. Exposure estimates were generated for potential contact with lawn, soil, and treated indoor surfaces.

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

Bifenthrin is a member of the pyrethroid class of pesticides. EPA is not currently following a cumulative risk approach based on a common mechanism of toxicity for the pyrethroids. Although all pyrethroids alter nerve function by modifying the normal biochemistry and physiology of nerve membrane sodium channels, available data show that there are multiple types of sodium channels and it is currently unknown whether the pyrethroids as a class have similar effects on all channels or whether modifications of different types of sodium channels would have a cumulative effect. Nor do we have a clear understanding of effects on key downstream neuronal function, e.g., nerve excitability, or how these key events interact to produce their compound specific patterns of neurotoxicity. Without such understanding, there is no basis to make a common mechanism of toxicity finding. There is ongoing research by the EPA's Office of Research and Development and pyrethroid registrants to evaluate the differential biochemical and physiological actions of pyrethroids in mammals. This research is expected to be completed by 2007. When available, the Agency will consider this research and make a determination of common mechanism as a basis for assessing cumulative risk. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* EPA concluded that there is not a concern for prenatal and/or postnatal toxicity resulting from exposure to bifenthrin. There was no quantitative or qualitative evidence of increased susceptibility of rat or rabbit fetuses to in utero exposure to bifenthrin in developmental toxicity studies and no quantitative or qualitative evidence of increased susceptibility of neonates (as compared to adults) to bifenthrin in a 2–generation reproduction study in rats. In addition, there are no concerns or residual uncertainties for prenatal and/or postnatal toxicity following exposure to bifenthrin.

3. *Conclusion.* EPA has concluded that in light of the lack of the developmental neurotoxicity (DNT) study the acute RfD, based on the no observed adverse effect level (NOAEL) of 32.8 milligrams/kilograms/day (mg/kg/day) be divided by an uncertainty factor (UF) of 1,000 (10X for interspecies extrapolation, 10X for intraspecies variations, and a 10X FQPA factor for an incomplete database for lack of a DNT study). EPA has concluded that, based on reliable data, an additional FQPA factor of 3X in the form of a database uncertainty factor is required for all repeated-dose exposure scenarios to address the lack of a developmental neurotoxicity study (DNT) because existing data indicate that the results of the DNT study might impact the current toxicology endpoint selection and RfDs. Further explanation for the choice of 3X is provided in Unit III.D. of the final rule published in the **Federal Register** of April 30, 2003 (68 FR 23056) (FRL–7304–4). An UFDB of 10X is applied to single dose exposure scenarios (i.e., acute RfD) to account for the lack of the DNT. Acceptable developmental studies in the rat and rabbit revealed no increased susceptibility of rat or rabbit fetuses following *in utero* exposure to bifenthrin. In addition, there was no evidence of increased susceptibility of young rats in the reproduction study with bifenthrin. There are no residual uncertainties in the exposure databases. The dietary food exposure assessment were refined using percent crop treated (CT) information, and anticipated residue (AR) values calculated from the available monitoring data and field trial results. Dietary drinking water exposure is based on conservative modeling estimates, and the Agency's Residential standard operating procedures (SOPs), in conjunction with some chemical specific data, were used to assess residential handler and post-application exposure to adults and children. These assessments will not underestimate the exposure and risks posed by bifenthrin.

E. Aggregate Risks and Determination of Safety

The Agency currently has two ways to estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses. First, a screening assessment can be used, in which the Agency calculates drinking water levels of comparison (DWLOCs) which are used as a point of comparison against estimated drinking water concentrations (EDWCs). The DWLOC values are not regulatory standards for drinking water, but are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. More information on the use of DWLOCs in dietary aggregate risk assessments can be found at *http://www.epa.gov/oppfead1/trac/science/screeningsop.pdf.* More recently the Agency has used another approach to estimate aggregate exposure through food, residential and drinking water pathways. In this approach, modeled surface and ground water EDWCs are directly incorporated into the dietary exposure analysis, along with food. This provides a more realistic estimate of exposure because actual body weights and water consumption from the CSFII are used. The combined food and water exposures are then added to estimated exposure from residential sources to calculate aggregate risks. The resulting exposure and risk estimates are still considered to be high end, due to the assumptions used in developing drinking water modeling inputs.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and drinking water to bifenthrin will occupy 24% of the aPAD for the U.S. population, 18% of the aPAD for females 13 years and older, 38% of the aPAD for all infants less than 1 year old, and 43% of the aPAD for children 3-5 years old, the subpopulation at greatest exposure. Therefore, EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to bifenthrin from food and drinking will utilize 10% of the cPAD for the U.S. population, 12% of the cPAD for All infants less than 1 year old, and 26% of the cPAD for children 1-2 years old, the subpopulation at greatest exposure. Based the use pattern, chronic residential exposure to residues of bifenthrin is not expected. Therefore, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Bifenthrin is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for bifenthrin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food, water and residential exposures aggregated result in aggregate MOEs of 530 for the general U.S. population, 380 for all infants less than 1 year old, and 350 for children 1-2 years old the subpopulation at greatest exposure. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food, water and residential uses. Therefore, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Bifenthrin is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for bifenthrin.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food, water and residential exposures aggregated result in aggregate MOEs of 530 for the general U.S. population, 380 for all infants less than 1 year old, and 350 for children 1-2 years old the subpopulation at greatest exposure. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food, water, and residential uses. Therefore, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population.* The Agency considers the chronic aggregate risk assessment, making use of the cPAD, to be protective of any aggregate cancer risk. See Unit III.E.2.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography (GC)/electron-capture detection (ECD)) are available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

The Codex Alimentarius Commission has established maximum residue limits (MRLs) for residues of bifenthrin in/on various commodities. Codex MRLs are expressed in terms of bifenthrin *per se*, as are U.S. tolerances. The only established Codex MRL relevant to the current petitions is for potato at 0.05 mg/kg. As the recommended tolerance of tuberous and corm vegetables is also 0.05 ppm, this tolerance is in harmony with the Codex MRL for potato. There are no equivalent Canadian or Mexican MRLs for the tolerances being requested in the current petition.

V. Conclusion

Therefore, tolerances are established for residues of bifenthrin, (2-methyl [1,1′-biphenyl]-3-yl) methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate on Brassica, leafy greens, subgroup 5B at 3.5 ppm; coriander, dried leaves at 25 ppm; coriander, leaves at 6.0 ppm; coriander, seed at 5.0 ppm; okra at 0.50 ppm; Pea and bean, dried shelled, except soybean, subgroup 6C at 0.15 ppm; turnip, greens at 3.5 ppm; and Vegetable, tuberous and corm, subgroup 1C at 0.05 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as addedby the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate,

the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated:August 1, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—AMENDED

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

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

■ 2. Section 180.442 is amended by alphabetically adding commodities to the table in paragraph (a) and by removing Sweet potato, roots from the table in paragraph (b) to read as follows:

§ 180.442 Bifenthrin; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * *	*
Brassica, leafy greens, subgroup 5B	3.5
* * * *	*
Coriander, dried leaves	25
Coriander, leaves	6.0
Coriander, seed	5.0
* * * *	*
Okra	0.50
Pea and bean, dried shelled, expect soybean, subgroup 6C	0.15
* * * *	*
Turnip, greens	3.5
* * * *	*
Vegetable, tuberous and corm, subgroup 1C	0.05

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[FR Doc. E6–13058 Filed 8–10–06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0495; FRL–8086–1]

Sanitizers with No Food-Contact Uses in Registered Pesticide Products; Revocation of Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking eight exemptions from the requirement of a tolerance that are associated with six food-contact surface sanitizing solutions because these specific tolerance exemptions correspond to uses no longer current or registered in the United States under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and because there are insufficient data to make the determination of safety required by the Federal Food, Drug, and Cosmetic Act (FFDCA). These ingredients are subject to reassessment by August 2006 under section 408(q) of FFDCA, as amended by the Food Quality Protection Act of 1996 (FQPA). The eight tolerance exemptions are considered "reassessed" for purposes of FFDCA's section 408(q) and count as a tolerance reassessment toward the August 2006 review deadline.

DATES: This rule is effective 90 days from August 11, 2006. Objections and requests for hearings must be received on or before October 10, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit V. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0495. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Laura Bailey, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460-0001; telephone number: 703-308-6212; e-mail address: *bailey.laura@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. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may

file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0495 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 10, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0495, 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.

II. Background and Statutory Findings

A. What Action is the Agency Taking?

In the **Federal Register** of June 9, 2006 (71 FR 33416-3419; FRL–8072–8), EPA issued a proposed rule to revoke 10 exemptions from the requirement of a tolerance that are associated with 7 ingredients because those substances are no longer contained in pesticide products. The proposed rule provided a 30–day comment period that invited public comment for consideration and for support of tolerance exemption retention under the FFDCA standards.

EPA received one comment expressing a need to retain two exemptions and an interest in providing data to support these exemptions from the requirement of a tolerance for one ingredient. Therefore, in this final rule, EPA is revoking eight exemptions from the requirement of a tolerance that are associated with six ingredients because these specific tolerance exemptions correspond to uses no longer current or registered under FIFRA in the United States. The tolerance exemptions revoked by this final rule are no longer necessary to cover residues of the relevant pesticide chemicals in or on domestically treated commodities or commodities treated outside but imported into the United States.

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

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

EPA's general practice is to revoke tolerances and tolerance exemptions for residues of pesticide chemicals on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances and tolerance exemptions that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances and tolerance exemptions even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances and tolerance exemptions for unregistered pesticide chemicals in order to prevent potential misuse.

C. When do These Actions Become Effective?

These actions become effective 90 days following publication of a final rule in the **Federal Register** to ensure that all affected parties receive notice of EPA's actions. For this rule, the revocations will affect exemptions for active or inert ingredients which have not been used in registered products, in some cases, for many years. The Agency believes that existing stocks of pesticide products containing active or inert ingredients covered by the exemptions have been completely exhausted and that treated commodities have had sufficient time for passage through the channels of trade. However, if EPA is presented with information that existing stocks would still be available and that information is verified, the Agency will consider extending the expiration date of the exemption. If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under **SUPPLEMENTARY INFORMATION**.

Any commodities listed in the regulatory text of this document that are treated with the pesticide chemicals subject to this final rule, and that are in the channels of trade following the tolerance exemption revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residues of these pesticide chemicals in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide chemical at a time and in a manner that was lawful under FIFRA, and

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under an exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide chemical was applied to such food.

D. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2006, to reassess the tolerances and exemptions from tolerances that were in existence on August 2, 1996. This document revokes eight tolerance exemptions for food-contact surface sanitizing solutions under FFDCA section 408(q), as amended by FQPA in 1996.

III. Statutory and Executive Order Reviews

In this final rule, EPA is revoking specific tolerance exemptions established under section 408(d) of FFDCA. The Office of Management and Budget (OMB) has exempted this type of action from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticide listed in this rule, the Agency hereby certifies that this final action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with pesticides containing the ingredients being revoked in this notice. Furthermore, for the pesticide named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change the EPA's previous analysis. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this final rule does not have any "tribal implications" as described in Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This final rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this final rule.

List of Subjects in 40 CFR Part 180

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

Dated: August 2, 2006.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

§ 180.940 [Amended]

■ 2. Section 180.940 is amended as follows:

■ i. In the table to paragraph (a) by removing the entry for "Potassium Permanganate" (CAS Reg. No.7722–64–7).

■ ii. In the table to paragraph (b) by removing the entry for "Sodium mono– and didodecylphenoxy–benzenedisulfonate" (CAS Reg. No. None).

■ iii. In the table to paragraph (c) by removing the entries for "Alkyl (C_{12}–C_{15}) monoether of mixed (ethylene-propylene) polyalkylene glycol, cloud point of 70–77 °C in 1% aqueous solution, average molecular weight (in amu), 807;" (CAS Reg. No. None); "Benzensulfonamide, N-chloro-4-methyl, sodium salt;" (CAS Reg. No. 127–65–1); "Benzenesulfonic acid, oxybis[dodecyl-" (CAS Reg. No. 30260–73–2); "Calcium bromide" (CAS Reg. No. 7789–41–5); "Potassium Permanganate" (CAS Reg. No.7722–64–7); and "Sodium mono-and didodecylphenoxy-benzenedisulfonate" (CAS Reg. No. None)

[FR Doc. E6–13173 Filed 8–10–06; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045–6045–01; I.D. 080806B]

Fisheries of the Exclusive Economic Zone Off Alaska; Rock Sole, Flathead Sole, and "Other Flatfish" by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing directed fishing for rock sole, flathead sole, and "other flatfish" by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2006 halibut bycatch allowance specified for the trawl rock sole, flathead sole, and "other flatfish" fishery category in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 8, 2006, through 2400 hrs, A.l.t., December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

The 2006 halibut bycatch allowance specified for the trawl rock sole, flathead sole, and "other flatfish" fishery category in the BSAI is 779 metric tons as established by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the 2006 halibut bycatch allowance specified for the trawl rock sole, flathead sole, and "other flatfish" fishery category in the BSAI has been caught. Consequently, NMFS is closing directed fishing for rock sole, flathead sole, and "other flatfish" by vessels using trawl gear in the BSAI.

"Other flatfish" includes Alaska plaice, as well as all other flatfish species except for Pacific halibut (a prohibited species), Greenland turbot, rock sole, yellowfin sole, flathead sole, and arrowtooth flounder.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for rock sole, flathead sole, and "other flatfish" by vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 7, 2006.

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

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: August 8, 2006.

James P. Burgess,

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

[FR Doc. 06–6868 Filed 8–8–06; 3:39 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045–6045–01; I.D. 080806C]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for yellowfin sole in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2006 yellowfin sole total allowable catch (TAC) in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 8, 2006, through 2400 hrs, A.l.t., December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

The 2006 yellowfin sole TAC in the BSAI is 88,846 metric tons (mt) as established by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006) and the release of reserves on July 24, 2006 (71 FR 41738, July 24, 2006)

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the 2006 yellowfin sole TAC in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 88,146 mt, and is setting aside the remaining 700 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for yellowfin sole in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of yellowfin sole in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 7, 2006.

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

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

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

Dated: August 8, 2006.

James P. Burgess,

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

[FR Doc. 06–6869 Filed 8–8–06; 3:39 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 155
Friday, August 11, 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 39

[Docket No. FAA–2006–24709; Directorate Identifier 2006–CE–28–AD]

RIN 2120–AA64

Airworthiness Directives; Glasflugel Models H 301 "Libelle," H 301B "Libelle," Standard "Libelle," and Standard Libelle-201B Sailplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Glasflugel Models H 301 "Libelle," H 301B "Libelle," Standard "Libelle," and Standard Libelle-201B sailplanes. This proposed AD would require you to replace the rudder actuator arm (manufactured according to drawing No. 301–45–10) with an improved design rudder actuator arm (manufactured following drawing No. 301–45–13). This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are proposing this AD to detect and correct damage to the rudder actuator arm, which could result in failure of the rudder actuator arm. This failure could result in reduced or loss of rudder control.

DATES: We must receive comments on this proposed AD by September 11, 2006.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Glasflugel, Glasfaser-Flugzeug-Service GmbH, Hansjory Steifeneder, Hofener Weg, 72582 Grabenstetten, Federal Republic of Germany; telephone: 011 49 7382 1032.

FOR FURTHER INFORMATION CONTACT: Gregory Davison, Glider Project Officer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, "FAA–2006–24709; Directorate Identifier 2006–CE–28–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified FAA that an unsafe condition may exist on all Glasflugel Models H 301 "Libelle," H 301B "Libelle," Standard "Libelle," and Standard Libelle-201B sailplanes. The LBA reports several occurrences of damage to the rudder actuator arm caused by inappropriately lifting the fuselage at the rudder during ground handling. Visual inspections of the actuator arm revealed the damage to the rudder actuator arm.

This condition, if not corrected, could result in failure of the rudder actuator arm. This failure could result in reduced or loss of rudder control.

Relevant Service Information

We have reviewed Glasfaser-Flugzeug-Service GmbH Hansjörg Streifeneder Technical Note No. 201–35 and No. 301–39, dated March 1, 2005.

The service information describes procedures for replacing the rudder actuator arm (manufactured according to drawing No. 301–45–10) with an improved design actuator arm (manufactured following drawing No. 301–45–13).

Foreign Airworthiness Authority Information

The LBA classified this service bulletin as mandatory and issued German AD Number D–2005–118, dated April 4, 2005, to ensure the continued airworthiness of these sailplanes in Germany.

These Glasflugel Models H 301 "Libelle," H 301B "Libelle," Standard "Libelle," and Standard Libelle-201B sailplanes are manufactured in Germany and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we have examined the LBA's findings, evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design that are certificated for operation in the United States.

This proposed AD would require you to replace the rudder actuator arm (manufactured according to drawing No. 301–45–10) with an improved design actuator arm (manufactured following drawing No. 301–45–13).

Costs of Compliance

We estimate that this proposed AD would affect 160 sailplanes in the U.S. registry.

We estimate the following costs to do the proposed replacement of the rudder actuator arm (manufactured according to drawing No. 301–45–10):

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
3 work-hours × $80 per hour = $240	$150	$390	$62,400

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Glasflugel: Docket No. FAA–2006–24709; Directorate Identifier 2006–CE–28–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by September 11, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD affects Models H 301 "Libelle," H 301B "Libelle," Standard "Libelle," and Standard Libelle-201B sailplanes, all serial numbers, that are certificated in any category.

Unsafe Condition

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to detect and correct damage to the rudder actuator arm, which could result in failure of the rudder actuator arm. This failure could result in reduced or loss of rudder control.

Compliance

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

Actions	Compliance	Procedures
(1) Replace the rudder actuator arm (manufactured according to drawing No. 301–45–10) with an improved design actuator arm (manufactured following drawing No. 301–45–13).	Within the next 30 days after the effective date of this AD, unless already done.	Follow Glasfaser-Flugzeug-Service GmbH Hansjörg Streifeneder Technical Note No. 201–35 and No. 301–39, dated March 1, 2005.
(2) Do not install any rudder actuator arm (manufactured according to drawing No. 301–45–10).	As of the effective date of this AD	Not Applicable.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Standards Office, Small Airplane Directorate, FAA, ATTN: Gregory Davison, Glider Project Officer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(g) German AD Number D–2005–118, dated April 4, 2005, also addresses the subject of this AD. To get copies of the service information referenced in this AD, contact Glasflugel, Glasfaser-Flugzeug-Service GmbH, Hansjory Steifeneder, Hofener Weg, 72582 Grabenstetten, Federal Republic of Germany; telephone: 011 49 7382 1032. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW.,

Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov*. The docket number is Docket No. FAA–2006–24709; Directorate Identifier 2006–CE–28–AD.

Issued in Kansas City, Missouri, on August 4, 2006.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–13134 Filed 8–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25501; Airspace Docket No. 06–ACE–9]

Proposed Establishment of Class D Airspace; Fort Riley, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class D airspace area extending upward from the surface to and including 3,600 feet above sea level within a 3.7-mile radius of Fort Riley, Marshall Army Airfield, KS. The establishment of an air traffic control tower has made this action necessary.

DATES: Comments for inclusion in the Rules Docket must be received on or before September 15, 2006.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2006–25501/ Airspace Docket No. 06–ACE–9, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation Nassif Building at the above address.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2006–25501/Airspace Docket No. 06–ACE–9." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This notice proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class D airspace area extending upward from the surface to and including 3,600 feet above sea level within a 3.7-mile radius of Fort Riley, Marshall Army Airfield, KS. The establishment of an air traffic control tower has made this action necessary. The intended effect of this proposal is to provide controlled airspace for flight operations at Fort Riley, Marshall Army Airfield, KS. The area would be depicted on appropriate aeronautical charts.

Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9N, dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

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

This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority since it would contain flight operations at Fort Riley, Marshall Army Airfield, KS.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 16, 2005, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ACE KS D Fort Riley, KS

Fort Riley, Marshall Army Airfield, KS
(Lat. 39°03'19" N., long. 96°45'52" W.)
Junction City, Freeman Field, KS
(Lat. 39°02'36" N., long. 96°50'36" W.)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 3.7-mile radius of the Marshall Army Airfield excluding that airspace within R–3602B and excluding that airspace within a 1-mile radius of the Junction City, Freeman Field, KS. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, MO, on July 31, 2006.

Donna R. McCord,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 06–6861 Filed 8–10–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA 2006–24233; Airspace Docket 06–ANM–1]

Proposed Revision of Class E Airspace; Saratoga, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would revise Class E airspace at Saratoga, WY. Additional controlled airspace is necessary for the safety of Instrument Flight Rules (IFR) aircraft executing the new Area Navigation (RNAV), Global Positioning System (GPS) approach procedure at Saratoga/Shively Field, Saratoga, WY.

DATES: Comments must be received by September 25, 2006.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2006–24233 and Airspace Docket No. 06–ANM–1, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Federal Aviation Administration, Air Traffic Organization, Western En Route and Oceanic Service Area Office, 1601 Lind Avenue, SW., Renton, WA 98057; telephone 425 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2006–24233 and Airspace Docket No. 06–ANM–1) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2006–24233 and Airspace Docket No. 06–ANM–1". The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRM's

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

You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Air Traffic Organization, Western En Route and Oceanic Service Area Office, Airspace Branch, 1601 Lind Avenue, SW., Renton, WA 98057.

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Saratoga, WY. Additional Class E airspace is necessary for the safety of IFR aircraft executing the new RNAV, GPS approach procedure at Saratoga/Shively Field, Saratoga, WY. Controlled airspace is necessary where there is a requirement for IFR services, which include arrival, departure, and transitioning to/from the terminal or en route environment.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9N, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under 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, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 14 CFR 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 part 71.1 of the FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

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

* * * * *

ANM WY E5 Saratoga, WY [Revised]

Saratoga/Shively Field, WY
(Lat. 41°26′41″ N., long. 106°49′25″ W.)
Saratoga NDB
(Lat. 41°26′42″ N., long. 106°49′56″ W.)
Cherokee VOR/DME
(Lat. 41°45′21″ N., long. 107°34′55″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Shively Field Airport and within 3.1 miles each side of the 342° bearing from the Saratoga NDB extending from the 6.9-mile radius to 10 miles northwest of the NDB; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 41°54′45″ N., long. 106°47′15″ W.; to lat. 41°17′00″ N., long. 106°32′30″ W.; to lat. 41°00′00″ N., long. 107°44′00″ W.; to the Cherokee VOR/DME; to the point of beginning.

* * * * *

Issued in Seattle, Washington, on July 19, 2006.

John Warner,

Manager, Planning and Requirements, Western Service Area.

[FR Doc. E6–13170 Filed 8–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–23270; Airspace Docket No. 05–ANM–16]

Proposed Revision to Class E Airspace; Laramie, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would revise Class E airspace at Laramie, WY. Additional controlled airspace is necessary to accommodate aircraft executing a procedure turn (PT) maneuver as part of the instrument approach procedure (IAP) at Laramie Regional Airport. Additional airspace also is necessary to accommodate aircraft executing a new holding pattern published at Laramie Regional Airport, Laramie, WY. This action would improve the safety of Instrument Flight Rules (IFR) aircraft executing this new procedure at Laramie Regional Airport. Additionally, this action reflects a change in the airport name from General Brees Field to Laramie Regional Airport.

DATES: Comments must be received on or before September 25, 2006.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2005–23270 and Airspace Docket No. 05–ANM–16, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Federal Aviation Administration, Air Traffic Organization, Western En Route and Oceanic Service Area Office, 1601 Lind Avenue, SW., Renton, WA 98057; telephone 425 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2005–23270 and Airspace Docket No. 05–ANM–16) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2005–23270 and Airspace Docket No. 05–ANM–16." The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRM's

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

You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Air Traffic Organization, Western En Route and Oceanic Service Area Office, Airspace Branch, 1601 Lind Avenue, SW., Renton, WA 98057.

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Laramie Regional Airport, Laramie, WY. Additional controlled airspace is necessary to accommodate aircraft executing a PT maneuver as part of the IAP at Laramie Regional Airport. Additional controlled airspace also is necessary to accommodate aircraft executing a new holding pattern published at Laramie Regional Airport, Laramie, WY. Controlled airspace is necessary where there is a requirement for IFR services, which include arrival, departure, and transitioning to/from the terminal or en route environment. Also, on December 30, 1992, Brees Field Airport (aka General Brees Field) was officially changed to Laramie Regional Airport, Laramie, WY. This action would reflect that change.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9N, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under 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, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 14 CFR 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 the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

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

* * * * *

ANM WY E5 Laramie, WY [Revised]

Laramie Regional Airport, WY
(Lat. 41°18′43″ N., long. 105°40′30″ W.)
Laramie VORTAC
(Lat. 41°20′16″ N., long. 105°43′15″ W.)
Medicine Bow VOR/DME
(Lat. 41°50′44″ N., long. 106°00′15″ W.)

That airspace extending upward from 700 feet above the surface within a 7.9-mile radius of Laramie Regional Airport, and within 4.8 miles south and 8.3 miles north of the Laramie VORTAC 301° radial extending from the 7.9-mile radius to 16.1 miles northwest of the VORTAC, and within 4.3 miles each side of the Laramie VORTAC 126° radial extending from the 7.9-mile radius to 18.3 miles southeast of the VORTAC; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at the Medicine Bow VOR/DME southwest to lat. 41°30′00;″ N., long. 106°27′00″ W., thence southeast to lat. 41°00′00″ N., long. 105°30′00″W., thence east along lat. 41°00′00″ N., to long. 105°15′00″ W., thence north to 41°30′00″ N., long. 105°15′00″ W., thence to point of beginning.

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Issued in Seattle, Washington, on July 19, 2006.

John Warner,

Manager, Planning and Requirements, Western Service Area.

[FR Doc. E6–13169 Filed 8–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20381; Airspace Docket No. 05–ANM–3]

Proposed Revision of Class E Airspace; Gillette, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would revise Class E airspace at Gillette, WY. Additional Class E airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Gillette-Campbell County Airport. This change is proposed to improve the safety of Instrument Flight Rules (IFR) aircraft executing the new RNAV GPS SIAP at Gillette-Campbell County Airport, Gillette, WY.

DATES: Comments must be received on or before September 25, 2006.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2005–20381 and Airspace Docket No. 05–ANM–3, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Federal Aviation Administration, Air Traffic Organization, Western En Route and Oceanic Service Area Office, 1601 Lind Avenue, SW., Renton, WA 98057; telephone 425–227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2005–20381 and Airspace Docket No.

05–ANM–3) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number).

You may also submit comments through the Internet at *http://dms.dot.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2005–20381 and Airspace Docket No. 05–ANM–3." The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRM's

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

You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Air Traffic Organization, Western En Route and Oceanic Service Area Office, Airspace Branch, 1601 Lind Avenue, SW., Renton, WA 98057.

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

The Proposal

The FAA is proposing to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Gillette-Campbell County Airport, Gillette, WY. The establishment of a new RNAV GPS SIAP requires additional controlled airspace. Additional controlled airspace extending upward from 1,200 feet above the surface of the earth is necessary for the safety of IFR aircraft executing the new RNAV GPS SIAPs at Gillette-Campbell County Airport. Controlled airspace is necessary where there is a requirement for IFR services, which include arrival, departure, and transitioning to/from the terminal or en route environment.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9N, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under 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, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 14 CFR 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 the FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

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

* * * * *

ANM WY E5 Gillette, WY [Revised]

Gillette-Campbell County Airport, WY
(Lat. 44°20'56" N., long. 105°32'22" W.)
Gillette VOR/DME
(Lat. 44°20'52" N., long. 105°32'37" W.)

That airspace extending upward from 700 feet above the surface of the earth within 6.1 miles east and 8.3 miles west of the Gillette VOR/DME 176° and 356° radials extending from 15.3 miles south to 16.1 miles north of the VOR/DME; that airspace extending upward from 1200 feet above the surface of the earth bounded by a line beginning at lat. 44°47'00" N., long. 106°22'32" W.; to lat. 44°23'00" N., long. 106°22'32" W.; to lat. 44°16'00" N., long. 105°58'02" W.; to lat. 44°05'00" N., long. 106°00'02" W.; to lat. 43°49'15" N., long. 106°09'32" W.; to lat. 43°39'00" N., long. 106°00'02" W.; to lat. 43°39'00" N., long. 105°09'02" W.; to lat. 44°08'30" N., long. 105°09'00" W.; to lat. 44°01'00" N., long. 104°51'02" W.; to lat. 44°30'00" N., long. 104°41'02" W.; to lat. 44°39'00" N., long. 105°20'00" W.; to lat. 44°55'00" N., long. 105°20'00" W.; to lat. 44°55'00" N., long. 105°55'00" W.; to lat. 44°43'30" N., long. 105°55'00" W.; thence to point of beginning.

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Issued in Seattle, Washington, on July 19, 2006.

John Warner,

Manager, Planning and Requirements, Western Service Area.

[FR Doc. E6–13202 Filed 8–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 060707188–6188–01]

RIN 0648–AT18

Consideration of Marine Reserves and Marine Conservation Areas Within the Channel Islands National Marine Sanctuary

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule.

SUMMARY: NOAA is proposing to establish a network of marine zones within the Channel Islands National Marine Sanctuary (CINMS or Sanctuary). Marine zones are discrete areas that have special regulations differing from the regulations that apply throughout or above the Sanctuary as a whole. The purpose of these proposed zones is to further the protection of Sanctuary biodiversity and complement an existing network established by the State of California in October 2002, and implemented in April 2003, under its authorities. Two types of zones are being proposed by this action: marine reserves and marine conservation areas. All extractive activities (*e.g.*, removal of any Sanctuary resource) and injury to Sanctuary resources would be prohibited in all zones of the Sanctuary designated as marine reserves. Certain lobster fishing and recreational fishing for pelagic species would be allowed within zones of the Sanctuary designated as marine conservation areas, while all other extraction and injury would be prohibited. The CINMS is approximately 1268 square nautical miles. The proposed action would establish approximately 232 square nautical miles of marine reserves and 8.6 square nautical miles of marine conservation areas in the state and federal waters of the Sanctuary. As part of this action, NOAA is also proposing to modify the terms of designation for the Sanctuary, which were originally published on October 2, 1980 (45 FR 65198), to allow for the regulation of extractive activities, including fishing, in the proposed marine reserves and marine conservation areas, and a slight modification to the outer boundary of the CINMS.

DATES: Comments must be received by October 10, 2006.

Dates for public hearings are:

1. September 26, 2006, 6:15 p.m. to 9 p.m., Ventura, California.

2. September 28, 2006, 6:15 p.m. to 9 p.m., Santa Barbara, California.

Please refer to **ADDRESSES** for additional information on the public hearings.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: *CINMSReserves.DEIS@noaa.gov*. Include in the subject line the following document identifier: Proposed marine reserves in CINMS.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Sean Hastings, Channel Islands National Marine Sanctuary, 113 Harbor Way, Suite 150, Santa Barbara, CA 93109.

Copies of the draft environmental impact statement, regulatory impact review, and initial regulatory flexibility analyses may be obtained from NOAA's Channel Islands National Marine Sanctuary web site at *http://channelislands.noaa.gov/* or by writing to Sean Hastings, Resource Protection Coordinator, Channel Islands National Marine Sanctuary,113 Harbor Way, Suite 150, Santa Barbara, CA 93109; e-mail: *Sean.Hastings@noaa.gov*.

Hearings: The hearing on Tuesday, September 26, 2006, 6:15–9 pm will be held in the Sheraton Four Points Hotel, San Buenaventura Ballroom, 1050 Schooner Drive, Ventura, California. The hearing on Thursday, September 28, 2006, 6:15–9 pm will be held at the Earl Warren Showgrounds, Exhibit Building, 3400 Calle Real, Santa Barbara, California

Paperwork Burden: Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to David Bizot, National Permit Coordinator, 1305 East West Highway, Silver Spring, MD 20910 and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Sean Hastings, (805) 884–1472; e-mail: *Sean.Hastings@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Channel Islands National Marine Sanctuary

The CINMS area is approximately 1,252.5 square nautical miles adjacent to the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock (collectively the Channel Islands), extending seaward to a distance of approximately 6 nautical miles. NOAA designated the CINMS in 1980 to protect the area's rich and diverse range of marine life and habitats, unique and productive oceanographic processes and ecosystems, and culturally significant resources (see 45 FR 65198). The Sanctuary was designated pursuant to NOAA's authority under the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 *et seq.*). There are significant human uses in the Sanctuary as well, including commercial and recreational fishing, marine wildlife viewing, boating and other recreational activities, research and monitoring activities, numerous educational activities, and maritime shipping.

The waters surrounding California's Channel Islands represent a globally unique and diverse assemblage of habitats and species. This region is a subset of the larger ecosystem of the Southern California Bight, an area bounded by Point Conception in the north and Punta Banda, Mexico in the south. In the area between Santa Barbara Island in the south and San Miguel Island in the northwest, the colder waters of the Oregonian oceanic province in the north converge and mix with the warmer waters of the Californian oceanic province. Each of these two provinces has unique oceanic conditions and species assemblages, which in turn are parts of distinct biogeographic regions. The mixing of these two provinces in the vicinity of the Channel Islands creates a transition zone within the island chain. Upwelling and ocean currents in the area create a nutrient rich environment that supports high species and habitat diversity.

In the Southern California Bight, marine resources have declined under pressure from a variety of factors, including commercial and recreational fishing, changes in oceanographic conditions associated with El Niño and other large-scale oceanographic cycles, introduction of disease, and increased levels of pollutants. The urbanization of southern California has significantly increased the number of people visiting the coastal zone. The burgeoning coastal population has greatly increased the influx of human, industrial, and agricultural wastes to California coastal waters. Population growth has also increased human demands on the ocean, including commercial and recreational fishing, wildlife viewing and other activities. New technologies have increased the yield of sport and commercial fisheries. Many former natural refuges for targeted species, such as submarine canyons, submerged pinnacles, deep waters, and waters distant from harbors, can now be accessed due to advancements in fishing technology and increased fishing effort.

The significant changes in ecological conditions resulting from the array of human activities in the Channel Islands region are just beginning to be understood. For example, many kelp beds have converted to urchin barrens, where urchins and coralline algae have replaced kelp as the dominant feature. Deep canyon and rock areas that were formerly rich rockfishing grounds have significantly reduced populations of larger rockfish such as cowcod and bocaccio.

In the Southern California Bight, commercial and recreational fisheries target more than 100 fish species and more than 20 invertebrate species. Targeted species have exhibited high variability in landings from year to year (*e.g.*, squid) and in several cases have declined to the point that the fishery has had to be shut down (*e.g.*, abalone). Many targeted species are considered overfished and one previously targeted species (white abalone) is listed as endangered. Excessive bycatch has caused declines of some non-targeted species. The removal of species that play key ecological roles, such as predatory fish, has altered ecosystem structure. Some types of fishing gear have caused temporary or permanent damage to marine habitats. The combination of direct take, bycatch, indirect effects, and habitat damage and destruction has contributed to a negative transformation of the marine environment around the Channel Islands.

B. Marine Zoning

For over twenty years, NOAA has used marine zoning as a tool in specific national marine sanctuaries to address a wide array of resource protection and user conflict issues. Marine zones are discrete areas within or above a national marine sanctuary that have special regulations that differ from the regulations that apply throughout or above the sanctuary as a whole. For example, marine zones are used to regulate the use of motorized personal watercraft in the Monterey Bay National Marine Sanctuary. Marine zones, including areas where all extraction is prohibited, have also been established in the Florida Keys National Marine Sanctuary to provide for varying levels of resource protection.

NOAA has used zoning within the CINMS since its original designation in 1980. For example, the CINMS regulations prohibit:

1. Cargo vessels from coming within 1 nautical mile of any island in the CINMS;

2. Disturbance of marine mammals or seabirds by flying aircraft below 1,000 feet within 1 nautical mile of any island within the CINMS; and

3. Construction upon or drilling into the seabed within 1 nautical mile of any island in the CINMS.

In addition to NOAA, other federal and state agencies have also established marine zones wholly or partially within the Sanctuary (*e.g.*, California Department of Fish and Game, National Park Service). In 1978, commercial and recreational fishing was prohibited by the State of California in one small marine protected area of the Channel Islands, the Anacapa Island Ecological Reserve. The International Maritime Organization has designated a voluntary vessel traffic separation scheme to guide large vessel traffic running through the Santa Barbara Channel. The National Park Service (NPS) has established several zoned areas within the Channel Islands National Park for different public uses, principally to protect seabird colonies and marine mammal haul outs. More recently, the NPS is instituting a new zoning approach to managing park lands, coasts, and adjacent waters.

Due to historic lows in the stocks of certain rockfish (*e.g.*, cowcod and bocaccio), in 2001 the Pacific Fishery Management Council (PFMC) took emergency action and established large bottom closures to rebuild these stocks. NOAA implemented the Cowcod Conservation Area regulations on January 1, 2001 (66 FR 2338) and the Rockfish Conservation Area emergency regulations on September 13, 2002 (67 FR 57973). The Cowcod Conservation Area and the California Rockfish Conservation Area overlay Sanctuary waters. Finally, in 2002, the California Fish and Game Commission (Commission) authorized the establishment of marine reserves and marine conservation areas within the Sanctuary that prohibit or limit the take of living, geological or cultural marine resources.

C. Channel Islands Marine Reserves Process, 1999–2003

The NMSA requires NOAA to periodically review the management plan and regulations for each national marine sanctuary and to revise them, as necessary, to fulfill the purposes and policies of the NMSA (16 U.S.C. 1434(e)). NOAA began the process to review the CINMS management plan and regulations in 1999. Through the scoping process, many members of the public voiced concern over the state of biodiversity in the CINMS and called for fully protected (*i.e.*, no-take) zones to be established.

In response to concerns about changes in the ecosystem and comments raised during the management plan scoping process, NOAA and the California Department of Fish and Game (CDFG) developed a Federal-State partnership to consider the establishment of marine reserves in the Sanctuary.

Since the marine reserves process is inherently complex, and is a stand-alone action that is programmatically independent of and severable from the more general suite of actions contemplated in the management plan review process, NOAA decided to separate the process to consider marine reserves from the larger CINMS management plan review process. The draft management plan and DEIS for the management plan review were released for public comment on May 19, 2006 (71 FR 29148). NOAA also published a proposed rule to implement the management plan review process on May 19, 2006 (71 FR 29096). Please see *http://channelislands.noaa.gov* for more information.

The CINMS Advisory Council, a federal advisory board of local community representatives and federal, state and local government agency representatives, created a multi-stakeholder Marine Reserves Working Group (MRWG) to seek agreement on a recommendation regarding the potential establishment of marine reserves within the Sanctuary. The CINMS Advisory Council also designated a Science Advisory Panel of recognized experts and a NOAA-led Socio-economic Team to support the MRWG in its deliberations.

Extensive scientific, social, and economic data were collected in support of the marine reserves assessment process. From July 1999 to May 2001, the MRWG met monthly to receive, weigh, and integrate advice from technical advisors and the public. The MRWG reached consensus on a set of ground rules, a mission statement, a problem statement, a list of species of interest, and a comprehensive suite of implementation recommendations. The MRWG found that in order to protect, maintain, restore, and enhance living marine resources, it is necessary to develop new management strategies that encompass an ecosystem perspective and promote collaboration between competing interests. A set of goals were also agreed upon by the MRWG:

1. To protect representative and unique marine habitats, ecological processes, and populations of interest.

2. To maintain long-term socioeconomic viability while minimizing short-term socioeconomic losses to all users and dependent parties.

3. To achieve sustainable fisheries by integrating marine reserves into fisheries management.

4. To maintain areas for visitor, spiritual, and recreational opportunities which include cultural and ecological features and their associated values.

5. To foster stewardship of the marine environment by providing educational opportunities to increase awareness and encourage responsible use of resources.

The MRWG developed over 40 different designs for potential marine

reserves and evaluated the ecological value and potential economic impact of each design. To do so, members of the MRWG contributed their own expertise to modify designs or generate alternatives and utilized a geospatial tool, known as the Channel Islands Spatial Support and Analysis Tool (CI–SSAT; Killpack et al. 2000). CI–SSAT provided opportunities for visualization, manipulation, and analysis of data for the purpose of designing marine reserves.

After months of deliberation, a consensus design could not be reached and the MRWG selected two designs to represent the diverse views of the group. These designs depict the best effort that each MRWG representative could propose. Ultimately, the CINMS Advisory Council provided the MRWG's two designs, as well as all of the supporting information developed during the process, including background scientific and economic information, to NOAA and the CDFG for consideration and action.

Based on this information and additional internal agency analysis, NOAA and the CDFG crafted a draft reserve network and sent it to the CINMS Advisory Council and the former MRWG, Science Panel and Socio-Economic Team members seeking further input. The draft reserve network was also published in local papers and on the CINMS Web site to solicit input from the general public. Several meetings were held with constituent groups, including the CINMS Advisory Council's Conservation Working Group, Fishing Working Group and Ports and Harbors Working Group, to discuss the draft network. Following this period of input, the CDFG and NOAA prepared a recommendation for establishing a network of marine reserves. The recommendation proposed a network of marine reserves and marine conservation areas in the same general locations as the MRWG Composite Map. The composite map was forwarded to the SAC and represented two versions of a reserve network, one version from consumptive interests and the other from non-consumptive interests. These two versions were overlaid on one map, and depicted a number of areas that the constituent groups agreed upon. This recommendation became the basis for the preferred alternative in the State's California Environmental Quality Act (CEQA) environmental review process.

D. Establishment of State Reserves in the CINMS

Due to the fact that the proposed network spanned both State and Federal waters, NOAA and the CDFG determined the implementation of the recommendation would need to be divided into a State phase and a Federal phase. State waters extend from the shore to a distance of three nautical miles. Federal waters extend beyond the limit of State waters to the extent of the exclusive economic zone, with the outer boundary of the CINMS at a distance of approximately six nautical miles from shore. The State phase was to be considered by the Commission under its authorities.

The CDFG completed an environmental review under the requirements of CEQA resulting in the publication of an environmental document. The draft environmental document (ED) was released for public comment on May 30, 2002. Comments were accepted for an extended period until September 1, 2002. The Commission and CDFG received 2,492 letters, e-mails and oral comments. Of this total, 2,445 were form letters that made identical comments.

The Commission certified the final ED on October 23, 2002. At this same meeting, the Commission approved the CDFG's preferred alternative. The CDFG published final regulations implementing the State phase in January 2003. As part of its implementation, the CDFG acknowledged the need for NOAA to implement the proposed action in Federal waters of the CINMS.

E. Federal Marine Reserves Process

Following the publication of the CDFG's final regulations in 2003, NOAA's NMSP initiated the Federal marine reserves process, and hosted scoping meetings with the general public, the CINMS Advisory Council, and PFMC. In 2004, the NMSP released a preliminary environmental document with a range of alternatives for public review. In 2005, the NMSP consulted with local, State, and Federal agencies and the PFMC on possible amendments to the CINMS designation document pursuant to section 303(b)(2) of the NMSA (16 U.S.C. 1433(b)(2)). In addition, in 2005 the NMSP provided the PFMC with the opportunity to prepare draft sanctuary fishing regulations pursuant to section 304(a)(5) of the NMSA (16 U.S.C. 1434(a)(5)) for the potential establishment of marine reserves and marine conservation areas.

In its response to NOAA's letter regarding draft sanctuary fishing regulations, the PFMC stated its support for NOAA's goals and objectives for marine zones in the CINMS but recommended that NOAA issue fishing regulations under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the relevant authorities of the states of California, Oregon, and Washington rather than under the NMSA. To that end, and in accordance with advice from the NOAA Administrator in his October 19, 2005 letter to the PFMC, the PFMC recommended the Channel Islands marine zones in federal waters be designated as Essential Fish Habitat and Habitat Areas of Particular Concern with corresponding management measures to prohibit the use of bottom contact gear under Amendment 19 of the Groundfish Fishery Management Plan. To complete the process of addressing closure of the remaining aspect of the marine zones (i.e., in the water column) the PFMC stated its intent to pursue those closures through other fishery management plan authorities and complementary State laws.

NOAA reviewed the PFMC's recommendations and determined that by themselves they did not have the specificity or record to support the use of the MSA or State laws to establish limited take or no-take zones in the water column and thereby did not fulfill NOAA's goals and objectives for these marine zones in the CINMS. However, Amendment 19 to the Groundfish Fishery Management Plan would implement, in part, the proposed marine zones by prohibiting all bottom contact gear in the proposed zones. Accordingly, the NMSA regulations proposed here would prohibit the take of resources from the proposed zones not prohibited by the Amendment 19 regulations. Further, these NMSA regulations would ensure that, should future changes to the MSA regulations alter the management regime established in Amendment 19, the take of all Sanctuary resources would continue to be regulated pursuant to the Sanctuary's limited-take or no-take prohibitions. Thus, along with Amendment 19, the proposed NMSA regulations would establish comprehensive limited-take and no-take zones in the CINMS in a manner that fulfills NOAA's goals and objectives for these marine zones in the CINMS.

II. Summary of Draft Environmental Impact Statement

In addition to this proposed rule, a draft environmental impact statement (DEIS) was prepared for the consideration of marine reserves and marine conservation areas within the Sanctuary. The DEIS was prepared in accordance with the NMSA and National Environmental Policy Act of 1969 (NEPA) requirements. The DEIS contains a statement of the purpose and need for the project, description of

proposed alternatives including the no action alternative, description of the affected environment, and evaluation and comparison of environmental consequences including cumulative impacts. The preferred alternative incorporates the network of marine reserves and marine conservation areas originally identified for the Federal phase in the Commission's CEQA document.

III. Proposed Revised Designation Document

Section 304(a)(4) of the NMSA requires that the terms of designation include the geographic area included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and the types of activities subject to regulation by the Secretary to protect these characteristics. Section 304(a)(4) also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made. To implement this proposed action, the CINMS Designation Document, originally published in the **Federal Register** on October 2, 1980 (45 FR 65198), is proposed to be modified as follows (new text in bold and deleted text in brackets and italics]:

1. No change to Article 1, Effect of Designation.

2. Article 2, Description of the Area, is modified by revising it to read:

"Article 2. Description of the Area

"The Sanctuary consists of an area of the waters off the coast of California, of approximately [*1252.5*] **1268** square nautical miles (nmi) adjacent to the northern Channel Islands and Santa Barbara Island seaward to a distance of **approximately** 6 nmi. The precise boundaries are defined by regulation."

3. No change to Article 3, Characteristics of the Area that Give it Particular Value.

4. Article 4, Scope of Regulation, is modified by adding the following at the end of Section 1:

"g. **Within a marine reserve, marine park, or marine conservation area, harvesting, removing, taking, injuring, destroying, possessing, collecting, moving, or causing the loss of any living or dead organism, historical resource, or any other Sanctuary resource, or attempting any of these activities.**

"**h. Within a marine reserve, marine park, or marine conservation area, possessing fishing gear.**"

5. Article 5, Relation to Other Regulatory Programs, is modified by revising the first sentence of Section 1 to read:

"Section 1. *Fishing.* The regulation of fishing is not authorized under Article 4, **except within portions of the Sanctuary designated as marine reserves, marine parks, or marine conservation areas established pursuant to the goals and objectives of the Sanctuary and within the scope of the State of California's Final Environmental Document "Marine Protected Areas in NOAA's Channel Islands National Marine Sanctuary" (California Department of Fish and Game, October 2002), certified by the California Fish and Game Commission.**"

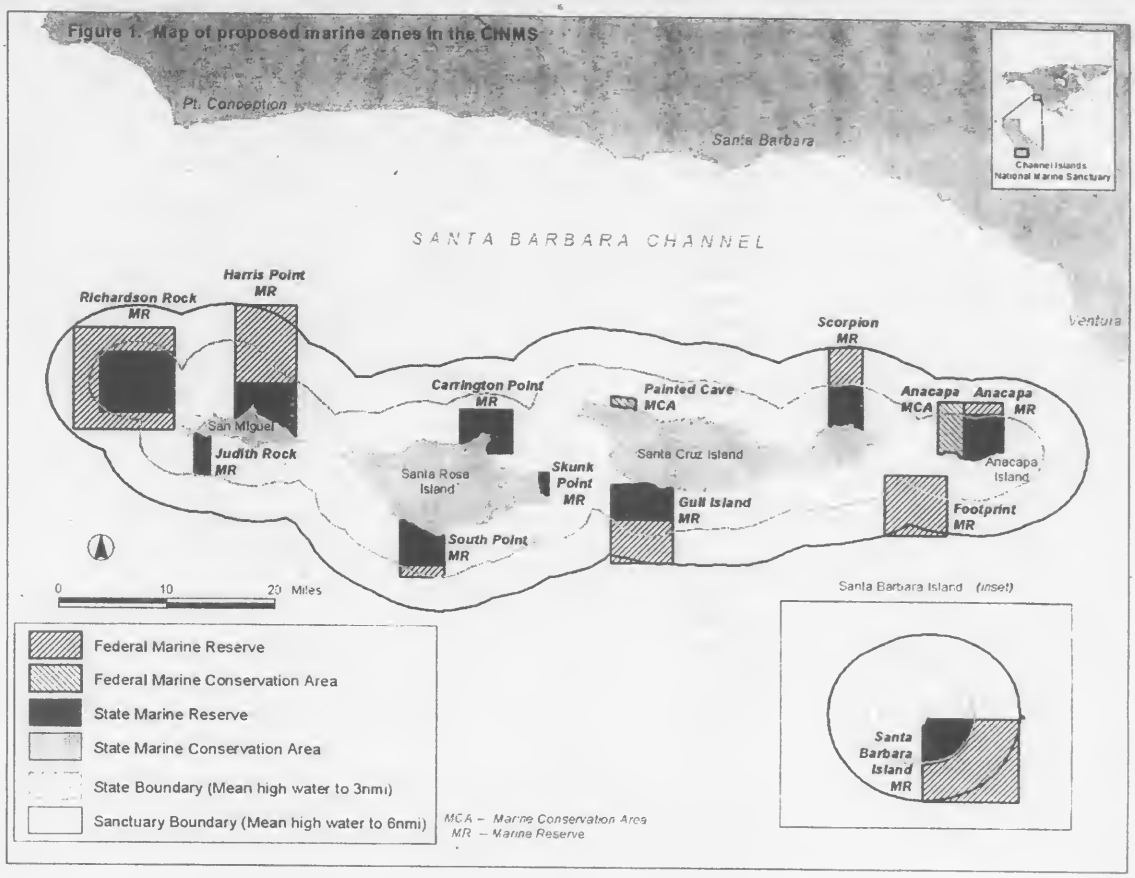
6. No change to Article 6, Alteration to this Designation.

IV. Summary of Proposed Regulations

The proposed regulations would implement NOAA's preferred alternative in the establishment of marine reserves and marine conservation areas within the CINMS. The proposed regulations would define two new terms (*pelagic finfish* and *stowed and not available for immediate use*), prohibit injuring Sanctuary resources, prohibit all extractive activities within the marine reserves, and prohibit all extractive activities within the marine conservation areas except recreational fishing for pelagic finfish, and commercial and recreational lobster fishing in the Anacapa Island Marine Conservation Area, and recreational lobster fishing in the Painted Cave Marine Conservation Area. The proposed regulations would also add two new appendices that list the boundary coordinates for the proposed marine reserves and marine conservation areas. The proposed regulations would modify subpart G of the National Marine Sanctuary Program Regulations (15 CFR part 922), the regulations for the Channel Islands National Marine Sanctuary.

A. Establishment of Marine Reserves and Marine Conservation Areas

The proposed regulations would establish under the NMSA eleven marine reserves and two marine conservation areas within the CINMS. Refer to figure 1 for a map depicting the locations of the marine reserves and marine conservation areas. The marine reserves would be distributed throughout the CINMS and extend slightly beyond the current boundaries of the CINMS in four locations. The total size of the CINMS would increase from 1252 square nautical miles to 1268 square nautical miles, an increase of 16 square nautical miles. The boundaries of the marine reserves and marine conservation areas would be consistent with the marine reserves and marine conservation areas established by the Commission in 2002 in State waters and extend most of them into Federal waters of the Sanctuary.



Under the proposed regulations, NOAA would establish three marine reserves in the area around San Miguel Island, three around Santa Rosa Island, two around Santa Cruz Island, two around Anacapa Island, and one around Santa Barbara Island. The marine conservation areas would be established in the areas around Santa Cruz and Anacapa Islands.

The total area that would be designated marine reserves under the proposed regulation would be 232.5 square nautical miles. The marine conservation areas would encompass an additional 8.6 square nautical miles.

B. Activities Prohibited Within the Marine Reserves

Under the proposed regulations, NOAA would prohibit any harvesting, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any living or dead organism, historical resource, or any other Sanctuary resource, or attempting to do so, within any of the marine reserves. The term "sanctuary resource" is broadly defined in the NMSP regulations at 15 CFR 922.3 and means any living or non-living resource that contributes to the conservation, recreational, ecological, historical, scientific, educational, or aesthetic value of the Sanctuary. For the CINMS, the term "Sanctuary resource" includes, for example, the seafloor and all animals and plants of the Sanctuary. It also includes historical resources (which, pursuant to 15 CFR 922.3, include cultural and archeological resources), such as shipwrecks and Native American remains. In addition, to enhance compliance and aid in enforcement, the proposed regulations would also prohibit possessing fishing gear and Sanctuary resources inside a marine reserve, except in certain circumstances. The proposed regulations would allow possession of legally harvested fish stowed on a vessel at anchor in or transiting through a marine reserve and would also allow the possession of stowed fishing gear, provided the gear is not available for immediate use.

The proposed regulations prohibit only those extractive activities within marine reserves that are not prohibited by 50 CFR part 660, the NOAA regulations that govern "Fisheries off West Coast States" (NOAA fisheries regulations). Therefore, if an extractive activity is prohibited by NOAA fishing regulations, it is not prohibited by the proposed regulation. Conversely, all extractive activities not prohibited by NOAA fisheries regulations would be prohibited by the proposed regulations within marine reserves. In the future, if NOAA were to amend the NOAA fisheries regulations to prohibit additional extractive activities for MSA reasons, that rulemaking would also propose for comment those activities that would be no longer within the scope of this NMSA regulation.

Regardless of the specific regulatory mechanism, the intended result of this proposed rule is for all extractive activities to be prohibited within the proposed marine reserves.

C. Activities Prohibited Within the Marine Conservation Areas

The proposed regulations would prohibit the same activities within the marine conservation areas as within the marine reserves except that lobster fishing and recreational fishing for

pelagic finfish would be allowed. Both commercial lobster fishing and recreational lobster fishing would be allowed in the marine conservation area at Anacapa Island. Recreational lobster fishing would be allowed in the marine conservation area at Santa Cruz Island. Commercial lobster fishing would not be allowed in the marine conservation area at Santa Cruz Island. Recreational fishing for pelagic finfish would only be allowed within the marine conservation areas. Commercial fishing for pelagic finfish would be prohibited within the marine conservation areas.

Like the proposed regulations for marine reserves, the proposed regulations for the marine conservation areas would only prohibit activities that are not prohibited by applicable NOAA fisheries regulations codified at 50 CFR part 660.

D. Enforcement

The proposed regulations would be enforced by NOAA and other authorized agencies (e.g., CDFG, United States Coast Guard, and National Park Service) in a coordinated and comprehensive way. Enforcement actions for an infraction would be prosecuted under the appropriate statutes or regulations governing that infraction. The result is that enforcement actions may be taken under State of California authorities, the NMSA, the MSA, or other relevant legal authority.

E. Permitting

The NMSP regulations, including the regulations for the CINMS, allow NOAA to issue permits to conduct activities that would otherwise be prohibited by the regulations. Most permits are issued by the Superintendent of the CINMS. Requirements for filing permit applications are specified in NMSP regulations and the Office of Management and Budget-approved application guidelines (OMB control number 0648–0141). Criteria for reviewing permit applications are contained in the NMSP regulations as well at 15 CFR 922.48. In general, permits may be issued for activities related to scientific research, education, and management. Permits may also be issued for activities associated with the salvage and recovery efforts for a recent air or marine casualty. (Emergency activities would not require a permit.)

Nationwide, NOAA issues approximately 200 national marine sanctuary permits each year. Of this amount, two or three are for activities within the CINMS. The majority of permits issued for activities within the CINMS are for activities related to scientific research. NOAA expects this trend to continue with the proposed regulations. Although there may be an increase in the number of permits requested for activities within the CINMS, NOAA does not expect this increase to appreciably raise the average number of permits issued nationwide. Therefore, NOAA has determined that the proposed regulations do not necessitate a modification to its information collection approval by the Office of Management and Budget under the Paperwork Reduction Act.

V. Miscellaneous Rulemaking Requirements

A. National Marine Sanctuaries Act

Section 304 of the NMSA (16 U.S.C. 1434) requires the Secretary of Commerce in designating a sanctuary to submit Sanctuary designation documents to the United States Congress (Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate) and Governor of each State in which any part of the Sanctuary would be located. The designation documents are to be submitted on the same date this notice is published and must include the proposed terms of the designation, the proposed regulations, a draft environmental impact statement, and a draft management plan. The terms of designation may only be modified by the same procedures by which the original designation is made. In accordance with Section 304, the appropriate documents are being submitted to the specified Congressional Committees and the Governor of California.

B. National Environmental Policy Act

In accordance with Section 304(a)(2) of the NMSA (16 U.S.C. 1434(a)(2)), and the provisions of NEPA (42 U.S.C. 4321–4370(a)), a draft environmental impact statement (DEIS) has been prepared for the proposed action. Copies of the DEIS are available upon request to NOAA at the address listed in the **ADDRESSES** section.

C. Executive Order 12866: Regulatory Impact

Under Executive Order 12866, if the proposed regulations are "significant" as defined in section 3(f)(1), (2), (3), or (4) of the Order, an assessment of the potential costs and benefits of the regulatory action must be prepared and submitted to the Office of Management and Budget. This proposed rule has been determined to be not significant within the meaning of Executive Order 12866.

D. Executive Order 13132: Federalism

The Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, will consult with appropriate elected officials in the State of California, as appropriate. Since 1999, NOAA has partnered with and supported the State in this effort. During the Federal phase, NOAA has continually briefed the Secretary of Resources and the Director of California Department of Fish and Game. NOAA also held numerous consultations with all California resource management agencies as required under section 303(b)(2) of the NMSA.

E. Regulatory Flexibility Act

In accordance with the requirements of section 603(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), NOAA has prepared an initial regulatory flexibility analysis (IRFA) describing the impact of the proposed action on small businesses. Section 603(b) (5 U.S.C. 603(b)) requires that each IRFA contain a description of the reasons the action is being considered, a succinct statement of the objectives of, and legal basis for, the action, a description of and, where feasible, an estimate of the number of small entities to which the proposed action will apply, a description of the projected reporting, recordkeeping and other compliance requirements of the proposed action, including an estimate of the classes of small entities which would be subject to the requirement and the type of professional skills necessary for preparation of the report or record, and an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed action. In addition, section 603(c) (5 U.S.C. 603(c)) requires that each IRFA contain a description of any significant alternatives to the proposed action which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed action on small entities. The IRFA is available upon request to NOAA at the address listed in the **ADDRESSES** section above. A summary of the IRFA follows.

Summary of the Initial Regulatory Flexibility Act Analysis

In accordance with the requirements of section 603(a) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603(a)), NOAA has prepared an IRFA describing the impact of the proposed regulations on small entities. A statement of why action by NOAA is being considered

and the objectives of, and legal basis for, the proposed rule is contained in the preamble section of the proposed rule and is not repeated here.

The Small Business Administration has established thresholds on the designation of businesses as "small entities". A fish-harvesting business is considered a "small" business if it has annual receipts not in excess of $3.5 million (13 CFR 121.201). Sports and recreation businesses and scenic and sightseeing transportation businesses are considered "small" businesses if they have annual receipts not in excess of $6 million (13 CFR 121.201). According to these limits, each of the businesses listed below are considered small entities.

All analyses are based on the most recently updated and best available information.

In 2003, there were 441 commercial fishing operations that reported catches from the CINMS. Total commercial fishing revenue from the CINMS was $17.3 million in 2003.

In 1999, there were 18 recreational fishing charter/party boats operating in the CINMS. In 1999, there were 10 consumptive diving charter/party boats operating in the CINMS. Total reported 1999 gross revenue from these consumptive recreational activities was $8.8 million. Total costs for 1999 were reported at $8.4 million. After all costs were paid, the consumptive recreational activities resulted in $420,000 in profit.

In 1999, there were 8 whale watching operations, 7 non-consumptive diving operations, 4 operations that offered kayaking or island sightseeing activities, and 8 sailing operations, within the CINMS. Total reported 1999 gross revenue from these non-consumptive recreational activities was $2.6 million. Total costs for 1999 were reported at $2.5 million. After all costs were paid, the non-consumptive recreational activities resulted in $82,000 in profit.

Two alternatives plus a no-action alternative were considered. The no action (status quo) alternative would not establish marine reserves and marine conservation areas in the Sanctuary. Therefore there is no economic impact.

Alternative 1, the proposed alternative, including both the existing state network and proposed extensions, would include approximately 232.5 square nautical miles of marine reserves and 8.6 square nautical miles of marine conservation areas for a total of 241.1 square nautical miles of the CINMS. The new proposed federal areas of alternative 1 potentially impact 0.51% (approximately $124,000) of ex vessel value of commercial catch in the CINMS. The total maximum potential loss to the income of commercial fishing businesses is 0.61% ($440,000) and to the employment of commercial fishing businesses is 0.66% (13 jobs). For consumptive recreation in the CINMS, the estimated maximum potential loss associated with alternative 1 is $935,000 (3.5%) in annual income and about 42 full and part-time jobs (3.7%) in the local county economies. For non-consumptive recreation in the CINMS, the estimated range of potential increases in income generated in the local county economies associated with alternative 1 is between $337 and about $380,000. The estimated range of potential increases in employment in the local county economies is between 0.02 and 19 full and part-time jobs.

Alternative 2, including both the existing state network and proposed extensions, would encompass approximately 275.8 square nautical miles of marine reserves and 12.1 square nautical miles of marine conservation areas for a total of 287.8 square nautical miles of the CINMS. Alternative 2 is larger than alternative 1, and proposes some different reserve areas not proposed in alternative 1. The new proposed federal areas of alternative 2 potentially impact 0.82% (approximately $197,000) of ex vessel value of commercial catch in the CINMS. The total maximum potential loss to the income of commercial fishing businesses is 0.91% ($650,000) and to the employment of commercial fishing businesses is 0.97% (19 jobs). For consumptive recreation in the CINMS, the estimated maximum potential loss associated with alternative 2 is $1,300,000 (5.0%) in annual income and about 59 full and part-time jobs (5.2%) in the local county economies. For non-consumptive recreation in the CINMS, the estimated range of potential increases in income generated in the local county economies associated with alternative 2 is between $748 and about $841,000. The estimated range of – potential increases in employment in the local county economies is between 0.04 and 44 full and part-time jobs.

There are no new reporting, recordkeeping, or other compliance requirements.

The CINMS lies in part within the area for which the PFMC is responsible for developing fishery management plans (FMPs) under the MSA. As stated previously, the proposed regulations governing fishing in the Sanctuary are drafted to avoid redundancy with regulations recommended by the PFMC and promulgated by NOAA under the MSA.

For a more detailed analysis consult the IRFA, which is available upon request to NOAA at the address listed in the **ADDRESSES** section above.

F. Paperwork Reduction Act

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) which has been approved by OMB under control number 0648–0141. The public reporting burden for national marine sanctuary permits is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This rule would not modify the average annual number of respondents or the reporting burden for this information requirement, so a modification to this approval is not necessary. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NOAA (see **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

G. Unfunded Mandates Reform Act of 1995

This proposed rule, if adopted as proposed, would contain no federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA)) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Dated: August 2, 2006.

John H. Dunnigan,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR part 922 is proposed to be amended as follows:

PART 922—[AMENDED]

1. The authority for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

2. Revise § 922.70 to read as follows:

§ 922.70 Boundary.

The Channel Islands National Marine Sanctuary (Sanctuary) consists of an area of the waters off the coast of California of approximately 1268 square nautical miles (nmi) adjacent to the following islands and offshore rocks: San Miguel Island, Santa Cruz Island, Santa Rosa Island, Anacapa Island, Santa Barbara Island, Richardson Rock, and Castle Rock (collectively the Islands) extending seaward to a distance of approximately six nmi. The boundary coordinates are listed in appendix A to this subpart.

§§ 922.71 and 922.72 [Redesignated]

3. Redesignate §§ 922.71 and 922.72 as §§ 922.72 and 922.74, respectively.

4. Add new § 922.71 to subpart G of part 922 to read as follows:

§ 922.71 Definitions.

In addition to those definitions found at § 922.3, the following definitions apply to this subpart:

Pelagic finfish are defined as: northern anchovy (*Engraulis mordax*), barracudas (*Sphyraena spp.*), billfishes (family *Istiophoridae*), dolphinfish (*Coryphaena hippurus*), Pacific herring (*Clupea pallasi*), jack mackerel (*Trachurus symmetricus*), Pacific mackerel (*Scomber japonicus*), salmon (*Oncorhynchus spp.*), Pacific sardine (*Sardinops sagax*), blue shark (*Prionace glauca*), salmon shark (*Lamna ditropis*), shortfin mako shark (*Isurus oxyrinchus*), thresher sharks (*Alopias spp.*), swordfish (*Xiphias gladius*), tunas (family *Scombridae*), and yellowtail (*Seriola lalandi*).

Stowed and not available for immediate use means not readily accessible for immediate use, e.g., by being securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, or partially disassembled (such as spear shafts being kept separate from spear guns).

5. Add § 922.73 to subpart G to read as follows:

§ 922.73 Marine reserves and marine conservation areas.

(a) *Marine reserves.* Unless prohibited by 50 CFR part 660 (Fisheries off West Coast States) as of [effective date of final rule], the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted within a marine reserve described in Appendix B to this subpart:

(1) Harvesting, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any living or dead organism, historical resource, or other Sanctuary resource, or attempting any of these activities.

(2) Possessing fishing gear on board a vessel unless such gear is stowed and not available for immediate use.

(3) Possessing any living or dead organism, historical resource, or other Sanctuary resource, except legally harvested fish on board a vessel at anchor or in transit.

(b) *Marine conservation areas.* Unless prohibited by 50 CFR part 660 (Fisheries off West Coast States) as of [effective date of final rule], the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted within a marine conservation area described in Appendix C to this subpart:

(1) Harvesting, removing, taking, injuring, destroying, collecting, moving, or causing the loss of any living or dead organism, historical resource, or other Sanctuary resource, or attempting any of these activities, except:

(i) Recreational fishing for pelagic finfish;

(ii) Commercial and recreational fishing for lobster within the Anacapa Marine Conservation Area; or

(iii) Recreational fishing for lobster within the Painted Cave Marine Conservation Area.

(2) Possessing fishing gear on board a vessel, except legal fishing gear used to fish for lobster or pelagic finfish, unless such gear is stowed and not available for immediate use.

(3) Possessing any living or dead organism, historical resource, or other Sanctuary resource, except legally harvested fish on board a vessel at anchor or in transit.

6. In newly redesignated § 922.74, revise paragraph (a) introductory text to read as follows:

§ 922.74 Permit procedures and criteria.

(a) Any person in possession of a valid permit issued by the Director in accordance with this section and § 922.48 may conduct any activity within the Sanctuary prohibited under §§ 922.72 or 922.73 if such activity is either:

* * * * *

7. Revise Appendix A to subpart G to read as follows:

Appendix A to Subpart G of Part 922—Channel Islands National Marine Sanctuary Boundary Coordinates

[Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

Point ID No.	Latitude (north)	Longitude (south)
1	33.94138	−119.27422
2	33.96776	−119.25010
3	34.02607	−119.23642
4	34.07339	−119.25686
5	34.10185	−119.29178
6	34.11523	−119.33040
7	34.11611	−119.39120
8	34.11434	−119.40212
9	34.11712	−119.42896
10	34.11664	−119.44844
11	34.13389	−119.48081
12	34.13825	−119.49198
13	34.14784	−119.51194
14	34.15086	−119.54670
15	34.15450	−119.54670
16	34.15450	−119.59170
17	34.15142	−119.61254
18	34.13411	−119.66024
19	34.14635	−119.69780
20	34.15988	−119.76688
21	34.15906	−119.77800
22	34.15928	−119.79327
23	34.16213	−119.80347
24	34.16962	−119.83643
25	34.17266	−119.85240
26	34.17588	−119.88903
27	34.17682	−119.93357
28	34.17258	−119.95830
29	34.13535	−120.01964
30	34.13698	−120.04206
31	34.12994	−120.08582
32	34.12481	−120.11104
33	34.12519	−120.16076
34	34.11008	−120.21190
35	34.11128	−120.22707
36	34.13632	−120.25292
37	34.15341	−120.28627
38	34.16408	−120.29310
39	34.17704	−120.30670
40	34.20492	−120.30670
41	34.20492	−120.38830
42	34.20707	−120.41801
43	34.20520	−120.42859
44	34.19254	−120.46041
45	34.20540	−120.50728
46	34.20486	−120.53987
47	34.18182	−120.60041
48	34.10208	−120.64208
49	34.08151	−120.63894
50	34.05848	−120.62862
51	34.01940	−120.58567
52	34.01349	−120.57464
53	33.98698	−120.56582
54	33.95039	−120.53282
55	33.92694	−120.46132
56	33.92501	−120.42170
57	33.91403	−120.37585
58	33.91712	−120.32506
59	33.90956	−120.30857
60	33.88976	−120.29540
61	33.84444	−120.25482
62	33.83146	−120.22927
63	33.81763	−120.20284
64	33.81003	−120.18731
65	33.79425	−120.13422
66	33.79379	−120.10207
67	33.79983	−120.06995
68	33.81076	−120.04351
69	33.81450	−120.03158
70	33.84125	−119.96508
71	33.84865	−119.92316
72	33.86993	−119.88330
73	33.86195	−119.88330

Point ID No.	Latitude (north)	Longitude (south)
74	33.86195	−119.80000
75	33.86110	−119.79017
76	33.86351	−119.77130
77	33.85995	−119.74390
78	33.86233	−119.68783
79	33.87330	−119.65504
80	33.88594	−119.62617
81	33.88688	−119.59423
82	33.88809	−119.58278
83	33.89414	−119.54861
84	33.90064	−119.51936
85	33.90198	−119.51609
86	33.90198	−119.43311
87	33.90584	−119.43311
88	33.90424	−119.42422
89	33.90219	−119.40730
90	33.90131	−119.38373
91	33.90398	−119.36333
92	33.90635	−119.35345
93	33.91304	−119.33280
94	33.91829	−119.32206
95	33.48250	−119.16874
96	33.44235	−119.16797
97	33.40555	−119.14878
98	33.39059	−119.13283
99	33.36804	−119.08891
100	33.36375	−119.06803
101	33.36241	−119.04812
102	33.36320	−119.03670
103	33.36320	−118.90879
104	33.47500	−118.90879
105	33.48414	−118.90712
106	33.52444	−118.91492
107	33.53834	−118.92271
108	33.58616	−118.99540
109	33.59018	−119.02374
110	33.58516	−119.06745
111	33.58011	−119.08521
112	33.54367	−119.14460
113	33.51161	−119.16367

8. Add Appendix B to subpart G to read as follows:

Appendix B to Subpart G of Part 922—Marine Reserve Boundaries

[Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

Table B–1. Richardson Rock (San Miguel Island) Marine Reserve

The Richardson Rock Marine Reserve boundary is defined by connecting in sequential order the coordinates provided in Table B–1.

Point	Latitude	Longitude
1	34.17333° N	−120.47000° W
2	34.17333° N	−120.60483° W
3	34.03685° N	−120.60483° W
4	34.03685° N	−120.47000° W

Table B–2. Harris Point (San Miguel Island) Marine Reserve

The Harris Point Marine Reserve (Harris Point) boundary is defined by NOAA's MHWL along San Miguel Island, the coordinates provided in Table B–2, and the following textual description.

The Harris Point boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the MHWL along San Miguel Island where a line defined by connecting Point 2 and Point 3 with a straight line intersects the MHWL. The boundary follows the MWHL northwestward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the MHWL northwestward along a straight line toward Point 5 until it again intersects the MWHL. At that intersection, the boundary follows the MWHL northwestward and then southwestward until it intersects the straight line connecting Point 6 and Point 7. At that intersection, the boundary extends from the MHWL along a straight line to Point 7.

Point	Latitude	Longitude
1	34.05170° N	−120.38830° W
2	34.20492° N	−120.38830° W
3	34.20492° N	−120.30670° W
4	34.03000° N	−120.30670° W
5	34.04830° N	−120.33670° W
6	34.05830° N	−120.35500° W
7	34.05170° N	−120.38830° W

Table B–3. Judith Rock (San Miguel Island) Marine Reserve

The Judith Rock Marine Reserve (Judith Rock) boundary is defined by NOAA's MHWL along San Miguel Island, the coordinates provided in Table B–3, and the following textual description.

The Judith Rock boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the MHWL along San Miguel Island where a line defined by connecting Point 2 and Point 3 with a straight line intersects the MHWL. The boundary follows the MWHL eastward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary then extends from the MHWL to Point 5 along a straight line.

Point	Latitude	Longitude
1	34.03000° N	−120.44330° W
2	33.97500° N	−120.44330° W
3	33.97500° N	−120.42170° W
4	34.02500° N	−120.42170° W
5	34.03000° N	−120.44330° W

Table B–4. Carrington Point (Santa Rosa Island) Marine Reserve

The Carrington Point Marine Reserve (Carrington Point) boundary is defined by NOAA's MHWL along Santa Rosa Island, the coordinates provided in Table B–4, and the following textual description.

The Carrington Point boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the MHWL along Santa Rosa Island where a line defined by connecting Point 2 and Point 3 with a straight line intersects the MHWL. The boundary follows the MWHL northward and then westward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the MHWL to Point 5 along a straight line. The boundary then extends from Point 5 to Point 6 along a straight line.

Point	Latitude	Longitude
1	34.02170° N	−120.08670° W
2	34.06670° N	−120.08670° W
3	34.06670° N	−120.01670° W
4	34.00830° N	−120.01670° W
5	34.00830° N	−120.04670° W
6	34.02170° N	−120.08670° W

Table B–5. Skunk Point (Santa Rosa Island) Marine Reserve

The Skunk Point Marine Reserve (Skunk Point) boundary is defined by NOAA's MHWL along Santa Rosa Island, the coordinates provided in Table B–5, and the following textual description.

The Skunk Point boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the MHWL along Santa Rosa Island where a line defined by connecting Point 2 and Point 3 with a straight line intersects the MHWL. The boundary follows the MWHL northward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the MHWL eastward to Point 5 along a straight line.

Point	Latitude	Longitude
1	33.98330° N	−119.98000° W
2	33.98330° N	−119.96700° W
3	33.95170° N	−119.96670° W
4	33.95170° N	−119.97000° W
5	33.98330° N	−119.98000° W

Table B–6. South Point (Santa Rosa Island) Marine Reserve

The South Point Marine Reserve (South Point) boundary is defined by NOAA's MHWL along Santa Rosa Island, the coordinates provided in Table B–6, and the following textual description.

The South Point boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the MHWL along Santa Rosa where a line defined by connecting Point 2 and Point 3 with a straight line intersects the MHWL. The boundary follows the MWHL southeastward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the MHWL to Point 5 along a straight line.

Point	Latitude	Longitude
1	33.91670° N	−120.16670° W
2	33.84000° N	−120.16670° W
3	33.84000° N	−120.10830° W
4	33.89670° N	−120.10830° W
5	33.91670° N	−120.16670° W

Table B–7. Gull Island (Santa Cruz Island) Marine Reserve

The Gull Island Marine Reserve (Gull Island) boundary is defined by NOAA's MHWL along Santa Cruz Island, the coordinates provided in Table B–7, and the following textual description.

The Gull Island boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the MHWL where a line defined by connecting Point 2 and Point 3 with a straight line intersects the MHWL. The boundary follows the MWHL eastward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary then extends from the MHWL to Point 5 along a straight line. The boundary then extends from Point 5 to Point 6 along a straight line.

Point	Latitude	Longitude
1	33.96700° N	−119.85000° W
2	33.96700° N	−119.88330° W
3	33.86195° N	−119.88330° W
4	33.86195° N	−119.80000° W
5	33.96170° N	−119.80000° W
6	33.96700° N	−119.85000° W

Table B–8. Scorpion (Santa Cruz Island) Marine Reserve

The Scorpion Marine Reserve (Scorpion) boundary is defined by NOAA's MHWL along Santa Cruz Island, the coordinates provided in Table B–8, and the following textual description.

The Scorpion boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the MHWL along Santa Cruz Island where a line defined by connecting Point 2 and Point 3 with a straight line intersects the MHWL. The boundary follows the MWHL westward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the MHWL to Point 5 along a straight line.

Point	Latitude	Longitude
1	34.04900° N	−119.59170° W
2	34.15450° N	−119.59170° W
3	34.15450° N	−119.54670° W
4	34.04670° N	−119.54670° W
5	34.04900° N	−119.59170° W

Table B–9. Footprint Marine Reserve

The Footprint Marine Reserve boundary is defined by connecting in sequential order the coordinates provided in Table B–9.

Point	Latitude	Longitude
1	33.98343° N	−119.43311° W
2	33.98343° N	−119.51609° W
3	33.90198° N	−119.51609° W
4	33.90198° N	−119.43311° W

Table B–10. Anacapa Island Marine Reserve

The Anacapa Island Marine Reserve (Anacapa Island) boundary is defined by NOAA's MHWL along Anacapa Island, the coordinates provided in Table B–10, and the following textual description.

The Anacapa Island boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the MWHL along Anacapa Island where a line defined by connecting Point 2 and Point 3 with a straight line intersects the MHWL. The boundary follows the MWHL westward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the MHWL to Point 5 along a straight line.

Point	Latitude	Longitude
1	34.00670° N	−119.41000° W
2	34.08330° N	−119.41000° W
3	34.08330° N	−119.35670° W
4	34.01670° N	−119.35670° W
5	34.00670° N	−119.41000° W

Table B–11. Santa Barbara Island Marine Reserve

The Santa Barbara Island Marine Reserve (Santa Barbara) boundary is defined by NOAA's MHWL along Santa Barbara Island, the coordinates provided in Table B–11, and the following textual description.

The Santa Barbara Island boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the MHWL along Santa Barbara Island where a line defined by connecting Point 2 and Point 3 with a straight line intersects the MHWL. The boundary follows the MWHL northeastward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary then extends from the MHWL to Point 5 along a straight line. The boundary then extends from Point 5 to Point 6 along a straight line.

Point	Latitude	Longitude
1	33.47500° N	−119.02830° W
2	33.47500° N	−118.90879° W
3	33.36320° N	−118.90879° W
4	33.36320° N	−119.03670° W
5	33.46500° N	−119.03670° W
6	33.47500° N	−119.02830° W

9. Add Appendix C to Subpart G to read as follows:

Appendix C to Subpart G of Part 9222—Marine Conservation Area Boundaries

Table C–1. Painted Cave (Santa Cruz Island) Marine Conservation Area

The Painted Cave Marine Conservation Area (Painted Cave) boundary is defined by NOAA's MHWL along Santa Cruz Island, the coordinates provided in Table C–1, and the following textual description.

The Painted Cave boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the MHWL along Santa Cruz Island where a line defined by connecting Point 2 and Point 3 with a straight line intersects the MHWL. The boundary follows the MWHL westward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the MHWL to Point 5 along a straight line.

Point	Latitude	Longitude
1	34.07500° N	−119.88330° W
2	34.08670° N	−119.88330° W
3	34.08330° N	−119.85000° W
4	34.06670° N	−119.85000° W
5	34.07500° N	−119.88330° W

Table C–2. Anacapa Island Marine Conservation Area

The Anacapa Island Marine Conservation Area (AIMCA) boundary is defined by NOAA's MHWL along Anacapa Island, the coordinates provided in Table C–2, and the following textual description.

The AIMCA boundary extends from Point 1 to Point 2 along a straight line. It then extends along a straight line from Point 2 to the MWHL of Anacapa Island where a line defined by connecting Point 2 and Point 3 with a straight line intersects the MHWL. The boundary follows the MWHL westward until it intersects the line defined by connecting Point 4 and Point 5 with a straight line. At that intersection, the boundary extends from the MHWL to Point 5 along a straight line.

Point	Latitude	Longitude
1	34.01330° N	−119.44500° W
2	34.08330° N	−119.44500° W
3	34.08330° N	−119.41000° W
4	34.00670° N	−119.41000° W
5	34.01330° N	−119.44500° W

[FR Doc. 06–6812 Filed 8–10–06; 8:45 am]
BILLING CODE 3510–NK–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[Docket No. DEA–257P]

RIN 1117–AA93

Changes in the Regulation of Iodine Crystals and Chemical Mixtures Containing Over 2.2 Percent Iodine

AGENCY: Drug Enforcement Administration (DEA), U.S. Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes changes in the regulation of the listed chemical iodine pursuant to the chemical regulatory provisions of the Controlled Substances Act (CSA). The Drug Enforcement Administration (DEA) believes that this action is necessary in order to remove deficiencies in the current regulatory controls, which are being exploited by drug traffickers who divert iodine (in the form of iodine crystals and iodine tincture) for the illicit production of methamphetamine in clandestine drug laboratories. This NPRM proposes (1) the movement of

iodine from List II to List I; (2) a reduction in the iodine threshold from 0.4 kilograms to zero kilograms; (3) the addition of import and export regulatory controls; and (4) the control of chemical mixtures containing greater than 2.2 percent iodine.

This NPRM proposes regulatory controls that will apply to iodine crystals and iodine chemical mixtures that contain greater than 2.2 percent iodine. This regulation will therefore control iodine crystals and strong iodine tinctures/solutions (e.g., 7 percent iodine) that do not have common household uses and instead have limited application in livestock, horses and for disinfection of equipment. Household products such as 2 percent iodine tincture/solution and household disinfectants containing iodine complexes will not be adversely impacted by this regulation.

If finalized as proposed, persons conducting regulated transactions involving iodine would need to be registered with the DEA, would be subject to import/export notification requirements of the CSA, and would be required to maintain records of all regulated transactions involving iodine regardless of size.

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before October 10, 2006.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA–257P" on all written and electronic correspondence. Written comments via regular mail should be sent to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL. Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, VA 22301. Comments may be sent directly to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov*. Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats. DEA will not accept any file format other than those specifically listed here.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537 at (202) 307–7183.

SUPPLEMENTARY INFORMATION:

I. Background Information on Iodine

Congress placed iodine in List II by amending Section 102(35) of the CSA (21 U.S.C. 802(35)) by passage of Public Law 104–237, the Comprehensive Methamphetamine Control Act of 1996 (MCA) on October 3, 1996. Iodine became a regulated chemical because of its use in the clandestine manufacture of the Schedule II controlled substances amphetamine and methamphetamine. Methamphetamine is the leading clandestinely manufactured controlled substance in the United States.

Faced with the growing threat of methamphetamine abuse in the United States and the ease with which methamphetamine is clandestinely produced using iodine, the DEA is proposing to increase the regulatory controls on iodine in an effort to prevent the diversion of iodine to clandestine drug laboratories.

Legitimate Uses of Iodine

Iodine is important to the chemical and allied industries primarily as a chemical intermediate used to make new chemical products for industry and research. These products have application in sanitation (as disinfectants), animal feed, pharmaceuticals, as catalysts, heat stabilizers, and in various other industrial applications. Most iodine is consumed by industry. Those who purchase iodine for end use, whether they are individuals or businesses, would be subject to CSA chemical regulatory controls to the extent that they must present identification and provide other information that helps assure the seller that his or her proposed use of the chemical is legitimate. See 21 U.S.C. 830 and 21 CFR 1310.07.

Iodine has powerful bactericidal action and is used for disinfecting unbroken skin before surgery. Iodine also may be employed as a weak solution for the first-aid treatment of small wounds and abrasions.

The standard definition for iodine topical solutions, and other iodine containing products, is specified in the United States Pharmacopeia (U.S.P.). The U.S.P. lists two strengths of iodine solution and two strengths of iodine tincture. The U.S.P. specifies formulations for iodine topical solution, strong iodine solution, iodine tincture, and strong iodine tincture in the official monographs.

Commercially available iodine solutions and tinctures are summarized in the following table:

CONCENTRATION OF IODINE PRODUCTS PER 100 ML

	Iodine (gm.)	Sodium Iodide (gm.)	Potassium Iodide (gm.)
Iodine Topical (w/ water)	1.8–2.2	2.1–2.6	.....
Strong Iodine (w/ water)	4.5–5.5	.....	9.5–10.5
Iodine Tincture (w/ alcohol @ 44–50%)	1.8–2.2	2.1–2.6	.....
Strong Iodine Tincture (w/ alcohol @ 82.5–88.5%)	6.8–7.5	.....	4.7–5.5

As shown on the table, the solutions are formulated in two concentrations of iodine. They are specifically named as iodine topical solution and strong iodine solution. Iodine topical solution two percent U.S.P. is defined as having in each 100 ml, not less than 1.8 grams and not more than 2.2 grams of iodine, and not less than 2.1 grams and not more than 2.6 grams of sodium iodide. Only water is used as the solvent. Strong iodine solution U.S.P. contains in each 100 ml, not less than 4.5 grams and not more than 5.5 grams of iodine and not less than 9.5 grams and not more than 10.5 grams of potassium iodine.

The U.S.P. defines iodine tincture as containing, in each 100 ml, not less than 1.8 grams and not more than 2.2 grams of iodine, and not less than 2.1 grams and not more than 2.6 grams of sodium iodide. The same weight amounts of iodine and sodium iodide are used as in the iodine topical solution except that alcohol is used in 44 to 50 percent

concentration. The target concentration of iodine is 2 percent. Strong iodine tincture is defined as containing, in each 100 ml, not less than 6.8 grams and not more than 7.5 grams of iodine and not less than 4.7 grams and not more than 5.5 grams of potassium iodide. The alcohol content is between 82.5 and 88.5 percent. The target iodine concentration is 7 percent.

Iodine two percent tincture and solution U.S.P. are sold at a wide variety of retail outlets and have household application as antiseptic and antimicrobial products. These products will not become regulated under the proposed regulation. In contrast, however, iodine crystals and iodine chemical mixtures containing over 2.2 percent iodine have no household use and are available only from specialty retailers. Iodine solutions (in excess of 2.2 percent iodine) are used as an antiseptic in the care of livestock and horses and as disinfectants for equipment and areas where livestock are kept. Some iodine solutions are used in saltwater aquariums, to test for the presence of starch, and as stains in some laboratory tests. This NPRM proposes regulating these chemical mixtures, but provides for the possibility of exemption as discussed later in this rule.

Iodine crystals have also been historically used by campers to purify water. Today, however, most of the water treatment products available to campers utilize iodide salts and are not the subject of this regulation. DEA, however, has identified two marketed products that contain iodine for water purification. Under this NPRM, these products would be subject to control.

There are other iodine containing products that have household use and are widely sold in retail settings. Iodine products classified as iodophors consist of iodine complexed with surfactant compounds (e.g. poloxamer-iodine complex) or with nonsurfactant compounds (e.g. polyvinyl pyrrolidone-iodine complex (povidone-iodine)). These complexes allow the iodine to be continually delivered. Such complex solutions in water or alcohol are better tolerated than iodine tincture and solutions with comparable efficacy. Considering the necessary time of application and the correct dilution, these complexes are used for general disinfection, hand disinfection, as well as for skin disinfection prior to surgery or venipuncture. Some of these iodine complexes are also used for the treatment of burns and of different skin lesions. Since these complex products do not have applicability as a source of iodine at clandestine drug laboratories, DEA is proposing that these products be specifically exempted in 21 CFR 1310.12(d)(4). This provision would be automatically exempt from CSA controls "Iodine products classified as iodophors which exist as an iodine complex to include poloxamer-iodine complex, polyvinyl pyrrolidone-iodine complex (i.e. povidone-iodine), undecoylium chloride iodine, nonylphenoxypoly (ethyleneoxy) ethanol-iodine complex, iodine complex with phosphate ester of alkylaryloxy polyethylene glycol, and iodine complex with ammonium ether sulfate/polyoxyethylene sorbitan monolaurate."

DEA is aware that the element iodine is a constituent in certain pharmaceutical products (e.g. potassium iodide and others) sold over-the-counter or pursuant to a prescription. Potassium iodide is available for use in the event of a nuclear incident to protect the thyroid gland of exposed individuals. The element iodine is also a constituent in products sold as radioisotopes (e.g. radioactive iodine) which find widest use in the treatment of hyperthyroidism and in the diagnosis of certain disorders (e.g. thyroid dysfunction). The greatest use has been made of sodium iodide I^{131}. DEA is also aware of other radiolabeled material, such as sodium iodide I^{123}, which is available for scanning/imaging purposes in disease diagnosis. Note that these iodide compounds are not the subject of this NPRM. As such, the proposed regulatory controls will not apply to any of these iodide salts or radiolabeled iodine. Additionally, these proposed regulatory controls will not apply to any iodide material commonly dispensed pursuant to a prescription. Instead, this NPRM is limited only to the regulation of iodine crystals and chemical mixtures that contain iodine in the form of the iodine tinctures and iodine solutions described above.

This NPRM proposes regulatory controls that will apply to iodine crystals and iodine chemical mixtures that contain greater than 2.2 percent iodine. The vast majority of products having household application will not be adversely impacted by this regulation.

Why Traffickers Use Iodine

Due to the regulatory controls placed on the listed chemical hydriodic acid, drug traffickers began using iodine as a substitute chemical in the illicit production of methamphetamine and amphetamine, both Schedule II controlled substances. Hydriodic acid became a regulated chemical upon enactment of the Chemical Diversion and Trafficking Act of 1988 (Pub. L. 100–690). Hydriodic acid, like iodine, was initially regulated as a List II chemical. Hydriodic acid was reclassified as a List I chemical by enactment of the Crime Control Act of 1990 (Pub. L. 101–647).

The Domestic Chemical Diversion Control Act of 1993 (DCDCA) (Pub. L. 103–200) required that handlers of List I chemicals be registered. This increased regulatory control and made it more difficult for traffickers to acquire hydriodic acid. Faced with this difficulty, traffickers began to substitute iodine for hydriodic acid for the illicit production of methamphetamine and amphetamine.

Iodine is commonly used with the List I chemicals phosphorus or hypophosphorous acid and ephedrine or pseudoephedrine to manufacture methamphetamine, which is now the most prevalent method used by traffickers. The List I chemicals phenylpropanolamine or norpseudoephedrine can be made into amphetamine by the same method.

Current Regulatory Controls on Iodine and Need for Increased Regulation

In response to the increased use of iodine in clandestine drug laboratories, Congress controlled iodine as a List II chemical by amending Section 102(35) of the CSA (21 U.S.C. 802(35)) by passage of Public Law 104–237, the Comprehensive Methamphetamine Control Act of 1996 (MCA) on October 3, 1996.

Although iodine became subject to CSA chemical regulatory controls, traffickers have exploited certain deficiencies in these controls to divert iodine. Only certain domestic distributions are regulated transactions, and distributions below the 0.4 kilogram cumulative threshold (about one pound), within a calendar month, are not regarded as regulated transactions. Import and export transactions of iodine are not regulated, regardless of the quantity distributed. Additionally, because iodine is a List II chemical, handlers of iodine are not required to register with DEA. These loopholes have been exploited by drug traffickers and the businesses that supply them.

While the regulatory controls placed on iodine apply to iodine crystals, they have not pertained to iodine tinctures (which are considered chemical mixtures). Drug traffickers are currently circumventing CSA regulatory controls via the diversion of iodine tinctures. Traffickers have learned that the tinctures can serve as a ready source of iodine crystals when the tincture is subjected to the appropriate chemical reaction.

Existing regulations pertaining to iodine have proved to be inadequate to prevent diversion. Traffickers have been able to make undocumented purchases of iodine crystals (up to the existing threshold of 0.4 kilograms), make unlimited purchases of iodine tincture, and make undocumented import and export shipments of iodine. Additionally, because iodine is a List II chemical and distributors are not registered, it is difficult for DEA to identify all handlers of regulated material.

This NPRM proposes changes to the regulatory control of iodine in an effort to prevent the diversion of iodine for the illicit production of methamphetamine and amphetamine.

Use of Iodine in Clandestine Drug Laboratories

Iodine is a major chemical used in the illicit manufacture of methamphetamine and amphetamine. DEA's El Paso Intelligence Center (EPIC) maintains the official U.S. database of clandestine laboratories seized by Federal, State, and local law enforcement. As reported by EPIC, the number of clandestine methamphetamine laboratories using iodine was 2243, 2774, 4015, 4326, and 4904 for the calendar years 1999, 2000, 2001, 2002, and 2003, respectively. The number of laboratories reported to have used hydriodic acid over the same years was 644, 661, 735, 746, and 650, respectively. The increased use of iodine over hydriodic acid is seen going back to 1997, the earliest year that such information is available from EPIC's database.

The data for clandestine labs seized only by federal authorities show similar trends. STRIDE (System to Retrieve Information on Drug Evidence) is a DEA maintained database that includes reports of clandestine laboratory seizures made primarily by DEA. STRIDE reports that between 1990 and 1994, the number of clandestine laboratories that used hydriodic acid was much greater than those using iodine. Although hydriodic acid became a List I chemical in 1990, handlers were not required to register until 1993. By 1994, the number of DEA cases involving iodine surpassed the number for hydriodic acid, and this has continued to the present time. This trend indicates that regulatory controls governing the handling of hydriodic acid were effective in causing traffickers to seek an alternate to hydriodic acid, in the form of iodine, which had less stringent regulatory controls.

Commercial iodine chemical mixtures, reported as iodine tincture, have also been identified as significant sources of iodine in clandestine methamphetamine laboratories. The number of iodine tincture seizures reported by EPIC has steadily increased from 71 seizures in calendar year 1999, 397 seizures in calendar year 2000, 1154 seizures in calendar year 2001, 1679 seizures in calendar year 2002, to 2252 seizures in calendar year 2003. Thus, iodine and iodine tincture have increasingly been used as chemicals in the illicit production of controlled substances within the United States.

International Scope of Problem

The illicit production of methamphetamine is also an international problem. Mexican drug trafficking organizations operating out of Mexico and California began to dominate the illicit production and distribution of methamphetamine in the United States around 1994. This followed years of control by independent, regional outlaw motorcycle gangs, supplemented by numerous independent, smaller-scale producers. Mexican organizations now produce and supply the majority of the methamphetamine illicitly available in the United States, using large-scale laboratories based in Mexico and the Southwestern United States. Outlaw motorcycle gangs and small independent producers remain active in domestic methamphetamine production, but not on the same scale as the Mexican traffickers. The Mexican organizations' ready access to essential chemicals on the international market has greatly facilitated their ability to produce large amounts of methamphetamine.

Seizures along the Mexican border illustrate the need for import/export control of iodine. The United States Bureau of Immigration and Customs Enforcement (ICE) reports seizures at Southern California ports of entry. In Calendar Year 2001, ICE reported that there were 26 seizures of iodine totaling 2140 kilograms. In Calendar Year 2002, there were 20 seizures totaling 1605 kilograms, and in Calendar Year 2003, there were 19 seizures totaling 971 kilograms. The smuggling of iodine illustrates the need for additional international controls. Although iodine seizures have been declining, these quantities remain significant. The decrease may reflect a changing pattern of production by large methamphetamine manufacturing organizations, which have shifted some production, via large capacity clandestine labs, from California to Mexico.

II. Proposed Changes to the Regulation of Iodine

Moving Iodine Into 21 CFR 1310.02(a) (List I)

The Controlled Substances Act (CSA) and its implementing regulations, specifically 21 U.S.C. 802(35) and 21 CFR 1310.02(c), provide the Attorney General with the authority to specify, by regulation, the addition or deletion of any chemicals as listed chemicals if they are used in the manufacture of a controlled substance in violation of the CSA. This authority has been delegated to the Administrator of DEA by 28 CFR 0.100 and redelegated to the Deputy Administrator by 28 CFR 0.104 Appendix to Subpart R Section 12.

The definition in 21 CFR 1300.02 (b)(19), defines "List II chemical" as a chemical, other than a List I chemical, specifically designated by the Administrator in 21 CFR 1310.02(b), that "is used in manufacturing a controlled substance in violation of the Act." 21 CFR 1300.02(b)(18) defines the term "List I chemical" to mean "a chemical specifically designated by the Administrator in 21 CFR 1310.02(a) * * * that * * * is used in manufacturing a controlled substance in violation of the Act and is important to the manufacture of a controlled substance."

The DEA is proposing to remove iodine from 21 CFR 1310.02(b) (List II) and to place it in 1310.02(a) (List I) because, based on the information provided above, iodine is a chemical that is important to the manufacture of the controlled substances methamphetamine and amphetamine. If placed in List I, 21 U.S.C. 822(a)(1) requires that persons who distribute iodine must be registered with DEA. Based on its experience with hydriodic acid and other List I chemicals, DEA believes that List I regulatory controls for iodine will help curtail its widespread use in the clandestine manufacture of methamphetamine and amphetamine. List I regulatory controls would dictate that handlers of iodine, including persons who manufacture, import, export, or distribute iodine, would be required to register with DEA. Retail and wholesale outlets that sell iodine crystals and covered tinctures/solutions would also be required to register.

Prior to receiving a DEA chemical registration, handlers are subject to a pre-registration investigation by DEA in order to determine the legitimacy of the business per criteria specified under 21 U.S.C. 823(h). Registration also provides the DEA with the identity of all businesses that handle List I chemicals.

A business that sells a List I chemical in violation of the law or regulations can have its registration revoked and be prevented from handling List I chemicals. The registration requirement is a disincentive to casual handlers of iodine, who might be used unwittingly by methamphetamine cooks.

Regulation of Import and Export Transactions

When iodine was controlled as a listed chemical by the Comprehensive Methamphetamine Control Act of 1996, the bill specifically exempted it from import and export controls. The MCA, however, also explicitly provided that Congress was not limiting the authorization of the Attorney General to impose the import and export provisions of the CSA on iodine. See Public Law 104–237, Sec. 204. Because of the international flow of iodine in the production and distribution of methamphetamine, DEA has determined that the addition of import and export controls on iodine is necessary. Therefore, 21 CFR 1310.08 is proposed to be amended to remove imports and exports of iodine as excluded transactions. Thus, iodine would become subject to the import and export notification provisions of the CSA.

Elimination of the Iodine Threshold

Transactions involving listed chemicals—including cumulative transactions in a single calendar month—below a quantity threshold, specified pursuant to 21 U.S.C. 802(39)(A), are excluded from the definition of "regulated transaction." Currently, the threshold for iodine is 400 grams (0.4 kilograms). Thresholds denote a quantity below which regulation is not necessary for law enforcement purposes. However, DEA has determined that the regulation of all transactions of regulated iodine products is necessary in order to prevent diversion. Thus, DEA is proposing to remove the threshold for iodine. Therefore, all transactions of regulated iodine products would be considered regulated transactions regardless of size.

Household uses for the regulated iodine products proposed to be controlled as List I chemicals by this NPRM are very limited. These regulated iodine materials (i.e. iodine crystals and tinctures and solution of greater than 2.2 percent iodine) are used in specialized applications, such as antiseptics in the care of large animals, sanitation for dairies, chemical lab tests, and as a source of iodine in saltwater aquariums. For some of the uses, two ounces can last several months.

DEA considered adjusting the threshold to exclude transactions of two ounces or below from regulatory control. However, the most common smaller size iodine container that DEA identified in clandestine laboratories is two ounces, which contains 56 grams of iodine. DEA estimates that 56 grams of iodine can produce over 50 grams of pure methamphetamine. Therefore, DEA determined that a 2-ounce quantity is useful to traffickers and should be regulated.

III. Proposed Regulation To Identify Exempt Iodine Chemical Mixtures

Definition of Chemical Mixtures

The CSA (21 U.S.C. 802(40)) defines the term "chemical mixture" as "a combination of two or more chemical substances, at least one of which is not a List I chemical or a List II chemical, except that such term does not include any combination of a List I chemical or a List II chemical with another chemical that is present solely as an impurity." Therefore, a chemical mixture contains any one or more listed chemical along with any number of non-listed chemicals.

DEA does not consider a chemical mixture to mean the combination of a listed chemical with an inert carrier. An inert carrier can be any chemical that does not interfere with the listed chemical's function but is present to aid in the delivery of the listed chemical so it can be used in some chemical process. Examples include, but are not limited to, solutions of listed chemicals such as methylamine in water or hydrogen chloride dissolved in water or alcohol.

Iodine tinctures and solutions are considered chemical mixtures because they require the addition of iodine and an iodide salt into a water or water/alcohol solution. It is not simply iodine dissolved in an inert carrier. These iodine tinctures and solutions are therefore chemical mixtures in the regulatory sense.

Regulation of Chemical Mixtures

The Chemical Diversion and Trafficking Act of 1988 (Pub. L. 100–690)(CDTA) created the definition of "chemical mixture" (21 U.S.C. 802(40)), and exempted chemical mixtures from regulatory control. The CDTA established 21 U.S.C. 802(39)(A)(v) to exclude "any transaction in a chemical mixture" from the definition of a "regulated transaction." This exemption of all chemical mixtures provided traffickers with an unregulated source for obtaining listed chemicals for use in the illicit manufacture of controlled substances.

The Domestic Chemical Diversion Control Act of 1993 (DCDCA), enacted in April 1994 subjected chemical mixtures containing listed chemicals to CSA regulatory requirements, unless specifically exempted by regulation. These requirements include recordkeeping, reporting, and security for all regulated chemical mixtures with the requirement added by the DCDCA of registration for handlers of regulated List I chemical mixtures.

The DCDCA also amended 21 U.S.C. 802(39)(A)(v) to provide the Attorney General with the authority to establish regulations exempting chemical mixtures from the definition of a "regulated transaction." However, exclusion from this definition can only be made "based on a finding that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical or chemicals contained in the mixture cannot be readily recovered." DEA has established the following three-tiered approach to identify which chemical mixtures qualify for automatic exemption: (1) The mixture contains a listed chemical at or below an established concentration limit; or (2) the mixture falls within a specifically defined category; or (3) the manufacturer of the mixture applies for and is granted a specific exemption for the product (68 FR 23195, May 1, 2003.)

This NPRM proposes regulations that identify which iodine chemical mixtures qualify for automatic exemption because they meet the requirements of 21 U.S.C. 802(39)(A)(v). Once finalized, those iodine chemical mixtures that do not qualify for automatic exemption would be regulated chemicals, unless the manufacturer has been granted specific exemption for their product(s) by DEA via an application process (21 CFR 1310.13).

Federal Register Publications Addressing Iodine Chemical Mixtures

Regulations regarding the exemption of chemical mixtures, including those containing iodine, were initially proposed by DEA on October 13, 1994, as part of its proposed regulations to implement the DCDCA (59 FR 51888). In response to industry concerns, the proposed regulations regarding the exemption process for chemical mixtures were withdrawn on December 9, 1994 (59 FR 63738). DEA proposed new regulations regarding the exemption of chemical mixtures by publishing a new NPRM entitled "Exemption of Chemical Mixtures" in

the **Federal Register** (63 FR 49506, September 16, 1998).

Iodine chemical mixtures, including iodine tinctures and solutions, were not a serious concern to law enforcement at the time DEA was drafting the 1998 proposed regulations regarding chemical mixtures. Therefore, a 20 percent concentration limit was proposed for iodine.

In addition to information obtained from DEA investigations, open sources, and communication with the regulated community, DEA also relies on comments to the NPRM to help establish final regulations. Comments to the NPRM "Exemption of Chemical Mixtures" informed DEA that seven percent iodine chemical mixtures are being used in the illicit manufacture of methamphetamine. Based on this information and the mounting evidence gathered by DEA that iodine is being extracted from these chemical mixtures for illicit purposes, DEA determined that the proposed concentration limit of 20 percent for iodine is too high compared to the concentration of iodine contained in mixtures being diverted by traffickers. Therefore, the final chemical mixture rulemaking published on December 15, 2004 [69 FR 74957], withdrew the iodine portion. Instead, DEA decided to address the iodine chemical mixture issue separately and is doing so under this NPRM. Since seven percent iodine tincture and solutions are the predominant iodine-containing chemical mixtures diverted by traffickers, DEA has determined that these chemical mixtures should be subject to CSA chemical regulatory controls. Two percent iodine tincture and solutions are also diverted, but DEA has not documented the frequent diversion of these materials at clandestine laboratories. Therefore, DEA does not intend to regulate the two percent iodine tincture or solution at this time.

DEA is also aware of other materials that contain iodine. Examples include iodophor complexes such as poloxamer-iodine and povidone-iodine. These materials are not of concern to DEA as a source of iodine for clandestine laboratories. This NPRM proposes that these materials be specifically exempted from CSA chemical regulatory controls pursuant to 21 CFR 1310.12 by adding a new paragraph (d)(4) which will exempt "Iodine products classified as iodophors which exist as an iodine complex to include poloxamer-iodine complex, polyvinyl pyrrolidone-iodine complex (i.e. povidone-iodine), undecoylium chloride iodine, nonylphenoxypoly (ethyleneoxy) ethanol-iodine complex, iodine complex with phosphate ester of alkylaryloxy polyethylene glycol, and iodine complex with ammonium ether sulfate/polyoxyethylene sorbitan monolaurate."

Exemption by Application Process

DEA recognizes that the 2.2 percent iodine concentration limit and category exemption criteria cannot identify all mixtures that should receive exemption status. DEA has implemented an application process to exempt additional mixtures (21 CFR 1310.13). This application process was finalized in the **Federal Register** Notice (68 FR 23195) published May 1, 2003. Under the application process, manufacturers may submit an application for exemption for those mixtures that do not qualify for automatic exemption. Exemption status can be granted if DEA determines that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and the listed chemical cannot be readily recovered (i.e., it meets the conditions in 21 U.S.C. 802(39)(A)(v)). An application may be for a single or a multiple number of formulations. All chemical mixtures which are granted exemption via the application process will be listed in 21 CFR 1310.13(i).

Specific Requirements That Will Apply to Regulated Chemical Mixtures Containing Iodine

DEA is proposing that a chemical mixture that is regulated because it contains greater than 2.2 percent iodine will be treated as a List I chemical. Therefore, the same requirements for registration, records and reports, imports/exports (except that pertaining to 21 U.S.C. 957), and administrative inspection, as outlined below, apply to handlers of regulated chemical mixtures.

Requirements That Apply to Regulated List I Chemicals and Their Regulated Chemical Mixtures

In light of the proposal to place iodine in 21 CFR 1310.02(a) (List I) and to control chemical mixtures containing greater than 2.2 percent iodine, the following requirements for List I chemicals are outlined. Chemical mixtures that are not exempt or excluded under any provision of these regulations, either by concentration limit, general category or as a result of DEA action on a specific application for exemption, shall be considered regulated chemical mixtures. Persons interested in handling List I chemicals, including regulated chemical mixtures containing List I chemicals, must comply with the following:

1. *Registration.* Any person who manufactures or distributes a List I chemical, or proposes to engage in the manufacture or distribution of a List I chemical, must obtain a registration pursuant to the CSA (21 U.S.C. 822). Regulations describing registration for List I chemical handlers are set forth in 21 CFR part 1309.

Separate registration is required for distribution, importing, and exporting. Different locations operated by a single entity require separate registration if any location is involved with the distribution, import, or export of a List I chemical. Any person distributing, importing, or exporting a regulated List I chemical mixture is subject to the registration requirement under the CSA. DEA recognizes, however, that it is not possible for persons who distribute, import, or export iodine, upon its placement in List I, to immediately complete and submit an application for registration and for DEA to issue registrations immediately for those activities. Therefore, to allow continued legitimate commerce in iodine, DEA is proposing to establish in 21 CFR 1310.09 a temporary exemption from the registration requirement for persons desiring to distribute, import, or export iodine, provided that DEA receives a properly completed application for registration on or before 60 days from the date of publication of a final rule. The temporary exemption for such persons will remain in effect until DEA takes final action on their application for registration.

The temporary exemption applies solely to the registration requirement; all other chemical control requirements, including recordkeeping and reporting, will remain in effect. Additionally, the temporary exemption does not suspend applicable federal criminal laws relating to iodine, nor does it supersede state or local laws or regulations. All handlers of iodine must comply with their state and local requirements in addition to the CSA and other federal regulatory controls.

2. *Records and Reports.* The CSA (21 U.S.C. 830) requires that certain records be kept and reports be made that involve listed chemicals. Regulations describing recordkeeping and reporting requirements are set forth in 21 CFR Part 1310. A record must be made and maintained for two years after the date of a transaction involving a listed chemical, provided the transaction is a regulated transaction.

Each regulated bulk manufacturer of a regulated mixture shall submit manufacturing, inventory and use data on an annual basis (21 CFR 1310.05(d)). Bulk manufacturers producing the

mixture solely for internal consumption, e.g., formulating a non-regulated mixture, are not required to submit this information. Existing standard industry reports containing the required information are acceptable, provided the information is readily retrievable from the report.

Title 21 CFR 1310.05 requires that each regulated person shall report to DEA any regulated transaction involving an extraordinary quantity of a listed chemical, an uncommon method of payment or delivery, or any other circumstance that the regulated person believes may indicate that the listed chemical will be used in violation of the CSA.

3. *Import/Export.* All imports/exports of a listed chemical shall comply with the CSA (21 U.S.C. 957 and 971). Regulations for importation and exportation of List I chemicals are described in 21 CFR 1313. Separate registration is necessary for each activity (21 CFR 1309.22).

4. *Security:* All applicants and registrants shall provide effective controls against theft and diversion of chemicals as described in 21 CFR 1309.71.

5. *Administrative Inspection.* Places, including factories, warehouses, or other establishments and conveyances, where regulated persons may lawfully hold, manufacture, or distribute, dispense, administer, or otherwise dispose of a regulated chemical/chemical mixture or where records relating to those activities are maintained, are controlled premises as defined in 21 CFR 1316.02(c). The CSA (21 U.S.C. 880) allows for administrative inspections of these controlled premises as provided in 21 CFR 1316 Subpart A.

The goal of this rulemaking is to deny traffickers unregulated access to iodine while minimizing the burden on legitimate industry. Persons who obtain a regulated chemical but do not distribute the chemical are end users. End users are not subject to CSA chemical regulatory control provisions such as registration or recordkeeping requirements. Some examples of end users are those who chemically react iodine and change it into a non-listed chemical, formulate iodine into an exempt chemical mixture or consume it in some industrial process, or use it for water treatment or sanitation.

Regulatory Certifications

Regulatory Flexibility and Small Business Concerns

The Regulatory Flexibility Act (5 U.S.C. 600–612) requires agencies to determine whether a proposed rule will have a significant economic impact on a substantial number of small entities (SEISNOSE). If an agency finds that there is a SEISNOSE, the agency must consider whether alternative approaches could mitigate the impact on small entities. The size criteria for small entities are defined by the Small Business Administration (SBA) in 13 CFR 121.201. As discussed below, DEA has researched the production and marketing of iodine to determine whether the proposed rule could have a SEISNOSE.

The majority of firms potentially subject to the proposed rule are considered small entities under the Small Business Administration definitions for the affected sectors.[1] The only firms for which the rule would have a significant economic impact are those with revenues or sales of less than about $100,000 a year; the initial registration time and fee would represent one percent of their revenues. Economic Census data indicate that even the smallest firms in the affected sectors have sales well above the $100,000 a year level.[2] Consequently, DEA concludes the proposed rule is unlikely to have a significant economic impact on a substantial number of small entities. DEA recognizes, however, that there may be a very small number of firms marketing specialty products that may be adversely affected because they offer no other products. DEA is seeking comment on whether there could be a significant economic impact on a substantial number of small entities.

Initial Regulatory Flexibility Analysis

Potential Universe of All Affected Entities

In broad terms, three companies produce iodine in bulk and distribute it to other companies that either use it in chemical manufacturing, purify it and repackage it, or simply repackage it for further sale. There may be a third step at the manufacturing level where iodine crystals or solutions are purchased in bulk from companies that purified it and are then repackaged for retail sales. Although some iodine products are likely to follow the normal distribution chain of manufacturer to wholesaler to retailer, others do not. Most chemical manufacturers are likely to purchase iodine directly from other manufacturers. Some of the "manufacturers" of iodine products appear to sell both to retail outlets and directly to consumers. Many of the manufacturers offer catalogue and Internet sales.

In addition to the three manufacturers that produce iodine as a bulk chemical, DEA identified 43 firms that have developed material safety data sheets (MSDSs) for iodine products that would be covered by the proposed rule; five of these are already registered as chemical manufacturers. It is not possible to determine whether the DEA registrants produce iodine at registered locations or whether any of the 43 firms produce iodine products at multiple locations.[3] Eight other chemical manufacturers list iodine as a product; one of these is registered as a chemical importer and exporter. There may be other firms producing iodine for industrial uses whose MSDSs are not publicly available.[4] DEA is seeking comments on whether such information exists that could help in further identifying the entities the rule will potentially impact.

DEA identified 15 other manufacturers of iodine products. It is likely that these firms purchase iodine crystals and repackage them or purchase crystals or concentrated solutions and dilute them prior to repackaging. Because some of these firms may operate at multiple locations and because it is likely that not all manufacturers have been identified, the analysis estimates that there are between 75 and 90 manufacturers of iodine products.

Iodine products may be handled by a variety of wholesalers. The livestock and science kit products could be handled by drug, chemical, or agricultural wholesalers. Current Duns data indicate that 267 wholesalers distribute animal medicines; these are the wholesalers most likely to be distributing iodine products for horses. Some of these distributors may already be registered to handle controlled substances. The 2002 Economic Census for the wholesale industry indicated that about 1,115 agricultural wholesalers/retailers may carry tack shop materials. It is possible that other chemical wholesalers may be providing iodine to manufacturers of iodine products, but DEA considers it more likely that these manufacturers purchase iodine in bulk directly from chemical manufacturers. DEA has not identified

[1] See Table 3 for the SBA size standards for affected entities.

[2] See Table 3 for the average revenue for the smallest firms.

[3] The CSA requires that each location where a controlled substance or List I chemical is handled have a separate registration.

[4] OSHA requires the manufacturer of a chemical to develop an MSDS. Other firms that package or distribute the chemical must provide the MSDS, but generally use the MSDS acquired from the original manufacturer. MSDSs must be made available to employees and to firms that purchase the chemical, but publishing them for the general public is not required.

any data that indicate the number of wholesalers who distribute aquarium chemicals, but as there appears to be only one such covered product marketed specifically for aquariums (Kent Marine Lugol solution), it may not be handled by a large number of wholesalers. Similarly, Census classifications do not cover camping goods or science kits at the wholesale level. The Web site for Polar Pure lists only two wholesale distributors. Overall, DEA estimates that the number of wholesalers may range from 300 to 1,400. DEA seeks comments on such approximation.

At the retail level, tinctures are sold by tack shops; 2005 Duns data list about 4,080 such retailers. Agricultural retailers may also sell these products for livestock, but these are included in the wholesale estimate because the Census combines agricultural wholesalers and retailers in a single classification. Veterinarians may also sell the products, but would not be subject to registration because they are already registered to handle controlled substances.

The 2002 Census indicated that there were 5,039 pet stores that sold aquarium supplies. A check of two large chains, which have more than 1,400 stores between them, indicates that although both stock some iodine supplements, neither stock Lugol's solution. DEA estimates that between one percent and five percent of pet stores would carry iodine either as crystals or strong tinctures. Although nursery/garden retailers and building supplies/garden retailers sell pet supplies, it is unlikely that any of them carry covered iodine products.

The Census listed about 1,524 sporting good specialty stores that carry camping supplies. DEA has included 5 percent to 10 percent of them. Mail order and Internet outlets sell all of the iodine products. DEA has no basis for estimating how many of these outlets sell iodine products without being associated with either wholesale or retail outlets that would be included in other counts. DEA has included 50 to 100 of these, but recognizes that these numbers could be either too low or too high. Table 1 presents the estimated low to high range of potentially regulated entities.

TABLE 1.—POTENTIALLY REGULATED UNIVERSE

	Low	High
New manufacturers	75	90
Wholesalers	300	1,400
Tack shops	2,040	4,080
Pet supplies	50	250
Camping supplies	75	150
Other	50	100
Total	2,590	6,070

The estimates in Table 1 represent the number of outlets that may currently handle products that would be subject to the proposed rule. In estimating the number of new registrants, however, DEA has to consider whether these outlets will elect to register and continue selling the products. For almost all of the entities listed in Table 1, iodine products are a minor item. The manufacturers, wholesalers, and mail order/Internet suppliers routinely collect the information DEA would require under the proposed rule; this information is necessary for them to ship the product. Other than the registration fees, the rule would not impose a burden on them although it is possible that some of these outlets may elect to drop iodine products rather than be subject to DEA rules.

Store retailers face a different situation. Not only are their revenues usually lower than those of manufacturers and wholesalers, but they are also unlikely to routinely collect all of the information DEA requires for these transactions. Because the cost of the iodine products is low ($5 to $20), many of the transactions may be in cash. To teach their clerks what is required, explain to customers why the information is needed, transcribe the data, and maintain the record may be too great a burden for a specialty product that is unlikely to be in high demand and for which reasonable substitutes exist. DEA expects, therefore, that most store retailers will stop carrying these products and direct their customers to substitutes or to mail order or Internet sources. This shift would, in turn, likely reduce the number of wholesale distributors handling the products. Table 2 provides a more likely estimate of the potential number of new registrants, but even these estimates are likely to be high because most wholesale and retail outlets may elect to avoid DEA regulation.

TABLE 2.—POTENTIAL NUMBER OF REGISTRANTS

	Low	High
New manufacturers	75	90
Chemical wholesalers	150	700
Other	50	100
Total	275	890

Small Entities Likely To Be Affected by This Rule

The SBA standards for the potentially affected sectors are shown in Table 3 as are the average sales or value of shipments (for manufacturers) for the smallest firms reported in the 2002 Economic Census:

TABLE 3.—SMALL BUSINESS STANDARDS FOR SECTORS

	Size standard	Average sales/smallest firms**
Inorganic chemical manufacturers	1,000 FTE*	$4.25 million.
Pharmaceutical manufacturers	750 FTE	$824,000.
Miscellaneous manufacturers	500 FTE.	
Chemicals wholesalers	100 FTE	$1 million.
Sporting goods and pet stores	$6.5 million	$345,000 (sporting) $274,000 (pet).
Electronic/mail order shopping	$23 million	$528,000 (electronic) $497,000 (mail).

*FTE is an abbreviation for Full Time Equivalent (Employees).
**1 to 4 FTE except for inorganic chemical, where data available only for 5–9 FTE.

Because of the size standards, it is highly likely that a substantial number of the firms that will be regulated will be considered small businesses. DEA has no information on the number of potentially regulated entities that would be classified as small and is seeking comment on this issue.

The three main manufacturers of iodine are large firms; two of the three are also foreign-owned and the third is a joint venture with foreign firms.

Specific Requirements Imposed That Would Impact Small Entities

Firms that handle iodine will be required to register with DEA. At present, the registration fee is $595; the reregistration fee is $477. Each of the firms will also be required to become familiar with DEA's regulations, to maintain records of each sale, and to report to DEA on unusual sales and thefts/losses. Bulk manufacturers must file annual reports, but these reports already apply to iodine as a List II chemical, so impose no new burden. DEA specifies that normal business records may be used to meet the requirements of records of sales. Importers and exporters would be required to file an advance notification for each importation or exportation.

DEA estimates that it takes a firm a half hour to complete and submit a registration, which can be done online. In addition, DEA estimates that it will take four hours to become familiar with the regulations that apply. DEA assumes that rule familiarization and registration will be done by managerial staff. The cost for initial compliance for firms in manufacturing, wholesale, and retail sectors is shown in Table 4. Wage rates are based on November 2004 BLS industry data and loaded with fringe and overhead. Fringe rates are based on BLS "Employer Costs for Employee Compensation—December 2005" for management for goods producing and service industries, as applicable. Overhead is loaded at 56 percent of compensation, based on the most recent Grant Thornton survey.

TABLE 4.—INITIAL COMPLIANCE COST PER FIRM

Sector	Wage rate	Total labor	Total cost with fee
Manufacturing	$127	$573	$1,168
Wholesale	98	442	1,037
Retail	60	269	864
Mail order/Electronic	91	408	1,003

A comparison of the initial compliance costs in Table 4 with the annual revenues or sales of the smallest firms shown in Table 3 indicates that the costs do not approach one percent of sales or revenues of the smallest firms in each sector and, therefore, do not impose a significant economic burden on firms. The recurring costs for renewal are lower (a half hour of labor plus the reregistration fee). DEA estimates that completing the advance notification (Form 486) for imports and exports requires less than 15 minutes. DEA is seeking comments on these estimates.

Reporting and Recordkeeping Requirements

Firms subject to the rule will be required to maintain records of sales. The records required include the date of the sale; the name, quantity, and form of packaging of the chemical; the method of transfer; and the type of identification used by the purchaser and any unique number on that identification. Routine sales records for credit card or mail order sales will include the required information. Manufacturers and wholesalers, which normally sell products through purchase orders, will not have to create any additional records. As noted above, retailers that have cash sales would have to create new records if they continue to sell the products. Because these products represent such a small percentage of any store's sales and there are products that can be substituted for them, DEA considers that it is unlikely that retailers will register and continue to sell iodine products.

Importers and exporters would have to file a Form 486 15 days in advance of any importation or exportation. If the importer meets the requirements to be a regular importer, the person must file the form on or before the date of importation, but does not require DEA approval. Similarly, exporters that have an established business relationship with a foreign customer need to file the form by the date of exportation.

Alternatives

Pursuant to the requirements of the RFA, DEA has evaluated alternatives to this proposed rule and determined that no reasonable alternatives exist. This NPRM proposes changes to the regulatory control of iodine in an effort to prevent the diversion of iodine for the illicit production of methamphetamine and amphetamine. Providing small businesses with alternatives and/or exemptions from the proposed rule would eliminate the regulatory objective behind the rule. DEA has proposed ways to lessen the regulations' economic impact on all entities covered by the rule. This NPRM proposes regulatory controls that will apply to iodine crystals and iodine chemical mixtures that contain greater than 2.2 percent iodine thereby eliminating the majority of products that use iodine from the requirements of this regulation.[5] Also, this proposed rule allows manufacturers to seek exemption for additional mixtures of iodine that do not qualify for automatic exemption under 21 CFR 1310.13. DEA seeks comments on reasonable alternatives to this rule that will serve to lessen its impact on small businesses while maintaining the regulatory objective of regulating iodine crystals and strong tinctures and chemical mixtures containing over 2.2 percent iodine.

Additional Impact Issues Raised

DEA expects that most store retailers will elect not to sell iodine crystals or strong tinctures rather than registering and maintaining sales records. Most iodine products with household applications would not be subject to the rule. DEA considered whether the loss of product sales would have a significant economic impact on retailers. DEA will seek comment on this issue, but in general does not expect an impact. These products make up a very small part of the sales of any pet or sporting goods store. Eliminating the product line is unlikely to have a noticeable effect on sales even if customers continue to seek the products from on line or mail order sources. In most cases, customers will be able to purchase substitutes that are no more expensive, and in some cases, are less expensive. DEA, therefore, expects that

[5] See the section in this regulation on the legitimate uses of iodine.

the impact on sales at the retail level will be minimal.

The impact on manufacturers, with one possible exception, is also likely to be minimal. DEA's research indicates that the manufacturers who produce iodine tinctures and crystals for use with livestock and fish also produce and market the substitutes. If sales of these iodine products decline, it is likely that the sales of substitutes will increase. Many of these companies also sell directly to customers through catalogues and on line. Because the sales records required under the rules are the same records the companies create for mail order or on line sales, there would be no burden beyond registration for these firms to meet these requirements. The one exception is a small company that apparently markets a single product using iodine crystals. To the extent that in-store sales of its product decline and are not replaced with on line sales, the rule could have a significant impact on the firm.

Executive Order 12866

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with Executive Order 12866, Section 1(b). It has been determined that this rule is a "significant regulatory action". Therefore, this action has been reviewed by the Office of Management and Budget.

This proposed rule would impose new regulatory requirements on businesses choosing to handle iodine tinctures, iodine crystals and chemical mixtures containing iodine including registration with DEA, recordkeeping, the submission of certain reports regarding import and export transactions to DEA, and security requirements. DEA believes that the requirement of recordkeeping for regulated transactions involving iodine tinctures, crystals and chemical mixtures containing iodine are already accomplished through the maintenance of business records as a usual and customary business practice. Likewise, security occurs as a normal part of good business practice. DEA believes these new regulatory requirements are necessary to prevent the diversion of iodine to the illicit production of methamphetamine and amphetamine.

Based on the costs and number of regulated entities discussed in the previous section, DEA estimates that the total cost of initial compliance with the proposed rule would range from $293,000 to $931,000; annual costs thereafter could range from $146,000 to $469,000.

Costs of Methamphetamine Abuse/ Benefits of Rulemaking

Methamphetamine is the most prevalent controlled substance illicitly synthesized in the United States. The clandestine manufacture, distribution and abuse of methamphetamine are serious public health problems. Despite considerable efforts by Federal, state, and local law enforcement, the illicit trafficking and abuse of methamphetamine continue.

According to the 2003 National Survey on Drug Use and Health, approximately 12.3 million Americans ages 12 and older reported trying methamphetamine at least once during their lifetimes, representing 5.2% of the population ages 12 and older. Approximately 1.3 million (0.6%) reported past year methamphetamine use and 607,000 (0.3%) reported past month methamphetamine use. In 2004, the Monitoring the Future Study which assesses the extent of drug use among adolescents (8th, 10th and 12th graders) indicated that 6.2 percent of high school seniors reported some prior lifetime use of methamphetamine, statistically unchanged from 2003. Some prior lifetime use of methamphetamine was reported by 5.3 percent of 10th grade students.

The consequences of methamphetamine use appear to be trending upward. The Drug Abuse Warning Network (DAWN) data indicate that the estimated number of emergency department (ED) mentions for methamphetamine increased steadily, from 10,447 in 1999, to 13,505 in 2000, to 14,923 in 2001, and to 17,696 in 2002, although the percentage increase from 2001 to 2002 is not statistically significant. Similarly, the estimated rate of ED mentions per 100,000 population has increased from 4 in 1999, to 5 in 2000, to 6 in 2001, to 7 in 2002. Statistically significant increases in methamphetamine ED mentions were reported by San Francisco (19.4%), Seattle (35.3%), and Atlanta (39.0%) between 2001 and 2002. (Note: A visit to the emergency department is referred to as an episode, and every time a drug is involved in an episode it is counted as a mention.) According to the DAWN 2002 mortality data, areas with the highest number of methamphetamine drug-related deaths were those in the Midwest and Western areas, including Phoenix (132), San Diego (81), Las Vegas (72), Dallas (46), and San Francisco (38).

The El Paso Intelligence Center (EPIC) reports that there were 10,349 methamphetamine laboratories seized in the U.S. in FY 2004 (as reported through April 12, 2006). Another rising cost of the methamphetamine problem is the cost of cleaning up the toxic side effects of methamphetamine production. Clandestine laboratory sites must be remediated and chemicals seized at clandestine laboratories must be removed, and that removal is very expensive. During FY 2004, DEA administered 10,061 state and local clandestine laboratory cleanups at a cost of $18.6 million.

The total social and monetary costs from trafficking and abuse of methamphetamine are abundant. Costs include those incurred to treat medical consequences of abuse, loss of life and injury to users and by users to bystanders, abandonment of the children of methamphetamine abusers (and corresponding cost of social services), theft and property damage resulting from abuse, loss of employment and productivity, increased costs to law enforcement, cost of prosecution and incarceration for crimes associated with drug use, and increased costs due to cleanups of lab sites. Benefits obtained from implementation of iodine controls, to counter illicit methamphetamine production, greatly exceed costs necessary to implement such controls. However, DEA is seeking public comment on any effect this rule may have on markets.

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.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Paperwork Reduction Act

This rule proposes changes to the regulation of iodine and proposes regulations to identify iodine chemical mixtures that are exempt from CSA regulatory controls pertaining to chemicals. Under this proposal, persons who handle chemical mixtures with concentration levels of iodine 2.2 percent and less will not be subject to CSA regulatory controls, including the requirement to register with DEA.

This Notice of Proposed Rulemaking would require persons handling iodine crystals, strong iodine tinctures and chemical mixtures containing iodine to

register with DEA and to report import and export transactions involving regulated transactions in these chemicals to DEA.

For purposes of this proposed rulemaking, DEA has estimated the population of persons potentially required to register with DEA to handle iodine and its chemical mixtures to be between 275 and 890. However, some of these persons may already be registered with DEA and others may decide to no longer handle such products rather than registering. Therefore, DEA is specifically seeking input from industry regarding the number of persons who might be affected by this rulemaking. DEA will not be amending its information collection regarding chemical registration [OMB information collection 1117–0031 "Application for Registration under Domestic Chemical Diversion Control Act of 1993 and Renewal Application for Registration under Domestic Chemical Diversion Control Act of 1993"] pending receipt of comments regarding the impact of this regulation. DEA will amend its information collection, as warranted, based on the public comment received.

Further, this NPRM would require persons importing and exporting products containing iodine crystals, tinctures and chemical mixtures controlled by this rule to report such imports and exports to DEA. DEA cannot accurately estimate how many such transactions occur annually and, thus, the impact of this reporting requirement to the regulated industry. DEA is seeking comment from the regulated industry regarding the impact of this proposed regulation and will amend its information collection regarding the reporting of import and export transactions [OMB information collection 1117–0023 "Import/Export Declaration: Precursor and Essential Chemicals"], as warranted, based on the public comment received.

DEA is also soliciting comments on the impact of recordkeeping requirements upon handlers of regulated iodine products and any potential impact upon public health given any reduction in availability of regulated products, especially where it can be quantified.

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 $114,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1310

Drug traffic control, Exports, Imports, List I and List II chemicals, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1310 is proposed to be amended as follows:

PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES [AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 827(h), 830, 871(b), 890.

2. Section 1310.02 is amended by adding a new paragraph (a)(28) and removing paragraph (b)(11) to read as follows:

§ 1310.02 Substances covered.

* * * * *

(a) * * *

(28) Iodine 6699

* * * * *

3. Section 1310.04 is amended by removing paragraph (f)(2)(ii)(H); redesignating (f)(2)(ii)(I) as (f)(2)(ii)(H); and adding a new paragraph (g)(1)(vi) to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(g) * * *

(1) * * *

(vi) iodine

* * * * *

§ 1310.08 [Amended]

4. Section 1310.08 is amended by removing paragraph (f) and redesignating paragraphs (g) through (l) as paragraphs (f) through (k).

5. Section 1310.09 is amended by adding new paragraph (h) to read as follows:

§ 1310.09 Temporary exemption from registration.

* * * * *

(h) Each person required by section 302 of the Act (21 U.S.C. 822) to obtain a registration to distribute, import, or export regulated iodine, including regulated iodine chemical mixtures pursuant to §§ 1310.12 and 1310.13, is temporarily exempted from the registration requirement, provided that DEA receives a proper application for registration or application for exemption for a chemical mixture containing iodine on or before [60 days from date of publication of a final rule]. The exemption will remain in effect for each person who has made such application until the Administration has approved or denied that application. This exemption applies only to registration; all other chemical control requirements set forth in the Act and parts 1309, 1310, and 1313 of this chapter remain in full force and effect. Any person who distributes, imports or exports a chemical mixture containing iodine whose application for exemption is subsequently denied by DEA must obtain a registration with DEA. A temporary exemption from the registration requirement will also be provided for these persons, provided that DEA receives a properly completed application for registration on or before 30 days following the date of official DEA notification that the application for exemption has not been approved. The temporary exemption for such persons will remain in effect until DEA takes final action on their registration application.

6. Section 1310.12 is amended by revising the introductory text of paragraph (c), by adding an entry for "Iodine" in alphabetical order in the table of paragraph (c), and adding new paragraph (d)(4) to read as follows:

§ 1310.12 Exempt chemical mixtures.

* * * * *

(c) Mixtures containing a listed chemical in concentrations equal to or less than those specified in the "Table of Concentration Limits" are designated as exempt chemical mixtures for the purpose set forth in this section. The concentration is determined for liquid-liquid mixtures by using the volume or weight and for mixtures containing solids or gases by using the unit of weight.

TABLE OF CONCENTRATION LIMITS

List I chemicals	DEA chemical code number	Concentration (percent)	Special conditions
* * * * *	*	*	*
Iodine	6699	2.2	
* * * * *	*	*	*

(d) * * *

* * * * *

(4) Iodine products classified as iodophors which exist as an iodine complex to include poloxamer-iodine complex, polyvinyl pyrrolidone-iodine complex (i.e. povidone-iodine), undecoylium chloride iodine, nonylphenoxypoly (ethyleneoxy) ethanol-iodine complex, iodine complex with phosphate ester of alkylaryloxy polyethylene glycol, and iodine complex with ammonium ether sulfate/polyoxyethylene sorbitan monolaurate.

Dated: July 6, 2006.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E6–12353 Filed 8–10–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

8 CFR Parts 212 and 235

[USCBP 2006–0097]

RIN 1651–AA66

DEPARTMENT OF STATE

22 CFR Parts 41 and 53

RIN 1400–AC10

Documents Required for Travelers Arriving in the United States at Air and Sea Ports-of-Entry From Within the Western Hemisphere

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security; Bureau of Consular Affairs, Department of State.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Intelligence Reform and Terrorism Prevention Act of 2004 provides that by January 1, 2008, United States citizens and nonimmigrant aliens may enter the United States only with passports or such alternative documents as the Secretary of Homeland Security may designate as satisfactorily establishing identity and citizenship. This notice of proposed rulemaking (NPRM) is the first phase of a joint Department of Homeland Security and Department of State plan to implement these new requirements. This NPRM proposes that, beginning January 8, 2007, United States citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico entering the United States at air ports-of-entry and most sea ports-of-entry, with certain limited exceptions, will generally be required to present a valid passport. This NPRM does not propose to change the requirements for United States citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico entering the United States at land border ports-of-entry and certain types of arrivals by sea (ferries and pleasure vessels) which will be addressed in a separate, future rulemaking.

DATES: Written comments must be submitted on or before September 25, 2006.

ADDRESSES: Comments, identified by docket number USCBP 2006–0097, must be submitted by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Comments by mail are to be addressed to the Bureau of Customs and Border Protection, Office of Regulations and Rulings, Border Security Regulations Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Submitted comments by mail may be inspected at the Bureau of Customs and Border Protection at 799 9th Street, NW., Washington, DC. To inspect comments, please call (202) 572–8768 to arrange for an appointment.

Instructions: All submissions must include the agency name and docket number USCBP 2006–0097. All comments will be posted without change to *http://www.regulations.gov*, including any personal information sent with each comment. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation in Rulemaking Process" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or submitted comments, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Department of Homeland Security: Robert Rawls, Office of Field Operations, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 5.4–D, Washington, DC 20229, telephone number (202) 344–2847.

Department of State: Consuelo Pachon, Office of Passport Policy, Planning and Advisory Services, Bureau of Consular Affairs, telephone number (202) 663–2662.

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Abbreviations and Terms Used in This Document

ANPRM—Advance Notice of Proposed Rulemaking
APIS—Advance Passenger Information System
BCC—Form DSP–150, B–1/B–2 Visa and Border Crossing Card
CBP—Bureau of Customs and Border Protection
DHS—Department of Homeland Security
DMV—Department of Motor Vehicles
DOS—Department of State
FAST—Free and Secure Trade
IBWC—International Boundary and Water Commission
INA—Immigration and Nationality Act
INS—Immigration and Naturalization Service
IRTPA—Intelligence Reform and Terrorism Prevention Act of 2004
LPR—Lawful Permanent Resident
MMD—Merchant Mariner Document
MODU—Mobile Offshore Drilling Unit
NATO—North Atlantic Treaty Organization
NPRM—Notice of Proposed Rulemaking
OCS—Outer Continental Shelf
OTTI—Office of Travel & Tourism Industries
SENTRI—Secure Electronic Network for Travelers Rapid Inspection
TSA—Transportation Security Administration
TWIC—Transportation Worker Identification Card
US–VISIT—United States Visitor and Immigrant Status Indicator Technology Program
WHTI—Western Hemisphere Travel Initiative

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. The Department of Homeland Security (DHS) and the Department of State (DOS) also invite comments that relate to the economic or environmental effects or the federalism implications that might result from this proposed rule. Comments that will provide the most assistance to DHS and DOS in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See **ADDRESSES** above for information on how to submit comments.

II. Background

A. Current Entry Requirements for United States Citizens Arriving by Air or Sea

In general, under federal law it is "unlawful for any citizen of the United States to depart from or enter * * * the United States unless he bears a valid United States passport."[1] However, the statutory passport requirement has not been applied to United States citizens when departing from or entering into the United States from within the Western Hemisphere other than from Cuba.[2] Currently, a United States citizen entering the United States from within the Western Hemisphere, other than from Cuba, is inspected at an air or sea port-of-entry by a DHS Bureau of Customs and Border Protection (CBP) officer.[3] To lawfully enter the United States, a person need only satisfy the CBP officer of his or her United States citizenship.[4] In addition to assessing the verbal declaration and examining the documentation the person submits, the CBP officer may ask for additional identification and evidence of citizenship until the officer is satisfied that the person is a United States citizen.

As a result of this procedure, United States citizens arriving at air or sea ports-of-entry from within the Western Hemisphere currently produce a variety of documents to establish their citizenship and right to enter the United States. A driver's license issued by a state motor vehicle administration or other competent state government authority is a common form of identity document now accepted by CBP at the border even though such documents do not denote citizenship. Citizenship documents currently accepted at ports-of-entry generally include birth certificates issued by a United States jurisdiction, Consular Reports of Birth Abroad, Certificates of Naturalization, and Certificates of Citizenship.

B. Current Entry Requirements for Nonimmigrant Aliens Arriving by Air or Sea

Currently, each nonimmigrant alien arriving in the United States must present to the CBP officer at the port-of-entry a valid unexpired passport issued by his or her country of citizenship and, if required, a valid unexpired visa issued by a United States embassy or consulate abroad.[5] Nonimmigrant aliens entering the United States must also satisfy any other applicable entry requirements (e.g., United States Visitor and Immigrant Status Indicator Technology Program (US–VISIT)). For nonimmigrant aliens arriving in the United States, the only current general exceptions to the passport requirement apply to the admission of (1) citizens of Canada and Bermuda arriving from anywhere in the Western Hemisphere and (2) Mexican nationals with a Border Crossing Card (BCC) arriving from contiguous territory.

1. Canadian Citizens and Citizens of the British Overseas Territory of Bermuda

In most cases, Canadian citizens and citizens of the British Overseas Territory of Bermuda (Bermuda) currently are not required to present a valid passport and visa when entering the United States as nonimmigrant visitors from countries in the Western Hemisphere.[6] Nevertheless, these travelers are currently required to satisfy the inspecting CBP officer of their identity and citizenship at the time of their application for admission. Entering aliens may present any evidence of identity and citizenship in their possession. Individuals who

[1] Section 215(b) of the Immigration and Nationality Act (INA), 8 U.S.C. 1185(b).

[2] *See* 22 CFR 53.2(b), which waived the passport requirement pursuant to section 215(b) of the INA, 8 U.S.C. 1185(b).

[3] United States citizens entering the United States at land border ports-of-entry from within the Western Hemisphere are also inspected by a CBP officer. However, such travelers are outside the scope of this proposed rulemaking and will be addressed in a separate, future rulemaking.

[4] 8 CFR 235.1(b).

[5] Section 212(a)(7)(B)(i) of the INA, 8 U.S.C. 1182(a)(7)(B)(i).

[6] 8 CFR 212.1(a)(1)(Canadian citizens) and 8 CFR 212.1(a)(2)(Citizens of Bermuda). *See also* 22 CFR 41.2.

initially fail to satisfy the examining CBP officer may then be required to provide further identification and evidence of citizenship such as a birth certificate, passport, or citizenship card.

2. Mexican Citizens

Mexican citizens arriving in the United States at ports-of-entry who possess a Form DSP–150, B–1/B–2 Visa and Border Crossing Card (BCC) are currently admitted without presenting a valid passport if they are coming from contiguous territory.[7] A BCC is a machine-readable, biometric card, issued by the Department of State, Bureau of Consular Affairs. The use of a BCC without a passport is atypical in the air/sea environment, but it continues to be permitted. Although the use of a BCC is much more common in the land environment, this NPRM deals solely with arrivals at air and sea ports-of-entry.

C. Intelligence Reform and Terrorism Prevention Act of 2004

This NPRM is the first phase of the joint DHS and DOS implementation of section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Pub. L. 108–458, 118 Stat. 3638 (Dec. 17, 2004). Section 7209 of IRTPA requires that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement a plan to require travelers entering the United States to present a passport, other document, or combination of documents, that are "deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship." Section 7209 expressly limits the waiver of documentation requirements for United States citizens under section 215(b) of the Immigration and Nationality Act (INA)[8] and eliminates the waiver of documentation requirements for categories of individuals for whom documentation requirements have previously been waived (citizens of Canada, Mexico, and Bermuda) under section 212(d)(4)(B) of the INA.[9] United States citizens and nonimmigrant aliens from Canada, Mexico, and Bermuda will be required to comply with the new document requirements of section 7209.[10] IRTPA requires that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement the plan by January 1, 2008.

Section 7209 limits the Secretaries' respective authorities[11] to waive generally applicable documentation requirements by providing that, after the complete implementation of the plan, neither the Secretary of State nor the Secretary of Homeland Security may exercise the authority of section 212(d)(4)(B) of the INA[12] to waive the passport requirement on the basis of reciprocity for nonimmigrant aliens who are nationals of foreign contiguous territory or adjacent islands. In addition, section 7209 of IRTPA provides that the President may exercise the authority of section 215(b) of the INA[13] to waive the new documentation requirements for United States citizens departing from or entering the United States only in three specific circumstances: (1) When the Secretary of Homeland Security determines that "alternative documentation" different from what is required under section 7209 is sufficient to denote citizenship and identity; (2) in an individual case of an unforeseen emergency; or (3) in an individual case based on "humanitarian or national interest reasons."[14]

United States citizens and nonimmigrant aliens, who currently are not required to have passports pursuant to sections 215(b) and 212(d)(4)(B) of the INA[15] respectively, would be required to present a passport or other identity and citizenship document deemed sufficient by the Secretary of Homeland Security when entering the United States from countries within the Western Hemisphere. The principal groups affected by this provision of IRTPA are United States citizens, Canadian citizens, citizens of Bermuda, and Mexican citizens holding BCC cards. These groups of individuals are currently exempt from the general passport requirement when entering the United States from within the Western Hemisphere.[16]

D. Advance Notice of Proposed Rulemaking

On September 1, 2005, DHS and DOS published in the **Federal Register** (70 FR 52037) an advance notice of proposed rulemaking (ANPRM) that announced that DHS and DOS were planning to amend their respective regulations to implement section 7209 of IRTPA. The DHS and DOS plan to implement section 7209 is also known as the Western Hemisphere Travel Initiative (WHTI). As stated in the ANPRM, DHS and DOS proposed to develop a plan that would require citizens of the United States, Canada, Bermuda, and Mexico to possess a passport or other acceptable secure document to enter the United States from within the Western Hemisphere by January 1, 2008. The ANPRM invited comments on the possible means of implementation and specifically invited comments on what documents, other than passports, should be accepted as sufficient under section 7209.

The ANPRM announced that DHS and DOS anticipated implementing the documentation requirements of section 7209 in two stages. The first stage would affect travelers entering the United States at air and sea ports-of-entry beginning January 1, 2007. The second stage would address travelers arriving at land border ports-of-entry beginning January 1, 2008. The two-stage approach is intended to ensure an orderly transition, provide affected persons with adequate notice to obtain necessary documents, and ensure that adequate resources are available to issue additional passports or other authorized documents.

In the ANPRM, DHS and DOS sought public comment to assist the Secretary of Homeland Security to make a final determination of which document or combination of documents other than valid passports will be accepted at ports-of-entry to satisfy section 7209. DHS and DOS also solicited public comments regarding the economic impact of implementing section 7209, the costs anticipated to be incurred by United States citizens and others as a result of new document requirements, potential benefits of the rulemaking, alternative methods of complying with the legislation, and the proposed stages for implementation. In addition to receiving written comments, DHS and

[7] 8 CFR 212.1(c)(1)(i). *See also* 22 CFR 41.2(g). If they are only traveling within a certain geographic area along the United States border with Mexico: usually up to 25 miles from the border but within 75 miles under the exception for Tucson, Arizona, they do not need to obtain a form I–94. If they travel outside of that geographic area, they must obtain an I–94 from CBP at the port-of-entry. 8 CFR 235.1(f)(1).

[8] 8 U.S.C. 1185(b).

[9] 8 U.S.C. 1182(d)(4)(B).

[10] Section 7209 does not apply to Lawful Permanent Residents, who will continue to be able to enter the United States upon presentation of a valid Form I–551, Alien Registration Card, or other valid evidence of permanent resident status. Section 211(b) of the INA, 8 U.S.C. 1181(b). It also does not apply to alien members of United States Armed Forces traveling under official orders. Section 284 of INA, 8 U.S.C. 1354. Additionally, section 7209 does not apply to nonimmigrant aliens from anywhere other than Canada, Mexico, or Bermuda. *See* section 212(d)(4)(B) of the INA, 8 U.S.C. 1182(d)(4)(B) and 8 C.F.R. 212.1.

[11] *See* section 212(d)(4)(B) of the INA, 8 U.S.C. 1182(d)(4)(B), and section 215(b) of the INA, 8 U.S.C. 1185(b).

[12] 8 U.S.C. 1182(d)(4)(B).

[13] 8 U.S.C. 1185(b).

[14] Section 7209(c)(2) of IRTPA.

[15] 8 U.S.C. 1185(b) and 8 U.S.C. 1182(d)(4)(B).

[16] Section 212(d)(4)(B) of the INA, 8 U.S.C. 1182(d)(4)(B) and section 215(b) of the INA, 8 U.S.C. 1185(b).

DOS representatives attended over 30 public sessions and town hall meetings throughout the country and met with community leaders and stakeholders to discuss the initiative.

DHS and DOS received 2,062 written comments in response to the ANPRM. The majority of the comments (1,910) addressed only potential changes to the documentation requirements at land border ports-of-entry. One hundred and fifty-two comments addressed changes to the documentation requirements for persons arriving at air or sea ports-of-entry. Comments were received from a wide range of United States and Canadian sources including: private citizens; businesses and associations; local, state, federal, and tribal governments; and members of the United States Congress and Canadian Parliament.

Some of the comments pertaining to arrivals at air and sea ports-of-entry were also applicable to land border crossings and will therefore be addressed in both this rulemaking and a separate, future rulemaking specific to land border crossings. As this proposed rule deals only with changes to arrivals at air and sea ports-of-entry, the comments received regarding only land border crossings will not be addressed here.

A general discussion of the comments relevant to this rulemaking follows. Complete responses to the comments from both the ANPRM and this NPRM regarding air and sea travel will be presented in the final rule.

1. Passport as Only Acceptable Document for WHTI Air-and-Sea Arrivals

Forty commenters contended that DHS should accept only a valid passport to satisfy documentary requirements for air and sea arrivals beginning January 1, 2007. Thirty-six of the 40 comments were submitted by United States citizens and four comments were submitted by associations or businesses located in the United States. Eight commenters recommended that the implementation of a "passport only" requirement should not be delayed. Among the reasons for supporting a "passport only" requirement, commenters expressed the need to enhance border security, prevent document forgeries, and simplify document review for CBP officers by utilizing one standardized document.

One hundred and twelve commenters opposed any proposal that would require a valid passport to satisfy the documentation requirements for air and sea arrivals, but supported the goal of improving border security.

Thirty-two comments stated that a "passport only" requirement would significantly impede travel and tourism either by causing lengthy delays at the border or by preventing individuals who did not possess a passport from traveling. Some of these comments asserted that requiring passports could essentially prevent travelers from making spontaneous decisions to travel by air or sea within the Western Hemisphere.

Thirty-four comments contended that due to the cost of a passport, a passport only requirement would be an unreasonable financial burden for many families. Citing the $97 cost of an initial adult passport and the $82 cost of a child's passport, several commenters asserted that the costs are multiplied for a family traveling together. Thirty-nine comments contended that a "passport only" requirement would have a significant negative economic impact on businesses and local economies. Many of these commenters provided quantitative and qualitative information to illustrate their proffered economic impact.

In addition, five commenters raised the concern that the demand for passports could exceed the passport processing capacity of DOS.

2. Alternative Forms of Identification

Eighty-one commenters submitted recommendations about the types of alternate documentation that could satisfy the requirements of section 7209 of IRTPA. Many of these commenters noted that section 7209 of IRTPA provides that a passport substitute could be another document or combination of documents that sufficiently denote identity and citizenship. Fifty-nine commenters asserted that DHS should identify acceptable alternative documents that would be more convenient, affordable and easier to obtain than a passport. Many of these commenters noted that DHS has not identified other low-cost and easily obtainable documents in lieu of a passport. Several commenters also recommended that any new document should be small enough to carry in a wallet as opposed to the current booklet-style passport.

Ten commenters recommended that DHS continue to accept a state-issued driver's license and an original birth certificate as evidence of identity and citizenship. Numerous commenters asserted that a driver's license combined with a birth certificate is the best-known and most generally accepted combination of documents that denote identity and citizenship. Several commenters reasoned that since these documents are sufficient to establish nationality and identity for the purpose of obtaining a passport, they should be acceptable at the border as well.

One commenter recommended that the current NEXUS Air program [17] should be expanded to additional Canadian airports. Another commenter noted that acquiring a NEXUS Air card requires a lengthy processing time of approximately 6 to 8 weeks for the individual to become enrolled.

3. One Implementation Date of January 1, 2008

Fifty-seven comments recommended that DHS and DOS delay the first stage of implementation for air and sea travelers by changing the implementation date from January 1, 2007, to January 1, 2008, or an unspecified later date. Many of these commenters asserted that the January 1, 2007, implementation date for air and sea travel does not allow adequate time for the traveling public and industry to prepare for the new regulations.

Some commenters expressed concern that a phased-in approach would unnecessarily discriminate against one mode of travel in favor of another because those traveling by air and sea will be subject to more stringent documentation requirements than those traveling by land during 2007. Several comments asserted that there is no basis for treating travelers who arrive by air or sea any differently from those who travel over land borders.

One commenter argued that the statutory deadline for implementation is January 1, 2008, and that IRTPA does not require implementation to be phased-in prior to that date. Several comments suggested that one implementation date would be less confusing to the traveling public and allow more time to educate the public about the new requirements and for proper consideration of alternative secure documents other than a passport.

Finally, a few commenters recommended delaying the implementation date of January 1, 2007, for air and sea travelers by at least one week, until after the holiday travel season.

4. Effective Communications Plan

Thirty-eight commenters recommended that DHS and DOS work

[17] NEXUS Air is an airport border clearance pilot project implemented at one airport in Vancouver, Canada by CBP and the Canada Border Services Agency, pursuant to the Shared Border Accord and Smart Border Declaration between the United States and Canada. The NEXUS Air alternative inspection program allows pre-screened, low-risk travelers to be processed more efficiently by United States and Canadian border officials.

with the travel industry to launch an effective communications campaign to inform and educate the traveling public about any new documentation requirements. According to several commenters, some Canadian and United States citizens mistakenly believe that a "passport only" requirement is already in effect. One commenter noted that due to confusion around the implementation phase-in dates, many members of the public believe that the first phase-in period will apply to all persons traveling to the United States whether or not they travel by air, sea or land. Another commenter suggested that educating the public about changes to the documentation requirements is best accomplished by beginning outreach and public relations efforts far in advance of any new requirement.

5. Passport Exemption for Children Under the Age of 16

Thirty-one commenters recommended that children under the age of 16 should be exempt from a passport requirement and instead be able to use a citizenship document such as a birth certificate. Several commenters asserted that very few children possess passports so that for children under the age of 16 from both Canada and the United States, the current documentation requirements should be maintained.

6. Reduce Cost of Passports or Institute Pricing Incentives

Eleven commenters recommended that passports should be either less expensive or pricing incentives should be introduced for United States citizens who are obtaining a passport for the first time in advance of the implementation deadline. One commenter asserted that financial incentives would encourage United States citizens to obtain a first-time passport or renew an existing passport. Several commenters specifically requested that passport costs be reduced for children less than 16 years of age, students, senior citizens, and families. One commenter recommended that the federal government provide a financial subsidy or discount the cost of passports for low-income earners, welfare recipients, and families with more than two children.

7. Bilateral or Multilateral Process

Three commenters recommended that the implementation of new documentation requirements should be a collaborative, multilateral process with a United States-Canadian partnership and a United States-Mexican partnership. Commenters recommended that the United States and Canadian governments work together to explore acceptable forms of documents in lieu of a passport for Canadian citizens. Certain commenters noted that if the United States unilaterally develops a new form of alternative document for entry into the United States, there would be no guarantee that the Canadian and Mexican governments would accept the new form of documentation as an entry document. These commenters suggested that the United States Government should not act unilaterally because of the potential negative effects that this rulemaking might have on the economy, and international relations, including a negative public reaction.

8. Native Americans

Three commenters opposed any regulation that would require Native Americans traveling from Canada into the United States to carry and produce a United States or Canadian passport as identification. These commenters asserted that such a requirement would infringe upon the treaty rights of indigenous peoples living within the United States and Canada to travel freely across the border on the basis of their membership in a particular Native American tribe or nation.

9. Mobile Offshore Drilling Units Working on the United States Outer Continental Shelf

Three commenters recommended that offshore workers of United States citizenship working aboard Mobile Offshore Drilling Units (MODUs) on the United States Outer Continental Shelf (OCS) be specifically excluded from any new documentation requirements when traveling between the United States and MODUs.

10. Passengers Traveling by Ferry

Eight commenters raised concerns that the new documentation requirements might create long waits and substantial disruption at ferry terminals, resulting in a decrease in ferry traffic. Some of these commenters recommended that any change to the documentation requirements for ferry passengers should be postponed until the implementation of any new documentation requirements at land border ports-of-entry.

11. Military Personnel

Two commenters recommended that fees for passports, including fees for expedited processing, be eliminated for active duty military personnel and their dependents.

III. Proposed Requirements for United States Citizens and Nonimmigrant Aliens Traveling by Air and Sea to the United States

This NPRM proposes that, with some exceptions, United States citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico traveling into the United States by air and sea from Western Hemisphere countries, be required to show a passport. This NPRM does not propose changes to the documentation requirements at land border ports-of-entry.

This passport requirement would apply to most air and sea travel, including commercial air travel and commercial sea travel (including cruise ships). There are two categories of travel and one category of traveler, discussed in more detail below, which would not be subject to the passport requirement proposed here. First, this proposal would not apply to pleasure vessels used exclusively for pleasure and which are not for the transportation of persons or property for compensation or hire. Second, this proposal would not apply to travel by ferry. Finally, this proposal would not apply to United States citizen members of the Armed Forces on active duty.

This NPRM also proposes to designate two documents, in addition to the passport, as sufficient to denote identity and citizenship under section 7209, and acceptable for air and sea travel. The first document is the Merchant Mariner Document (MMD) or "z-card" issued by the United States Coast Guard (Coast Guard) to Merchant Mariners. The second document is the NEXUS Air card when used with a NEXUS Air kiosk. Finally, this proposal would not apply to United States citizen members of the Armed Forces on active duty.

A. Passports for Air and Sea Arrivals

After reviewing the comments received and taking them into consideration, DHS and DOS jointly propose that, beginning January 8, 2007, most United States citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico entering the United States at air or sea ports-of-entry from Western Hemisphere countries will be required to present a valid passport. DHS and DOS note that in response to comments, the originally proposed implementation date of January 1, 2007, for air and sea travelers is being delayed until January 8, 2007, to better accommodate the holiday travel season. The Departments do not believe that there will be an adverse effect on national security by delaying the implementation of this rule by one

week. Persons traveling prior to the effective date of the final rule implementing the air and sea stages of WHTI should plan to depart from the United States with documents sufficient to meet requirements that will be in place when they return.

This proposed rule would implement Congress' direction in IRTPA by eliminating the passport waiver for United States citizens,[18] who enter the United States at air and sea ports-of-entry when traveling between the United States and any country, territory, or island adjacent thereto in North, South or Central America.[19] In addition, this proposed rule would eliminate the passport waiver for nonimmigrant aliens who are Canadian citizens, citizens of Bermuda, and Mexican nationals entering the United States at air and sea ports-of-entry from any country, territory, or island adjacent thereto in North, South or Central America.[20]

As required by IRTPA, both DHS and DOS reviewed a variety of options for implementing the WHTI requirements, and jointly decided to phase-in the documentation requirement based upon risk management and operational considerations. As the ANPRM discussed, this phased approach is essential because a staggered implementation at air and sea ports-of-entry one year before the statutory deadline will enhance security requirements using existing infrastructure while allowing the Departments time to acquire and develop resources to meet the increased demand for the largest sector, the land border crossings.

Requiring travelers to carry and produce passports for the air and sea environments has multiple security and operational benefits. WHTI will reduce the vulnerabilities identified in the final report of the National Commission on Terrorist Attacks Upon the United States (9/11 Commission). WHTI is intended not only to enhance security efforts at our Nation's borders, but also to expedite the movement of legitimate travel within the Western Hemisphere.

As the report of the 9/11 Commission observed, travel documents are as valuable as weapons to terrorists, and the passport is regarded as the most secure travel identity document in the world. After a review of current international travel documents and the available alternatives, DHS and DOS believe that the passport is the most reliable travel document to optimize safety and efficiency in the air and sea environments.

Standardizing documentation requirements for all air and sea travelers entering the United States will enhance our national security and secure and streamline the entry process into the United States. A passport requirement for the majority of travelers would allow border security officials to quickly, efficiently, accurately, and reliably review documentation, identify persons of concern to national security, and determine eligibility for entry of legitimate travelers without disrupting the critically important movement of people and goods across our air and sea borders. Implementing standardized travel documents (i.e., passports) for citizens of the United States, Canada, Bermuda, and Mexico entering the United States at air and sea ports-of-entry would also reduce confusion for the airline industry and make the entry process more efficient for CBP officers and the public alike since the majority of travelers traveling internationally to or from an airport or seaport would require the passport as a travel document, regardless of destination.

The 9/11 Commission noted that the current exemptions to the passport requirement are a weak link in our layered approach to security that can no longer be ignored. Cognizant of this concern and the realities of the modern world, DHS and DOS agree that any acceptable alternative documents must establish the identity and citizenship of the bearer in a way that can be electronically verified and must include significant security features.

Passports incorporate a host of security features not normally found or available on other documents such as birth certificates and driver's licenses. Security features include, but are not limited to, rigorous adjudication standards and document security features. The adjudication standards establish the individual's citizenship and identity and ensure that the individual meets the qualifications for a United States passport. The document authentication features include digitized photographs, embossed seals, watermarks, ultraviolet and fluorescent light verification features, security laminations, micro-printing, and holograms. A United States passport is a document that is adjudicated by trained DOS experts and issued to persons who have documented their United States identity and citizenship by birth, naturalization or derivation. Applications are subject to additional Federal government checks to ensure the applicants are eligible to receive a U.S. passport under applicable standards (for example, those subject to outstanding federal warrants for arrest are not eligible for a U.S. passport). Finally, CBP Officers can verify and authenticate a U.S. passport through connectivity with the DOS passport database, allowing a real-time check on the validity of the passport. The primary purpose of the passport has always been to establish citizenship and identity. It has been used to facilitate travel to foreign countries by displaying any appropriate visas or entry/exit stamps. Passports are globally interoperable, consistent with worldwide standards, and usable regardless of the international destination of the traveler.

Requiring passports for most air and sea travel would allow CBP officers to more efficiently process these travelers because there is a standard document to review which contains features that allow for quick reading of the relevant information. Reducing the number of acceptable travel documents would eliminate the need to examine a host of distinct and sometimes illegible, birth certificates and other documents—over 8,000 types may be presented today. By requiring most air and sea passengers to possess a passport, CBP officers would reduce the time and effort used to manually enter passenger information into the computer system on arrival because the officer can quickly scan the machine-readable zone of the passport to process the information using standard passport readers used for all machine readable passports worldwide. It is difficult to precisely determine the improved efficiencies resulting from limiting the acceptable documents at air and sea environments. Based on information from CBP field operations, CBP estimates that presenting secure and machine-readable documentation may typically save CBP officers from 5 to 30 seconds per air and sea passenger processed. This could result in an annual cost savings of $2.5 million to $15.0 million.[21]

[18] In addition to affecting U.S. citizens who currently leave and enter the United States without a passport for travel within the Western Hemisphere, section 7209 requires the elimination of the exception to the U.S. passport requirement for U.S. citizen children under the age of 12 included in the foreign parent's passport and for U.S. citizens under age 21 who are members of the household of an official or employee of a foreign government or the United Nations and in possession of or included in a foreign passport. *See* 22 CFR 53.2 (e) and (f).

[19] *See* 22 CFR 53.2(b).

[20] *See* 8 CFR 212.1 and 22 CFR 41.2.

[21] This is based on the estimated time savings (5 to 30 seconds) multiplied by the number of new passengers with a passport (5,905,462; from Chapter 2 of the Regulatory Assessment) multiplied by the hourly cost of a CBP officer. The annual base salary for a GS–11/1 (in 2005) is $45,239. This is multiplied by a load factor of 1.4 to account for fringe benefits and locality pay, for an annual salary of $63,335. This is divided by 2,080 hours to reach an hourly rate of $30.45.

Protecting the national security is a fundamental mission of DHS. Initiating the first phase for all air and most sea travelers by January 8, 2007, will remedy significant vulnerabilities identified by the 9/11 Commission associated with the millions of travelers who enter the United States through air and sea ports-of-entry. This improvement will utilize the existing operational capabilities of both Departments without unduly burdening the traveling public. Phasing in the air and sea travel prior to land border crossings will provide near term border security benefits with regard to a significant number of arriving passengers without significant investment in new port-of-entry infrastructure. DHS estimates that CBP will be able to facilitate the processing of arriving passengers more efficiently when all arriving air and sea passengers carry and produce passports, MMD, or NEXUS Air card, instead of the broad range of documents now presented by arriving United States citizens and citizens of Canada, Bermuda, and Mexico.

CBP estimates that approximately 21 million United States citizens travel to Canada, Mexico, and the Caribbean annually, and that approximately six million of those air and sea travelers do not possess a passport (see section IV below, regarding the Regulatory Analyses). Airports and seaports currently have the personnel and equipment to inspect incoming passengers who carry passports, so the major operational requirement of the final rule resulting from this NPRM is for DOS to expand passport production capacity to meet passport demand. DOS is already expanding passport production capacity to meet the additional demand for passports and will be able to meet a significant increase in demand from the more than 10 million passports produced in fiscal year 2005. DOS reports an estimated 25 percent increase in passport applications so far in fiscal year 2006. DOS has increased passport production capacity with an aim towards processing 16 million passports in fiscal year 2007 and 19 million passports in fiscal year 2008.

B. Exceptions to the Passport Proposal

DHS and DOS do not propose any change in the requirements for travel by pleasure vessel and ferry at this time. The Departments also propose to postpone any change in the requirements for United States citizen members of the United States Armed Forces also discussed below.

1. Passengers Arriving by Pleasure Vessel

For purposes of this proposed rule, a pleasure vessel will be defined as a vessel that is used exclusively for recreational or personal purposes and not to transport passengers or property for hire. A day sailer or bareboat charter that is rented without a captain or crew and is used for recreational or personal purposes would be considered a pleasure vessel. This rule would not propose changes to the documentation requirements for United States citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico who are aboard pleasure vessels arriving in the United States from a foreign port or place from within the Western Hemisphere.

Pleasure vessel arrivals are treated similarly to land border crossings rather than like commercial vessel arrivals. These pleasure vessel passengers, who are frequent, short duration travelers, are similar to land border crossers and will be addressed in the WHTI second phase rulemaking. This will allow for more consistent processing of these travelers and the use of land border based inspection systems including registered/trusted traveler programs. Many of the pleasure vessel crossings are similar to bridge crossings because they are crossings of a short expanse of river or other waterway and are relatively short in duration.

2. Passengers Arriving by Ferry

For purposes of this proposed rule, a ferry is defined as any vessel: (1) Operating on a pre-determined fixed schedule; (2) providing transportation only between places that are no more than 300 miles apart; and (3) transporting passengers, vehicles, and/or railroad cars. Since ferries will be subject to land border type entry processing on arrival from or departure to a foreign port or place, DHS and DOS propose that ferries be exempt from the new requirements of this rulemaking. Ferries will be addressed in the second phase rulemaking. Thus, current documentation requirements for ferry passengers will not change at this time.

3. Members of the United States Armed Forces

When this rule is promulgated, all active duty members of the United States Armed Forces regardless of citizenship will be exempt from the requirement to present a valid passport when entering the United States. Currently, under 22 CFR 53.2(d), citizens of the United States are not required to possess a valid passport to enter or depart the United States when traveling as a member of the Armed Forces of the United States on active duty.[22] Under this proposed rule, travel document requirements for United States citizens who are members of the United States Armed Forces would not change from the current requirements. Future changes, if any, to the current documentation requirements will be addressed during the second phase of the WHTI rulemaking process.

Spouses and dependents of these military members would be required to present a passport or other document or combination of documents sufficient to denote identity and citizenship as discussed below, and a valid visa, if required, when entering the United States at air or sea ports-of-entry.

C. Other Documents Deemed Acceptable To Denote Citizenship and Identity

This NPRM also proposes to designate two documents, in addition to the passport, as sufficient to denote identity and citizenship under section 7209, and acceptable for air and sea travel. IRTPA gives the Secretary of Homeland Security the authority to determine what documents other than the passport are sufficient to denote identity and citizenship for all travel into the United States by United States citizens and citizens of Canada, Mexico, and Bermuda.[23] Accordingly, the Merchant Mariner Document (MMD) when used in conjunction with maritime business, and the NEXUS Air card when used at a designated kiosk, are proposed as acceptable for air and sea travel into the United States from within the Western Hemisphere.

1. Merchant Mariner Document

Currently, an MMD or "z-card" is accepted for United States citizen crewmembers in lieu of a passport.[24] To obtain an MMD, United States citizen Merchant Mariners must provide proof of their citizenship, must provide proof of their identity and must undergo an application process that includes a fingerprint background check submitted to the Federal Bureau of Investigation, a National Driver Register check, and a drug test from an authorized official that administers a drug testing program.

The Secretary of Homeland Security proposes that an MMD when used in

(5,905,462 travelers)(5 seconds)($30.45/hour) = $2,497,463

(5,905,462 travelers)(30 seconds)($30.45/hour) = $14,984,778.

[22] For a discussion regarding the documentation requirements for alien members of the United States Armed Forces, see section III.D.6. of this document.

[23] Section 7209(b)(1) of IRTPA.

[24] *See* 22 CFR 53.2(c).

conjunction with maritime business would be sufficient to denote identity and citizenship when presented upon arrival at an air or sea port-of-entry. Accordingly, under this proposed rule, United States citizens who possess an MMD would continue to be exempt from the requirement to present a passport when arriving in the United States at air or sea ports-of-entry. However, the Coast Guard has proposed to phase-out the MMD over the next five years and streamline all existing Merchant Mariner credentials.[25] DHS proposes to accept the MMD as long as it is an unexpired document. We also note that United States citizen Merchant Marines serving on U.S. flag vessels are eligible for no fee U.S. passports upon presentation of a letter from the employer and an MMD, in addition to the standard evidence of citizenship and identity.

2. NEXUS Air Program Membership Card

NEXUS Air is an airport border clearance pilot project implemented by CBP and the Canada Border Services Agency, pursuant to the Shared Border Accord and Smart Border Declaration between the United States and Canada. The NEXUS Air program is an alternative inspection program designed to facilitate the entry formalities by registered users which allows pre-screened, low-risk travelers to be processed more efficiently by United States and Canadian border officials.

Enrollment in the program is limited to citizens of the United States and Canada, Lawful Permanent Residents (LPRs) of the United States, and permanent residents of Canada. To enroll in the NEXUS Air program, a participant must provide acceptable proof of citizenship or permanent resident status in Canada or the United States. United States citizens must provide an original birth certificate, along with a government-issued photo identification, a valid passport, or a certificate of naturalization. Canadian citizens must provide an original birth certificate, along with a government-issued photo identification, a valid passport, citizenship certificate with photo identification, or a citizenship card.

LPRs of the United States must provide evidence of citizenship and of permanent resident status to enroll in NEXUS Air. Because the scope of section 7209 of IRTPA does not include LPRs, membership in Nexus Air does not change their document requirements. Therefore, LPRs of the United States, whether or not participating in the NEXUS Air program, will continue to be required to present a valid Form I–551, Alien Registration Card, or other valid evidence of permanent resident status to enter the United States. Canadian permanent residents must provide an original birth certificate, along with a government-issued photo identification, a valid passport (and visa if applicable), and proof of permanent resident status when applying for NEXUS Air enrollment.

An extensive background check against law enforcement databases and terrorist indices, including fingerprint checks, as well as a personal interview with a CBP officer is required of each applicant. Each NEXUS Air membership card has physical security features including digital photographs of the participant's face. When a participant uses a NEXUS Air kiosk, he or she is prompted to look into a camera, which then biometrically verifies membership in NEXUS Air by taking a picture of the participant's iris and matching it to the image stored in the database.

The Secretary of Homeland Security proposes that a NEXUS Air membership card would be a document sufficient to denote identity and citizenship for United States citizens, Canadian citizens, and permanent residents of Canada when arriving in the United States as a NEXUS Air program participant and when using a NEXUS Air kiosk at designated airports.

LPRs of the United States, whether or not participating in the NEXUS Air program, will continue to be required to present a valid Form I–551, Alien Registration Card, or other valid evidence of permanent resident status to enter the United States.

D. Impact of This Rulemaking on Specific Groups and Populations

1. Charter and Commercial Vessels

Under this proposed rule, a commercial vessel will be defined as any civilian vessel being used to transport persons or property for compensation or hire to or from any port or place including all cruise ships. A charter vessel, that is leased or contracted to transport persons or property for compensation or hire to or from any port or place, would be considered a commercial vessel. In contrast, a day sailer or bareboat charter that is rented without a captain or crew and is used for recreational or personal purposes would be considered a pleasure vessel as described above in section III.B.1. Under this proposed rule, commercial vessels will be treated as arrivals at sea ports-of-entry under this proposed rule. Passengers and crew aboard commercial vessels will need to possess a valid passport when arriving in the United States from a foreign port or place.

Under applicable immigration law, sailing from a United States port into international waters, without a call at a foreign port, and returning to the United States, does not constitute a "departure" from the United States and, consequently, is not an "entry" into the United States that requires a passport under section 215(b) of the INA.[26] Therefore, passports will not be required for persons (including commercial fishermen) onboard a vessel that sails from a United States port and returns without calling at a foreign port or place as the vessel is not considered to have departed the United States. Therefore, commercial fishermen would not be required to possess a passport unless they call at a foreign port or place.

2. Aviation Passengers and Crew

Under this proposed rule, all aviation passengers and crew, including commercial flights and general aviation flights (i.e., private planes), who arrive at air ports-of-entry in the United States from countries within the Western Hemisphere will be required to possess a valid passport beginning January 8, 2007. The only exceptions to this requirement would be for United States citizens who are members of the United States Armed Forces traveling on active duty and travelers who possess either an MMD or NEXUS Air card, as described above.

3. Lawful Permanent Residents

Section 7209 of IRTPA applies to documentation requirements waived under section 212(d)(4)(B) of the INA27,[27] which applies to nonimmigrant aliens, and section 215(b) of the INA,[28] which applies to United States citizens. LPRs are exempt from the requirement to present a passport when arriving in the United States under Section 211 of the INA [29]—section 7209 does not apply to LPRs. LPRs will continue to be able to enter the United States upon presentation of a valid Form I–551, Alien Registration Card, or other valid evidence of permanent resident status.[30] Form I–551 is a secure, fully adjudicated document that can be verified and authenticated

[25] 71 FR 29462 (May 22, 2006).

[26] 8 U.S.C. 1185(b).

[27] 8 U.S.C. 1182(d)(4)(B).

[28] 8 U.S.C. 1185(b).

[29] 8 U.S.C. 1181.

[30] *See* section 211(b) of the INA, 8 U.S.C. 1181(b).

by CBP at ports-of-entry. DHS published a notice of proposed rulemaking in the **Federal Register** on July 27, 2006, that proposes to collect and verify the identity of LPRs arriving at air and sea ports-of-entry, or requiring secondary inspection at land ports of entry, through US–VISIT.[31]

4. Mexican Citizens

Currently, Mexican citizens traveling to the United States for business or pleasure who are in possession of a BCC may be admitted, subject to certain limitations,[32] without presenting a valid passport when coming from a contiguous territory.[33] IRTPA, however, does not exempt Mexican citizens who possess a BCC from providing a passport or other document designated by DHS upon arrival in the United States. By this rulemaking, Mexican citizens, whether in possession of a BCC or not, would be required to present a valid passport when entering the United States by air or commercial sea vessel, except by ferry or pleasure vessel.

This requirement for Mexican BCC holders is consistent with the requirements that are imposed on both other aliens and United States citizens.

5. Children Under the Age of 16

The United States government currently requires children under the age of 16 arriving from countries outside the Western Hemisphere to provide a passport when entering the United States. IRTPA does not contain an exemption from providing a passport or other document designated by DHS for children under the age of 16 when entering the United States from Western Hemisphere countries. Consequently, as there is no other statutory exemption, children under the age of 16 arriving from Western Hemisphere countries would be required to present a passport when entering the United States by air or commercial sea vessel, except by ferry or pleasure vessel.

6. Alien Members of the United States Armed Forces

Pursuant to section 284 of the INA,[34] alien members of the United States Armed Forces entering under official orders presenting military identification are not required to present a passport and visa.[35] Because this statutory exemption does not fall within the scope of section 7209 of IRTPA, under this proposed rule alien members of the United States Armed Forces traveling on orders would continue to be exempt from the requirement to present a passport when arriving in the United States at air or sea ports-of-entry. Accordingly, under this NPRM, these individuals would continue to be required to present a military identification card and official orders. However, spouses and dependents of military members are not covered by the exemption set forth in section 284 of the INA.[36] Under the proposed regulation they would continue to be required to present a passport (and visa if required) when entering the United States at air or sea ports-of-entry even when returning from travel in the Western Hemisphere.

7. Members of NATO Armed Forces

Pursuant to Article III of the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, June 19, 1951,[37] North Atlantic Treaty Organization (NATO) military personnel on official duty are normally exempt from passport and visa regulations and immigration inspection on entering and leaving the territory of a NATO party, but if asked must present a personal I.D. card issued by their NATO party of nationality and official orders from an appropriate agency of that country or from NATO.[38] Because their exemption from the passport requirement is based on the NATO Status of Forces Agreement rather than a waiver under section 212(d)(4)(B) of the INA,[39] they are not subject to section 7209 of IRTPA. Therefore, notwithstanding this proposed rule, NATO military personnel would not be subject to the requirement to present a passport when arriving in the United States at air or sea ports-of-entry.

8. Native Americans Born in Canada

Section 289 of the INA[40] provides that nothing in the INA affects "the right" of Native Americans born in Canada to "pass the borders of the United States," provided they possess at least 50 percentum of Native American blood.[41] Historically, the courts have addressed the right of Native Americans born in Canada to "pass the borders of the United States" in the context of land border crossings.[42] Subsequent case law has not expressly addressed the extension of the right to "pass the borders of the United States" by air or sea.[43] Moreover, any right or privilege to "pass the border" does not necessarily encompass a right to "pass the border" without sufficient proof of identity and citizenship. Under this proposed rule, Native Americans born in Canada would now be required to present a valid passport when entering the United States by air and commercial sea vessel, except by ferry or pleasure vessel.

9. Native Americans Born in the United States

Federal statutes apply to Native Americans born in the United States absent some clear indication that Congress did not intend for them to apply.[44] IRTPA expressly applies to United States citizens and as a matter of law Native Americans born in the United States are United States citizens.[45] Moreover, Congress did not indicate any intention to exclude Native Americans born in the United States from the requirements of IRTPA. Under this proposed rule, therefore, Native Americans born in the United States would now be required to present a valid passport when entering the United States by air and commercial sea vessel, except by ferry or pleasure vessel.

10. American Indian Card Holders From Kickapoo Band of Texas and Tribe of Oklahoma

DHS issues American Indian Cards (Form I–872) to both United States-born

[31] See 71 FR 42605.

[32] See 8 CFR 235.1(f).

[33] 8 CFR 212.1(c)(1)(i). Also, Mexican citizens who enter the United States from Mexico solely to apply for a Mexican passport or other "official Mexican document" at a Mexican consulate in the United States have not been required to present a valid passport. This type of entry generally occurs at land borders. Land border entry for this purpose will be addressed in a separate, future rulemaking regarding documentation requirements at land border ports-of-entry. See 8 CFR 212.1(c)(1)(ii).

[34] 8 U.S.C. 1354.

[35] See *also* 8 CFR 235.1(c).

[36] 8 U.S.C. 1354.

[37] Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, June 19, 1951, [1953, pt.2] 4 U.S.T. 1792, T.I.A.S. No. 2846 (effective Aug. 23, 1953). NATO member countries are: Belgium, Bulgaria, Canada, the Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, the United Kingdom of Great Britain and Northern Ireland, and the United States.

[38] See *also* 8 CFR 235.1(c).

[39] 8 U.S.C. 1182(d)(4)(B).

[40] 8 U.S.C. 1359.

[41] Canadian-born Inuits (Eskimos) do not have the same right to "pass" the borders of the United States.

[42] See *Akins* v. *Saxbe*, 380 F.Supp. 1210, 1221 (D. Maine 1974) ("[I]t is reasonable to assume that Congress' purpose in using the Jay Treaty language in the 1928 Act was to recognize and secure the right of free passage as it had been guaranteed by that Treaty.") See *also United States ex rel. Diabo* v. *McCandless*, 18 F.2d 282 (E.D. Pa. 1927), aff'd, 25 F.2d 71 (3rd Cir. 1928).

[43] See *Matter of Yellowquill*, 16 I.&N. Dec. 576 (BIA 1978).

[44] See *Federal Power Commission* v. *Tuscarora Indian Nation*, 362 U.S. 99, 120 (1960); *Taylor* v. *Ala. Intertribal Council Title IV J.T.P.A.*, 261 F.3d 1032, 1034–1035 (11th Cir. 2001).

[45] 8 U.S.C. 1401(b).

Kickapoo Indians and Mexican-born Kickapoo Indians to document their status. The American Indian Card is issued pursuant to the Texas Band of Kickapoo Act of 1983 (TBKA).[46] There are two versions of the American Indian Card: (1) For Kickapoos who opted to become United States citizens under the TBKA (the filing deadline for this benefit closed in 1989) and (2) for Kickapoos who opted not to become United States citizens, but instead were afforded "pass/repass" status.

While certain Mexican born Kickapoo Indians may "pass the borders" between Mexico and the United States[47] under this authority, this authority has historically been used at land border crossings. Therefore, under this proposed rule, both United States and Mexican-born Kickapoo Indians would be required to present a valid passport when entering the United States by air and sea. Any changes to the land border requirements for Kickapoo Indians will be addressed in the WHTI second phase rulemaking. Mexican-born Kickapoo Indians arriving at air or sea ports-of-entry would be required to present their Mexican passport.

As stated previously, federal statutes apply to Native Americans born in the United States absent some clear indication that Congress did not intend for them to apply. IRTPA expressly applies to United States citizens and as a matter of law American Indians born in the United States are United States citizens. As a result, American-born Kickapoo Indians will be required to present a valid passport when entering the United States by air and commercial sea vessel, except by ferry or pleasure vessel.

11. Travel From Territories Subject to the Jurisdiction of the United States

Pursuant to section 215(c) of the INA,[48] the term "United States" as used in section 215 includes all territory and waters, continental or insular, subject to the jurisdiction of the United States. The United States, for purposes of section 215 of the INA and IRTPA section 7209, includes Guam, Puerto Rico, the U.S. Virgin Islands, American Samoa, Swains Island, and the Commonwealth of the Northern Mariana Islands. Because section 7209's requirements apply only to persons traveling between the United States and foreign countries, these requirements will not apply to United States citizens and nationals who travel directly between parts of the United States, as defined in section 215(c) of the INA, without touching at a foreign port or place.

12. Outer Continental Shelf Employees

In response to comments received to the ANPRM, DHS and DOS are clarifying that, under this proposed rule, offshore workers who work aboard Mobile Offshore Drilling Units (MODUs) attached to the United States Outer Continental Shelf (OCS) and travel to and from them would not need to possess a passport to re-enter the United States if they depart the United States and do not enter a foreign port or place. Upon return to the United States from a MODU, such an individual would not be considered a new "entry" for inspection purposes under 8 CFR 235.1. Therefore, this individual would not need to possess a passport when returning to the United States. However, an individual who travels to a MODU from outside of the United States and, therefore has not been previously inspected and admitted to the United States, would be required to possess a passport and visa when arriving at the U.S. port-of-entry by air or commercial sea vessel, except by ferry.

13. International Boundary and Water Commission Employees

In response to comments received to the ANPRM, DHS and DOS are clarifying that, under this proposed rule, documentation requirements for direct and indirect employees of the International Boundary and Water Commission crossing the United States-Mexico border while on official business will not change.[49]

E. Section-by-Section Discussion of Proposed Amendments

Based on the discussion above, the following changes are necessary to the regulations.

8 CFR 212.1

The amendment to this section would revise paragraphs (a)(1) and (a)(2), which provide a passport exemption for Canadian citizens and citizens of the British Overseas Territory of Bermuda. New language would be added that requires a passport for these groups when they enter the United States from within the Western Hemisphere except by land, ferry, or pleasure vessel. Canadian citizens who are participants in the NEXUS Air program may present other documentation in the form of a NEXUS Air membership card pursuant to 8 CFR 235.1(e).

In addition, this section involves a revision of paragraph (c)(1)(i), which concerns Mexican nationals entering the United States who are in possession of a BCC. New language would be added that specifies that the passport exemption applies when entering the United States from contiguous territory by land, ferry, or pleasure vessel.

8 CFR 235.1

The amendment to this section would involve adding a new paragraph (d), which provides that United States citizens who are holders of a Merchant Mariner Document (MMD or "z-card") issued by the Coast Guard traveling on maritime business may present, in lieu of a passport, an MMD. This new paragraph would be added because the Secretary of Homeland Security proposes that an MMD, when used on maritime business and presented upon arrival, will be deemed sufficient documentation to denote identity and citizenship under IRTPA.

In addition, this section involves adding a new paragraph (e), which provides that United States citizens, Canadian citizens, and permanent residents of Canada who enter the United States as NEXUS Air participants by using a NEXUS Air kiosk, may present, in lieu of a passport, a valid NEXUS Air membership card when entering the United States.

22 CFR 41.1

The amendment to this section would revise paragraph (b), which provides a passport exemption for American Indians born in Canada, having at least 50 per centum of blood of the American Indian race. New language would be added to clarify that the passport exemption applies only to those persons entering from contiguous territory by land, ferry, pleasure vessel, or as participants in the NEXUS Air program.

22 CFR 41.2

The amendment to this section would revise paragraphs (a) and (b), which provide a passport exemption for Canadian citizens and citizens of Bermuda. New language would be added to clarify that the passport exemption applies only to travel into the United States from within the Western Hemisphere by land, ferry, pleasure vessel, or in conjunction with the NEXUS Air program, as applicable. In addition, this section would revise paragraph (g), which concerns Mexican nationals entering the United States who are in possession of a Form DSP–

[46] Pub. L. 97–429, 96 Stat. 2269 (1983), codified at 25 U.S.C. 1300b–11–1300b–16.

[47] TBKA, 25 U.S.C. 1300b–13.

[48] 8 U.S.C. 1185(c).

[49] Article 20 of the 1944 Treaty Between the United States and Mexico (regarding division of boundary water and the functions of International Boundary and Water Commission), TS 922, Bevan 1166, 59 Stat. 1219; 8 CFR 212.1(c)(5).

150, B–1/B–2 Visa and Border Crossing Card. Subparagraph (g)(2) would be eliminated as redundant because Form DSP–150 is a B–1/B–2 visa as well as a Border Crossing Card. Subparagraph (g)(4) would be eliminated because 22 CFR 41.32 has been amended to require that all applicants for Border Crossing Cards present a valid passport; section 41.32 no longer provides conditions for a waiver of the passport requirement. New language would be added that specifies that the passport exemption applies only when entering the United States at a land border port-of-entry or by pleasure vessel or ferry.

22 CFR 53.1

The amendments to this part would revise 22 CFR 53.1 to provide that it is unlawful for a United States citizen, except as provided in 22 CFR 53.2, to depart from or enter, or attempt to depart from or enter, the United States unless he or she bears a valid passport. They also revise 22 CFR 53.1 to provide definitions of "commercial vessel," "ferry," "pleasure vessel," and "United States."

22 CFR 53.2

The amendments to this part would revise the exceptions to the passport requirement stated in 22 CFR 53.2 so that they are consistent with this rulemaking. One change would narrow the so-called "Western Hemisphere" exception so that it only applies to entries to and departures from Canada and Mexico by land, while another provides exceptions for entries and departures aboard pleasure vessels and ferries. In addition, the amendments would make it clear that the exception for members of the U.S. Armed Forces traveling on active duty will be maintained. The amendment would also contain an exception for U.S. citizen seamen on maritime business who are carrying Merchant Marine Documents (MMDs or Z-cards). The amendment would also contain an exception for United States citizens who are carrying a NEXUS Air membership card and participating in the NEXUS Air program by using a NEXUS Air kiosk.

The amendments would eliminate the exception for cards of identity or registration issued at consular offices abroad because such cards are no longer issued; for U.S. citizen children included in a foreign passport of an alien parent; for child of members of a foreign government or the United Nations included on a foreign passport; and the current broad exception for waivers authorized by the Secretary of State in 22 CFR 53.2(h). Instead, new exceptions that are consistent with IRTPA would be substituted for those that would be eliminated (i.e., providing exceptions for documentation deemed sufficient to denote identity and citizenship by the Secretary of Homeland Security, and allowing for waiver in individual cases when an unforeseen emergency occurs and individual cases for humanitarian or national interest reasons).

22 CFR 53.4

The amendments to this part would clarify the point that nothing in this rule would prevent a United States citizen from presenting a U.S. passport in circumstances where that passport is not required.

IV. Regulatory Analyses

A. Executive Order 12866: Regulatory Planning and Review

This rule is considered to be an economically significant regulatory action under Executive Order 12866 because it may result in the expenditure of over $100 million in any one year. Accordingly, this proposed rule has been reviewed by the Office of Management and Budget (OMB). The following summary presents the costs and benefits of the proposed rule plus a range of alternatives considered. The complete and detailed "Regulatory Assessment" can be found in the docket for this rulemaking: *http://www.regulations.gov* (see also *http://www.cbp.gov*). Comments regarding the analysis and the underlying assumptions are encouraged and may be submitted by any of the methods described under the **ADDRESSES** section of this document.

This rule will affect certain travelers to the Western Hemisphere countries for whom there are no current requirements to present a United States passport for entry. While United States citizens may not need a passport to enter these countries, they would need to carry a passport to leave the United States and for inspection upon re-entry to the United States. This analysis considers air travelers on commercial flights, travelers using general aviation, and cruise ship passengers.

Based on data from the Department of Commerce, approximately 22 million travelers will be covered by the proposed rule. Based on additional available data sources, DHS and DOS assume that a large portion of these travelers already hold passports and thus will not be affected (i.e., they will not need to obtain a passport as a result of this rule). If the provisions of the proposed rule are finalized, DHS and DOS estimate that approximately 6 million passports will be required in the first year the rule is in effect, at a direct cost to traveling individuals of $941 million. These estimates are presented in Table 1.

TABLE 1.—FIRST YEAR DIRECT COSTS TO TRAVELERS OF THE PROPOSED RULE

Travelers to WHTI countries, first year	21,792,788		
	1st quartile	Median	3rd quartile
Passports demanded:			
Air travelers	3,942,859	4,084,204	4,364,197
Cruise passengers	1,751,988	1,821,258	1,877,324
Total	5,694,846	5,905,462	6,241,521
Total cost of passports demanded:			
Air travelers	$579,379,344	$600,142,162	$641,283,623
Cruise passengers	259,398,916	269,658,495	277,962,482
Total	$838,778,260	$869,800,657	$919,246,105
Expedited service fees (20% of passports):			
Number of passports	1,138,969	1,181,092	1,248,304
Cost of expedited service	$68,338,158	$70,865,540	$74,898,252
Grand total cost	$907,116,418	$940,666,196	$994,144,357

Following the first year, the costs will diminish as most United States travelers in the air and sea environments would then hold passports. Because the number of travelers to the affected Western Hemisphere countries has been growing, a small number of "new" travelers who did not previously hold passports will now have to obtain them in order to travel. The estimated costs for new passport acquisition in the second year the rule is in effect are presented in Table 2.

TABLE 2.—SECOND YEAR DIRECT COSTS TO TRAVELERS OF THE PROPOSED RULE

"New" travelers to WHTI countries, second year	1,313,091		
	1st quartile	Median	3rd quartile
Passports demanded:			
Air travelers	195,638	202,409	216,428
Cruise passengers	140,159	145,701	150,186
Total	335,797	348,110	366,614
Total cost of passports demanded:			
Air travelers	$28,744,708	$29,742,623	$31,801,499
Cruise passengers	20,751,913	21,572,680	22,236,999
Total	$49,496,622	$51,315,302	$54,038,497
Expedited service fees (20% of passports):			
Number of passports	67,159	69,622	73,323
Cost of expedited service	$4,029,570	$4,177,321	$4,399,366
Grand total cost	$53,526,192	$55,492,623	$58,437,863

This rule could also impose indirect costs to those industries that support the traveling public. If some travelers do not obtain passports because of the cost or inconvenience and forego travel to Western Hemisphere destinations, certain industries would incur the indirect consequences of the foregone foreign travel. These industries include (but are not limited to):

- Air carriers and cruise ship companies;
- Airports, cruise terminals, and their support services;
- Traveler accommodations; travel agents; dining services; retail shopping;
- Tour operators;
- Scenic and sightseeing transportation;
- Hired transportation (rental cars, taxis, buses);
- Arts, entertainment, and recreation.

DHS and DOS expect that foreign businesses whose services are consumed largely outside of the United States (with the exception of United States air carriers, cruise ship companies, travel agents, and airport and cruise terminal services) will primarily be impacted. If domestic travel is substituted for international travel, domestic industries in these areas would gain. DHS and DOS expect, however, that United States travel and tourism could also be indirectly affected by the proposed rule if fewer Canadian, Mexican BCC holders, and Bermudan travelers visit the United States (these travelers do not currently need a passport for entry to the United States but will require one under the proposed rule). In this case, United States businesses in these sectors would be affected. Thus, gains in domestic consumption may be offset by losses in services provided to the citizens and residents of the Western Hemisphere countries affected. In both cases, we expect the gains and losses to be marginal as the vast majority of travelers (based on our Regulatory Assessment, an estimated 96 percent of United States air and sea travelers and 99 percent of Canadian, Mexican, and Bermudan air and sea travelers) are expected to obtain passports and continue traveling internationally.

The benefits of the proposed rule are virtually impossible to quantify in monetary terms. The benefits of the proposed rule are significant and real in terms of increased security in the air and sea environments provided by more secure documents and facilitation of inspections provided by the limited types of documents that would be accepted. In fact, this proposed rule addresses a vulnerability of the United States to entry by terrorists or other persons by false documents or fraud under the current documentary exemptions for travel within the Western Hemisphere, which has been noted extensively by Congress and others:

- During the debate on IRTPA, several members of Congress, including the Chairman of the House Judiciary Committee commented on the need for more secure documents for travelers.[50]
- The 9/11 Commission recommendations, which provide much of the foundation for IRTPA, specifically include a recommendation to address travel documents in the Western Hemisphere.[51]
- Finally, in May 2003, a subcommittee of the House Judiciary Committee held a hearing focused on a fraudulent U.S. document ring in the Caribbean, the exploitation of which allowed the notorious Washington D.C. "sniper," John Allen Muhammad, to support himself while living in Antigua. A Government Accountability Office (GAO) investigator at that hearing testified as to the ease of entering the United States with fraudulent birth certificates and drivers' licenses.

A uniform document requirement would assist CBP officers in verifying the identity and citizenship of travelers who enter the United States, and

[50] "As the 9/11 staff report on terrorist travel declared, 'The challenge for national security in an age of terrorism is to prevent the people who may pose overwhelming risk from entering the United States undetected.' The Judiciary sections of title III require Americans returning from most parts of the Western Hemisphere to possess passports; require Canadians seeking entry into the United States to present a passport or other secure identification; authorize additional immigration agents and investigators; reduce the risk of identity and document fraud; provide for the expedited removal of illegal aliens; limit asylum abuse by terrorists; and streamline the removal of terrorists and other criminal aliens. These provisions reflect both commission recommendations and legislation that was pending in the House." *Congressional Record, October 7, 2004,* H8685.

[51] "Americans should not be exempt from carrying biometric passports or otherwise enabling their identities to be securely verified when they enter the United States; nor should Canadians or Mexicans. Currently U.S. persons are exempt from carrying passports when returning from Canada, Mexico, and the Caribbean. The current system enables non-U.S. citizens to gain entry by showing minimal identification. The 9/11 experience shows that terrorists study and exploit America's vulnerabilities." *The 9/11 Commission Report,* p. 388.

improving their ability to detect fraudulent documents or false claims to citizenship and deny entry to such persons. Further, such standardized documents would enable more rapid processing of travelers who enter the United States because an individual's identity would be easier to confirm and he or she could be processed through CBP more efficiently.

Alternatives to the Proposed Rule

CBP considered the following five alternatives to the proposed rulemaking:

1. The No Action alternative (status quo);
2. Require United States travelers to present a state-issued photo ID and proof of citizenship (such as birth certificates) upon return to the United States from countries in the Western Hemisphere;
3. Allow United States citizens who possess a Transportation Worker Identification Card (TWIC) to use the card as a travel document in the air and sea environments;
4. Allow Mexican citizens to present their Border Crossing Cards (BCCs) in the air and sea environments in lieu of a passport; and
5. Develop and designate a low-cost PASS card as an acceptable document for United States citizens.

Calculations of costs (if any) for the alternatives can be found in the Regulatory Assessment.

Alternative 1: The No Action Alternative

The No Action alternative would have zero costs (or benefits) associated with it. This alternative was rejected because section 7209 of the IRTPA specifically provides that, by January 1, 2008, United States citizens and nonimmigrant aliens may enter the United States only with passports or such alternative documents as the Secretary of Homeland Security may designate as satisfactorily establishing identity and citizenship. Current documentation requirements leave major gaps in security at U.S. airports and seaports and do not satisfy the requirements under the IRTPA that travel documents for entry into the United States must denote identity and citizenship.

Alternative 2: Require United States Travelers To Present a State-Issued Photo ID and Proof of Citizenship

The second alternative would require United States citizens to present state-issued photo identification in combination with a birth certificate to establish citizenship and identity. This alternative is similar to the status quo. The U.S. birth certificate can be used as evidence of birth in the United States; however, it does not provide definitive proof of citizenship (e.g., children born in the U.S. to foreign diplomats do not acquire U.S. citizenship at birth). Highly trained passport specialists and consular officers abroad adjudicate passport applications, utilizing identity and citizenship documents (like U.S. birth certificates, naturalization certificates, consular reports of birth abroad, etc.). These specialists have resources available, including fraud and document experts, to assist when reviewing documents and are not faced with the same time constraints as officers at ports-of-entry. These factors are critical in determining that a birth certificate and driver's license may be presented as documentary evidence of citizenship and identity for an application for a passport but are not sufficient under WHTI for entry to the United States. There are, in addition, other circumstances where a non-U.S. birth certificate does not provide definitive proof of citizenship (e.g., dual-nationals, foreign birth to U.S. citizen parents, foreign-born adopted children, and naturalized citizens). In addition, there is no current way to validate that the person presenting the birth certificate for inspection is, in fact, the same person to whom it was issued. The lack of security features and the plethora of birth certificates issued in the United States (issued by more than 8,000 entities) currently make it difficult to reliably verify or authenticate a birth certificate. A state-issued photo identification provides positive identification with name, address, and photograph. However, a state-issued photo identification does not provide proof of citizenship.

Alternative 2 was rejected for several reasons. Because birth certificates and driver's licenses are issued by numerous government entities, there is no standard format for either document, and, at present, it is not possible to authenticate quickly and reliably either document. Some states only issue photocopies as replacements of birth certificates, some states issue replacement birth certificates by mail or through the Internet, and some states will not issue photo identification to minors. Both documents lack security features and are susceptible to counterfeiting or alteration. While most states require that driver's licenses contain correct address information, it is not uncommon for the address information to be outdated. Neither the birth certificate nor the state-issued identification was designed to be a travel document. Birth certificates can easily deteriorate when used frequently as travel documents because they are normally made from some sort of paper with a raised seal, so they cannot be laminated or otherwise protected when under repeated use.

Because these documents are not standardized, CBP officers require additional time to locate the necessary information on the documents. This may result in cumulative delays at air and sea ports of entry. If the information is not current, travelers may need to be referred to secondary inspection for additional processing. CBP, DHS, and DOS believe that the risk of counterfeiting and fraud associated with these documents makes them unacceptable documents for travel under IRTPA.

Because neither document has a machine-readable zone, CBP will not be able to front-load information on the traveler to expedite the initial inspection processing, including checks necessary to protect the national security of the United States. Birth certificates are issued by thousands of authorities, and are currently impossible to validate or vet sufficiently. Both documents are readily available for purchase to assume a false identity. Because the birth certificate and state-issued photo ID have limited or non-existent security features, they are more susceptible to alteration. Therefore, the actual, rather than claimed, identity and citizenship of the traveler using these documents cannot always be determined.

The costs of this alternative are associated with minors obtaining photo identification for travel. Currently, all adult travelers in the air and sea environments must present photo identification (usually a driver's license) along with proof of citizenship (usually a birth certificate) when they check in for their flights and voyages (per the requirements of the air and sea carriers). Additionally, all countries in the Western Hemisphere require a passport or these documents for entry into their countries. The exception, however, is for minor travelers. Currently, parents may orally vouch for their children upon exit and entry into the United States to and from the Western Hemisphere, and some Western Hemisphere countries allow children to present school identification as sufficient proof of identity. To comply with a requirement that would allow a photo ID in combination with a birth certificate for travel in the Western Hemisphere, minors would most likely need to obtain state-issued photo identification. There could also be additional costs in the form of lost

efficiency upon entry to United States ports-of-entry. If CBP officers need to spend more time examining a variety of documents to determine what they are and if they are fraudulent, and if CBP officers need to enter data by hand rather than routinely utilize machine-readable technology to obtain information on arriving passengers, this would have time-delay impacts at airports and seaports. CBP is unable to quantify this loss of efficiency and presents only the cost to minors to obtain a photo ID.

Based on data from the Department of Commerce's Office of Travel & Tourism Industries (OTTI), eleven states with the highest number of international travelers (to the Western Hemisphere or otherwise) (California, New York, New Jersey, Florida, Texas, Illinois, Virginia, Pennsylvania, Washington, Massachusetts, and Ohio) account for almost three-quarters of international air travelers.[52] Most requirements for obtaining a photo identification are similar across these states: completion of a department of motor vehicles (DMV) form, submission of a form or declaration attesting that the applicant is the parent or legal guardian of the minor receiving the identification, and presentation of a birth certificate and social security card. If the applicant is a minor, he or she must appear in person with a parent or guardian. Fees for these states range from $3 (Florida) to $21 (California), and identifications are valid for an average of five years.[53] As stated previously, some states will not issue photo ID to minors under a certain age.[54] For the purposes of this analysis only, we assume all minors would be able to obtain state-issued photo identification.

CBP estimates that there are 1,643,606 minors that will be covered by this proposed rule, 557,365 of whom do not currently hold a passport. CBP has used the average of the photo identification fees from the 11 states above ($15) and added the cost of the time it takes to complete the forms and submit them to the DMV ($41, the same time cost CBP estimated to obtain the passport) for a total of approximately $55 per minor. Thus, assuming that a birth certificate is readily available, the cost of this alternative ID for minors would be $30.7-million.

Alternative 3: Designate TWIC as an Acceptable Document for United States Citizens

The third alternative would allow U.S. transportation workers to use their TWICs in lieu of a passport. Section 102 of the Maritime Transportation Security Act of 2002 requires the Secretary of Homeland Security to issue a biometric transportation security card to individuals with unescorted access to secure areas of vessels and facilities.[55] In addition, these individuals must undergo a security threat assessment to determine that they do not pose a security threat prior to receiving the biometric card and access to the secure areas. The security threat assessment must include a review of criminal, immigration, and pertinent intelligence records in determining whether the individual poses a threat, and individuals must have the opportunity to appeal an adverse determination or apply for a waiver of the standards. The regulations to implement the TWIC in the maritime environment are in the proposed rule stage and are pending finalization subject to public comment and revision.[56] For the sake of comparison, CBP assumes that TWICs are available to all transportation workers covered by the proposed rule. Additionally, analysis of this alternative assumes that CBP would accept the TWIC for any travel.

The Transportation Security Administration (TSA) and Coast Guard estimate that the initial population of cards holders will be approximately 750,000.[57] This population includes such individuals as United States MMD holders, port truck drivers, contractors, longshoremen, and rail workers. As discussed previously, MMD holders will not be affected by the proposed WHTI air and sea rule, because the MMD will be an acceptable document under the proposed rule. The other TWIC holders do not likely leave the country on vessels for the purposes of work-related activities. For the purposes of this economic analysis only, CBP estimates the cost savings to these individuals of using TWICs in the air and sea environments for non-work-related travel.

CBP does not know how TWIC holders overlap with the United States population traveling to the affected WHTI countries. As calculated previously, CBP estimates there are approximately 22 million unique travelers covered by the proposed rule, and approximately 6 million (27 percent) of them will require passports since they do not already have them. For the purposes of this analysis of alternatives, CBP assumes that the population requiring passports fully encompasses TWIC holders. This is an extreme best-case assumption, as most of the TWIC holders will not be traveling internationally in the air and sea environments as part of their work. Thus in the best-case, 27 percent of the 750,000 TWIC holders (approximately 203,000 individuals) would not need passports. At a cost of $149 per passport ($97 application fee for an adult, $11 for photos and $41 for the time costs of completing the necessary paperwork), this would result in a savings of, at best, $30.2 million. This is approximately 3 percent of the total rule cost. The savings are likely to be lower than that because the TWIC-holding population in the maritime environment is unlikely to be entirely included in the United States traveling population covered by the proposed rule.

The TWIC cannot be read by current CBP technology installed in air and sea ports-of-entry. While there is information embedded in the chip on the TWIC, only the name of the individual and a photo ID are apparent to a CBP officer upon presentation. DHS would have to install chip readers in all air and sea ports-of-entry to access other information and verify the validity of the document. TSA estimates that this cost could be $7,200 per card reader. Additionally, CBP believes that it would cost $500,000 to develop databases, cross-reference information and coordinate with TSA and Coast Guard, and test equipment installed in airports and seaports.

For this analysis CBP assumes that a card reader would need to be installed in each CBP booth in airports and 4 mobile readers would be required in seaports that receive cruise passengers. CBP estimates that there are 2,000 air and sea "lanes" nationwide that would need a TWIC reader. The cost for readers is thus $14.4 million and with the additional cost for reprogramming and adapting existing systems, the total cost is $14.9 million in the first year. Following the first year, CBP would expect to pay approximately 25 percent of the initial cost for operations and

[52] Table 22, U.S. Travelers to Overseas Countries 2004, State of Residence of Travelers, OTTI, 2005.

[53] See the nationwide DMV guide at *www.dmv.org*.

[54] Of the 11 states examined in the analysis of this alternative, Florida, Massachusetts, New Jersey, and Pennsylvania have a minimum age requirement for obtaining a photo ID. The minimum age to obtain a photo ID in Florida is 12, in Massachusetts is 16, in New Jersey is 17, and in Pennsylvania is 16.

[55] Pub. L. 107–295, 116 Stat. 2064 (Nov. 25, 2002).

[56] 71 FR 29396 and 29462 (May 22, 2006).

[57] Department of Homeland Security, Transportation Security Administration, and U.S. Coast Guard, Regulatory Evaluation for the Notice of Proposed Rulemaking Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector, 49 (2006). Dockets TSA–2006–24191 or USCG–2006–24196.

maintenance. The net first-year savings would be, again at best, $15.3 million. This is a 2 percent difference from the costs of the chosen alternative (i.e., $15.3 million divided by $941 million).

This alternative was rejected because the TWIC does not denote citizenship on its face and it was not designed as a travel document but rather, to positively identify the holder and hold the results of a security threat assessment, and as a tool for use in access control systems. Because the TWIC does not provide citizenship information on its face, the holder would need to present at least one other document that proves citizenship. CBP would need to take additional time at primary inspection to establish citizenship, or the traveler would have to be referred to secondary inspections for further processing. The overall result could be increased delays at ports of entry.

Alternative 4: Designate the BCC as an Acceptable Document for Mexican Citizens

Alternative 4 would allow Mexican citizens to present their BCCs upon entry to this country. This alternative would have no impact on the cost of the rule to United States citizens. The BCC is a credit card-size document with many security features and 10-year validity. Also called a "laser visa," the card is both a BCC and a B1/B2 visitor's visa. This alternative could be less expensive for a percentage of Mexican citizens. A Mexican passport is required to obtain a BCC; however, there are some Mexican citizens that hold a BCC without a valid passport because the passport has expired prior to the expiration of the BCC. The BCC is currently limited to use on the southern land border and the traveler is required to remain within 25 miles of the border unless the traveler obtains an I–94 prior to traveling further into the United States.[58]

This alternative was rejected because the BCC cannot be used with CBP's Advance Passenger Information System (APIS), which collects data from travelers prior to their arrival in and departure from the United States.[59] The passport requirement for Mexican citizens who hold BCC in the air and sea environments is consistent with the requirement for passports for most United States citizens and foreign nationals.

Alternative 5: Develop and Designate a Low Cost PASS Card as an Acceptable Document for United States Citizens

DOS, in consultation with DHS, has begun developing an alternative travel document, a card-format, limited use passport called a People Access Security Service card (PASS card). Like a traditional passport booklet, the PASS card will be a secure travel document that establishes the identity and citizenship of the bearer. The PASS card is being designed to benefit those citizens in border communities who regularly cross the northern and southern borders every day and where such travel is an integral part of their daily lives. As currently envisioned, it will be the size of a credit card and will have a fee structure that is lower than for a traditional passport booklet. The application process for the PASS card will be comparable to that for the passport booklet in that each applicant will have to establish United States citizenship, personal identity, and entitlement to obtain the document.

The cost of the PASS card has yet to be determined. Strictly for the purposes of this analysis of alternatives, we assume the fee for a first-time adult PASS card would be $45 and for a minor would be $35. The cost for photos is $11. Because the application process would be comparable to that for a traditional passport, the personal time cost would continue to be $41, as estimated previously for the primary analysis of the cost of the proposed rule. Using the same methodology as used for the primary analysis (most likely scenario) but assuming that all travelers who do not currently hold a passport obtain a PASS card rather than the traditional passport booklet, we estimate that the first-year cost would be $668 million. At this lower cost, approximately 6.2 million PASS cards would be demanded, approximately 300,000 more than under the proposed rule, an increase of 5 percent.

Use of this alternative passport card was rejected for the air and sea environments for a number of reasons. This rule is proposed to take effect on January 8, 2007, and there is not sufficient time for the Department of State to develop and issue the PASS card by that time. The PASS card is intended to be a limited-use passport and will not meet all the international standards for passports and other official travel documents (for example, the size of the PASS card does not comport with the International Civil Aviation Organization 9303 travel document standards).

The following table presents a comparison of the costs of the proposed rule and the alternatives considered.

COMPARISON OF REGULATORY ALTERNATIVES IN FIRST YEAR

[Costs in millions]

Alternative	First-year cost	Cost compared to status quo	Cost compared to proposed rule	Reason rejected
Proposed rule (passports, MMDs, Air Nexus).	$941	+$941	n/a	
Status quo	$0	n/a	−$941	Status quo does not meet requirements of IRTPA.
State-issued photo ID + birth certificate in lieu of U.S. passport.	$31	+$31	−$910	Identity and citizenship of the traveler cannot always be reasonably assumed or ascertained using these documents; minors may not be able to obtain IDs in all states; delays in processing entries because neither document is standardized.

[58] With the exception of Tucson, Arizona, where travel is limited to 75 miles.

[59] Information for aircraft to be submitted includes: full name, date of birth, gender, citizenship, country of residence, status on board the aircraft, travel document type, passport information if passport is required (number, country of issuance, expiration date), alien registration number where applicable, address while in the United States (unless a U.S. citizen, lawful permanent resident, or person in transit to a location outside the United States), Passenger Name Record locator if available, foreign code of foreign port/place where transportation to the United States began, code of port/place of first arrival, code of final foreign port/place of destination for in-transit passengers, airline carrier code, flight number, and date of aircraft arrival. Information for vessels is comparable, with requirements appropriate to vessels: vessel name, vessel country of registry/flag, vessel number, and voyage number (for multiple arrivals on the same calendar day).

COMPARISON OF REGULATORY ALTERNATIVES IN FIRST YEAR—Continued

[Costs in millions]

Alternative	First-year cost	Cost compared to status quo	Cost compared to proposed rule	Reason rejected
TWICs in lieu of U.S. passport.	$910	+$910	−$15	TWICs do not yet exist in the maritime environment; TWIC not designed as a travel document; citizenship not included; CBP would have to install card readers and modify their own systems to accept TWICs.
BCCs in lieu of Mexican passport.	No direct costs for U.S. citizens	$0	May be slightly less expensive for BCC holders.	Cannot be used in conjunction with APIS in the air and sea environments.
PASS card in lieu of traditional passport booklet.	$668	+$668	−$273	PASS cards cannot be used because they do not yet exist.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/omb/circulars/index.html*), CBP has prepared an accounting statement showing the classification of the expenditures associated with this rule. The table provides an estimate of the dollar amount of these costs and benefits, expressed in 2005 dollars, at three percent and seven percent discount rates. DHS and DOS estimate that the cost of this rule will be approximately $237 million annualized (7 percent discount rate) and approximately $233 million annualized (3 percent discount rate). Non-quantified benefits are enhanced security and efficiency.

ACCOUNTING STATEMENT: CLASSIFICATION OF EXPENDITURES, 2006 THROUGH 2016

[2005 dollars]

	3% discount rate	7% discount rate
COSTS		
Annualized monetized costs	$233 million	$237 million.
Annualized quantified, but un-monetized costs	None	None.
Qualitative (un-quantified) costs	Indirect costs to the travel and tourism industry.	Indirect costs to the travel and tourism industry.
BENEFITS		
Annualized monetized benefits	None quantified	None quantified.
Annualized quantified, but un-monetized costs	None quantified	None quantified.
Qualitative (un-quantified) costs	Enhanced security and efficiency	Enhanced security and efficiency.

In accordance with the provisions of EO 12866, this regulation was reviewed by OMB.

B. Regulatory Flexibility Act

We have prepared this section to examine the impacts of the proposed rule on small entities as required by the Regulatory Flexibility Act (RFA).[60] A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

When considering the impacts on small entities for the purpose of complying with the RFA, we consulted the Small Business Administration's guidance document for conducting regulatory flexibility analysis.[61] Per this guidance, a regulatory flexibility analysis is required when an agency determines that the rule will have a significant economic impact on a substantial number of small entities that are *subject to the requirements of the rule*.[62] This guidance document also includes a good discussion describing how direct and indirect costs of a regulation are considered differently for the purposes of the RFA. We do not believe that small entities are subject to the requirements of the proposed rule; individuals are subject to the requirements, and individuals are not considered small entities. To wit, "The courts have held that the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates them." [63]

As described in the Regulatory Assessment for this rulemaking, we could not quantify the indirect impacts of the proposed rule with any degree of certainty; we instead focused our analysis on the direct costs to individuals recognizing that some small entities will face indirect impacts.

Many of the small entities indirectly affected will be foreign owned and will be located outside the United States. Additionally, reductions in international travel that result from the proposed rule could lead to gains for the domestic travel and tourism industry. Most travelers—an estimated 96 percent of United States travelers and 99 percent of Canadian, Mexican, and Bermudan travelers (based on the Regulatory

[60] 5 U.S.C. 601–612.

[61] Small Business Administration, Office of Advocacy, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act*, May 2003.

[62] *Id.* at 69.

[63] *Id.* at 20.

Assessment summarized above)—are expected to obtain passports and continue traveling. Consequently, indirect effects are expected to be spread over wide swaths of domestic and foreign economies.

Small businesses may be indirectly affected by the proposed rule if international travelers forego travel to affected Western Hemisphere countries. Industries likely affected include (but may not be limited to):

- Air carriers;
- Cruise ship companies;
- Airports;
- Cruise terminals and their support services;
- Traveler accommodations;
- Travel agents;
- Dining services;
- Retail shopping;
- Tour operators;
- Scenic and sightseeing transportation;
- Hired transportation (rental cars, taxis, buses);
- Arts, entertainment, and recreation.

Because this rule does not directly regulate small entities, we do not believe that this rule has a significant economic impact on a substantial number of small entities. However, we welcome comments on that assumption. The most helpful comments are those that can provide specific information or examples of a direct impact on small entities. If we do not receive comments that demonstrate that the rule causes small entities to incur direct costs, we may certify that this action does not have a significant economic impact on a substantial number of small entities during the final rule.

The complete analysis of impacts to small entities for this proposed rulemaking is available on the CBP Web site at: *http://www.regulations.gov;* see also *http://www.cbp.gov.* Comments regarding the analysis and the underlying assumptions are encouraged and may be submitted by any of the methods described under the **ADDRESSES** section of this document.

C. Executive Order 13132: Federalism

Executive Order 13132 requires DHS and DOS to develop a process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." Policies that have federalism implications are defined in the Executive Order to include rules that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." DHS and DOS have analyzed the proposed rule in accordance with the principles and criteria in the Executive Order and have determined that it does not have federalism implications or a substantial direct effect on the States. The proposed rule requires United States citizens and nonimmigrant aliens from Canada, Bermuda and Mexico entering the United States by air or sea from Western Hemisphere countries to present a valid passport. States do not conduct activities with which this rule would interfere. For these reasons, this proposed rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

D. Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988. Executive Order 12988 requires agencies to conduct reviews on civil justice and litigation impact issues before proposing legislation or issuing proposed regulations. The order requires agencies to exert reasonable efforts to ensure that the regulation identifies clearly preemptive effects, effects on existing federal laws or regulations, identifies any retroactive effects of the regulation, and other matters. DHS and DOS have determined that this regulation meets the requirements of Executive Order 12988 because it does not involve retroactive effects, preemptive effects, or the other matters addressed in the Executive Order.

E. Unfunded Mandates Reform Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the UMRA, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the UMRA is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the UMRA, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposal would not impose a significant cost or uniquely affect small governments. The proposal does have an effect on the private sector of $100 million or more. This impact is discussed under the Executive Order 12866 discussion.

F. Paperwork Reduction Act

The collection of information requirement for passports is contained in 22 CFR 51.20 and 51.21. The required information is necessary for DOS Passport Services to issue a United States passport in the exercise of authorities granted to the Secretary of State in 22 U.S.C. Section 211a *et seq.* and Executive Order 11295 (August 5, 1966) for the issuance of passports to United States citizens and non-citizen nationals. The issuance of U.S. passports requires the determination of identity and nationality with reference to the provisions of Title III of the Immigration and Nationality Act (8 U.S.C. sections 1401–1504), the 14th Amendment to the Constitution of the United States, and other applicable treaties and laws. The primary purpose for soliciting the information is to establish nationality, identity, and entitlement to the issuance of a United States passport or related service and to properly administer and enforce the laws pertaining to issuance thereof.

There are currently two OMB-approved application forms for passports, the DS–11 Application for a U.S. Passport (OMB Approval No. 1405–0004) and the DS–82 Application for a U.S. Passport by Mail. First time applicants must use the DS–11. The proposed rule would not create any new collection of information requiring OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). It would result in an increase in the number of persons filing the DS–11, and a corresponding increase in the annual reporting and/or record-keeping burden. In conjunction with publication of the final rule, DOS will amend the OMB form 83I (Paperwork Reduction Act Submission) relating to the DS–11 to reflect these increases.

The collection of information encompassed within this proposed rule has been submitted to the OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

Estimated total reporting and/or recordkeeping burden over 3 years: 37.4 million hours.

Estimated annual average reporting and/or recordkeeping burden: 12.5 million hours.

Estimated total number of respondents over 3 years: 26.4 million.

Estimated annual average number of respondents: 8.8 million.

Estimated average burden per respondent: 1 hour 25 minutes.

Estimated frequency of responses: every 10 years (adult passport application); every 5 years (minor passport application).

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of State, Office of Information and Regulatory Affairs, Washington, DC 20503. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) Whether the collection 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 of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchases of services to provide information.

G. Privacy Statement

A Privacy Impact Assessment (PIA) is being posted to the DHS Web site (at *http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0511.xml*) in conjunction with the publication of this proposed rule in the **Federal Register**. The changes proposed in this rule involve the removal of an exception for United States citizens from having to present a passport in connection with Western Hemisphere travel, such that those individuals must now present a passport when traveling from points of origin both within and without of the Western Hemisphere. The rule expands the number of individuals submitting passport information for travel within the Western Hemisphere, but does not involve the collection of any new data elements. Presently, CBP collects and stores passport information from all travelers, required to provide such information pursuant to the Aviation and Transportation Security Act of 2001 (ATSA) and the Enhanced Border Security and Visa Reform Act of 2002 (EBSA), in the Treasury Enforcement Communications System (TECS) (a System of Records Notice for which is published at 66 FR 53029). By removing the exception for submitting passport information from United States citizens traveling within the Western Hemisphere, DOS and CBP are requiring these individuals to comply with the general requirement to submit passport information when traveling to and from the United States.

List of Subjects

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

22 CFR Part 41

Aliens, Nonimmigrants, Passports and visas.

22 CFR Part 53

Passport Requirement and Exceptions; parameters for U.S. citizen travel and definitions.

Amendment of the Regulations

For the reasons stated in the preamble, DHS and DOS propose to amend 8 CFR parts 211 and 235 and 22 CFR parts 41 and 53 as set forth below.

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 is amended to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458).

2. Section 212.1 is amended by:

a. Revising paragraphs (a)(1) and (a)(2); and

b. Revising paragraphs (c)(1)(i), as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(a) *Citizens of Canada or Bermuda, Bahamian nationals or British subjects resident in certain islands.*—(1) *Canadian citizens.* A visa is not required. A passport is not required for Canadian citizens entering the United States from within the Western Hemisphere by land, ferry, pleasure vessel as defined in 22 CFR 53.1(b), or as participants in the NEXUS Air program pursuant to 8 CFR 235.1(e). A passport is otherwise required for Canadian citizens arriving in the United States by aircraft or by commercial sea vessels as defined in 22 CFR 53.1(b).

(2) *Citizens of the British Overseas Territory of Bermuda.* A visa is not required. A passport is not required for Citizens of the British Overseas Territory of Bermuda entering the United States from within the Western Hemisphere by land, ferry, or pleasure vessel, as defined in 22 CFR 53.1(b). A passport is otherwise required for Citizens of the British Overseas Territory of Bermuda arriving in the United States by aircraft or by commercial sea vessels as defined in 22 CFR 53.1(b).

* * * * *

(c) *Mexican nationals.* (1) A visa and a passport are not required of a Mexican national who:

(i) Is in possession of a Form DSP–150, B–1/B–2 Visa and Border Crossing Card, containing a machine-readable biometric identifier, issued by the DOS and is applying for admission as a temporary visitor for business or pleasure from a contiguous territory by land, ferry, or pleasure vessel, as defined in 22 CFR 53.1(b).

* * * * *

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

3. The authority citation for part 235 is amended to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, published January 2, 2004), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731–32; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458).

4. Section 235.1 is amended by:

a. Redesignating current paragraphs (d), (e), and (f) as paragraphs (f), (g), and (h);

b. Adding a new paragraph (d); and

c. Adding a new paragraph (e).

The additions and revisions read as follows:

§ 235.1 Scope of Examination.

* * * * *

(d) *U.S. Merchant Mariners.* United States citizens who are holders of a Merchant Mariner Document (MMD or Z-card) issued by the U.S. Coast Guard may present, in lieu of a passport, an MMD used in conjunction with maritime business when entering the United States.

(e) *NEXUS Air Program Participants.* United States citizens, Canadian citizens, and permanent residents of Canada who are traveling as participants in the NEXUS Air program, may present, in lieu of a passport, a valid NEXUS Air membership card when using a NEXUS Air kiosk prior to entering the United States.

* * * * *

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

5. The authority citation for part 41 is amended to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681–795 through 2681–801; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458).

6. Section 41.1 is amended revising paragraph (b) to read as follows:

* * * * *

(b) American Indians born in Canada. An American Indian born in Canada, having at least 50 per centum of blood of the American Indian race, entering from contiguous territory by land, ferry, pleasure vessel as defined in 22 CFR 53.1(b), or as participants in the NEXUS Air program pursuant to 8 CFR 235.1(e) (sec. 289, 66 Stat. 234; 8 U.S.C. 1359).

* * * * *

7. Section 41.2 is amended by:

a. Revising paragraphs (a) and (b);

b. Revising paragraph (g)(1);

c. Removing paragraphs (g)(2) and (g)(4); and

d. Redesignating paragraphs (g)(3) as (g)(2), (g)(5) as (g)(3), and (g)(6) as (g)(4);

* * * * *

(a) *Canadian nationals.* A visa is not required. A passport is not required for Canadian citizens entering the United States from within the Western Hemisphere by land, ferry, pleasure vessel as defined in 22 CFR 53.1(b), or as participants in the NEXUS Air program pursuant to 8 CFR 235.1(e). A passport is required for Canadian citizens arriving in the United States by aircraft or by commercial sea vessels as defined in 22 CFR 53.1(b).

(b) *Citizens of the British Overseas Territory of Bermuda.* A visa is not required. A passport is not required for Citizens of the British Overseas Territory of Bermuda entering the United States from within the Western Hemisphere by land, ferry, or pleasure vessel, as defined in 22 CFR 53.1(b). A passport is required for Citizens of the British Overseas Territory of Bermuda arriving in the United States by aircraft or by commercial sea vessels as defined in 22 CFR 53.1(b).

* * * * *

(g) *Mexican nationals.* (1) A visa and a passport are not required of a Mexican national in possession of a Form DSP–150, B–1/B–2 Visa and Border Crossing Card, containing a machine-readable biometric identifier, applying for admission as a temporary visitor for business or pleasure from a contiguous territory by land, ferry, or pleasure vessel, as defined in 22 CFR 53.1(b).

* * * * *

8. Part 53 is revised to read as follows:

PART 53—PASSPORT REQUIREMENT AND EXCEPTIONS

Sec.

53.1 Passport requirement; definitions.
53.2 Exceptions.
53.3 Attempt of a citizen to enter without a valid passport.
53.4 Optional use of a valid passport.

Authority: 8 U.S.C. 1185; 8 U.S.C. 1185 note (section 7209 of Pub.L. 108–458); E.O. 13323, 69 FR 241 (Dec. 30, 2003).

§ 53.1 Passport requirement; definitions.

(a) It is unlawful for a citizen of the United States, unless excepted under 22 CFR 53.2, to enter or depart, or attempt to enter or depart, the United States, without a valid U.S. passport.

(b) For purposes of this part:

(1) *Commercial sea vessel* means any civilian vessel being used to transport persons or property for compensation or hire to or from any port or place including all cruise ships.

(2) *Ferry* means any vessel operating on a pre-determined fixed schedule and route, which is being used solely to provide transportation between places that are no more than 300 miles apart and which is being used to transport passengers, vehicles, and/or railroad cars.

(3) *Pleasure vessel* means a vessel that is used exclusively for recreational or personal purposes and not to transport passengers or property for hire.

(4) *United States* means "United States" as defined in § 215(c) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1185(c)).

§ 53.2 Exceptions.

A U.S. citizen is not required to bear a valid U.S. passport to enter or depart the United States:

(a) When traveling directly between parts of the United States as defined in § 50.1 of this chapter; or

(b) When entering the United States from, or departing the United States for, Mexico or Canada by land; or

(c) When entering from or departing to a foreign port or place within the Western Hemisphere, excluding Cuba, by pleasure vessel; or

(d) When entering from or departing to a foreign port or place within the Western Hemisphere, excluding Cuba, by ferry; or

(e) When traveling as a member of the Armed Forces of the United States on active duty; or

(f) When traveling as a U.S. citizen seaman, carrying a Merchant Marine Document (MMD or Z-card) in conjunction with maritime business. The MMD is not sufficient to establish citizenship for purposes of issuance of a United States passport under 22 CFR Part 51; or

(g) When traveling as a participant in the NEXUS Air program with a valid NEXUS Air membership card. United States citizens who are traveling as participants in the NEXUS Air program, may present, in lieu of a passport, a valid NEXUS Air membership card when using a NEXUS Air kiosk prior to entering the United States. The NEXUS Air card is not sufficient to establish citizenship for purposes of issuance of a U.S. passport under 22 CFR Part 51; or

(h) When the U.S. citizen bears another document, or combination of documents, that the Secretary of Homeland Security has determined under Section 7209(b) of Public Law 108–458 (8 U.S.C. 1185 note) to be sufficient to denote identity and citizenship; or

(i) When the U.S. citizen is employed directly or indirectly on the construction, operation, or maintenance of works undertaken in accordance with the treaty concluded on February 3, 1944, between the United States and Mexico regarding the functions of the International Boundary and Water Commission (IBWC), TS 994, 9 Bevans 1166, 59 Stat. 1219, or other related agreements provided that the U.S. citizen bears an official identification card issued by the IBWC; or

(j) When the Department of State waives, pursuant to EO 13323 of December 30, 2003, Sec 2, the requirement with respect to the U.S. citizen because there is an unforeseen emergency; or

(k) When the Department of State waives, pursuant to EO 13323 of December 30, 2003, Sec 2, the requirement with respect to the U.S.

citizen for humanitarian or national interest reasons.

§ 53.3 Attempt of a citizen to enter without a valid passport.

The appropriate officer at the port of entry shall report to the Department of State any citizen of the United States who attempts to enter the United States contrary to the provisions of this part, so that the Department of State may apply the waiver provisions of § 53.2 (i) and § 53.2(j) to such citizen, if appropriate.

§ 53.4 Optional use of a valid passport.

Nothing in this part shall be construed to prevent a citizen from using a valid U.S. passport in a case in which that passport is not required by this part 53, provided such travel is not otherwise prohibited.

Dated: August 7, 2006,

Michael Chertoff,

Secretary of Homeland Security, Department of Homeland Security.

Henrietta H. Fore,

Under Secretary for Management, Department of State.

[FR Doc. 06–6854 Filed 8–10–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 555

[Docket No. ATF 9P; AG Order No. 2830–2006]

RIN 1140–AA24

Commerce in Explosives—Amended Definition of "Propellant Actuated Device" (2004R–3P)

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice is proposing to amend the regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to clarify that the term "propellant actuated device" does not include hobby rocket motors or rocket-motor reload kits consisting of or containing ammonium perchlorate composite propellant (APCP), black powder, or other similar low explosives.

DATES: Comments must be submitted on or before November 9, 2006.

ADDRESSES: Send written comments to: James P. Ficaretta, Program Manager; Room 5250; Bureau of Alcohol, Tobacco, Firearms, and Explosives; P.O. Box 50221; Washington, DC 20091–0221; *ATTN: ATF 9P.* Written comments must include your mailing address and be signed, and may be of any length.

Comments may also be submitted electronically to ATF at *nprm@atf.gov* or to *http://www.regulations.gov* by using the electronic comment form provided on that site. You may also view an electronic version of this proposed rule at the *http://www.regulations.gov* site. Comments submitted electronically must contain your name, mailing address and, if submitted by e-mail, your e-mail address. They must also reference this document docket number, as noted above, and be legible when printed on 8½" x 11" paper. ATF will treat comments submitted electronically as originals and ATF will not acknowledge receipt of comments submitted electronically. See the Public Participation section at the end of the **SUPPLEMENTARY INFORMATION** section for requirements for submitting written comments by facsimile.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives; U.S. Department of Justice; 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8203.

SUPPLEMENTARY INFORMATION:

Background

ATF is responsible for implementing Title XI, Regulation of Explosives (18 United States Code chapter 40), of the Organized Crime Control Act of 1970 ("Title XI"). One of the stated purposes of that Act is to reduce the hazards to persons and property arising from misuse and unsafe or insecure storage of explosive materials. Under section 847 of title 18, United States Code, the Attorney General "may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter." Regulations that implement the provisions of chapter 40 are contained in title 27, Code of Federal Regulations (CFR), part 555 ("Commerce in Explosives").

Section 841(d) of title 18 sets forth the definition of "explosives." "Propellant actuated devices" along with gasoline, fertilizers, and propellant actuated industrial tools manufactured, imported, or distributed for their intended purposes are exempted from this statutory definition by 27 CFR 555.141(a)(8).

In 1970, when Title XI was enacted by Congress, the Judiciary Committee of the United States House of Representatives specifically considered and supported an exception for propellant actuated devices. H.R. Rep. No. 91–1549, 91st Cong., 2nd Sess. 64 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4007, 4041. Neither the statute nor the legislative history defines "propellant actuated device." In 1981, however, ATF added the following definition of "propellant actuated device" to its regulations: "[a]ny tool or special mechanized device or gas generator system which is actuated by a propellant or which releases and directs work through a propellant charge." 27 CFR 555.11.

In applying the regulatory definition, ATF has classified certain products as propellant actuated devices: aircraft slide inflation cartridges, inflatable automobile occupant restraint systems, nail guns, and diesel and jet engine starter cartridges. ATF also examined hobby rocket motors to determine whether they could be classified as propellant actuated devices. To be classified as a "propellant actuated device," it is, in view of the definition set forth at 27 CFR 555.11, at a minimum necessary that a particular item be susceptible of being deemed a "tool," a "special mechanized device," or a "gas generator system." Additionally, logic dictates that it is necessary that a propellant actuated device contain and be actuated by propellant.

To ascertain the common, contemporary meanings of "tool," "special mechanized device," and "gas generator system," it is useful to look to Merriam-Webster's Collegiate Dictionary (10th Ed., 1997) ("Webster's"). Webster's defines "tool" in pertinent part as follows: "a handheld device that aids in accomplishing a task * * *[;] the cutting or shaping part in a machine or machine tool * * *[;] a machine for shaping metal * * * " Id. at 1243. "Device" is defined as "something * * * contrived" and, more specifically, as "a piece of equipment or a mechanism designed to perform a special function." Id. at 317. For a particular device to be a "special mechanized device," Webster's suggests it would be necessary that it be both unique and of a mechanical nature. (See definition of "special," id. at 1128; definition of "mechanize," id. at 721.) As to the term "gas generator system," Webster's defines "generator" as "an apparatus in which vapor or gas is formed" and as "a machine by which mechanical energy is changed into electrical energy." Id. at 485. Further, Webster's defines "system" as "a regularly interacting or interdependent

group of items forming a unified whole." Id. at 1197. Thus, Webster's suggests that "gas generator system" is properly defined as "a group of interacting or interdependent mechanical and/or electrical components that generates gas."

Although some may argue that certain hobby rocket motors are the products of complex design and construction, the hobby rocket motor consists essentially of ammonium perchlorate composite propellant (APCP) encased by a cardboard, plastic, or metallic cylinder. Though it also sometimes includes a nozzle, retaining cap, delay grain and ejection charge, the hobby rocket motor is little more than propellant in a casing, incapable of performing its intended function until fully installed (along with an ignition system) within a hobby rocket.

The hobby rocket motor cannot be brought within the regulatory definition of propellant actuated device as a "tool" because it is neither "handheld" nor a complete "device" and because it is not a metal-shaping machine or a part thereof. Further, it cannot be considered to be a "special mechanized device" because, although clearly designed to serve a special purpose, it lacks the necessary indicia of a mechanized device. Indeed, the hobby rocket motor is in no way reminiscent of a "mechanism." See id. at 721. Finally, because it has no interacting mechanical or electrical components, the hobby rocket motor cannot be deemed to be a gas generator system.

In addition, in order to classify the hobby rocket motor as a propellant actuated device consistent with the regulatory definition, it would be necessary to conclude that the motor's cylindrical casing is a "device" that is actuated by propellant. This simply is not a reasonable interpretation in light of the context in which the hobby rocket motor is used. Because the hobby rocket motor is, in essence, simply the propellant that actuates the hobby rocket, and for the additional reasons stated in the preceding paragraphs, the motor itself cannot be construed to constitute a propellant actuated device.

Proposed Rule

This proposed rule amends the definition of "propellant actuated device" in 27 CFR 555.11 to clarify ATF's determination that hobby rocket motors do not fall within the exemption to the explosives regulatory scheme for such devices.

ATF is engaging in rulemaking with regard to this issue because on March 19, 2004, the United States District Court for the District of Columbia found that ATF has in the past advanced inconsistent positions regarding the application of the propellant actuated device exemption to hobby rocket motors. ATF issued two related letters in 1994 that could be interpreted to state that a fully assembled rocket motor would be considered a propellant actuated device if the rocket motor contained no more than 62.5 grams (2.2 ounces) of propellant material and produced less than 80 newton-seconds (17.92 pound seconds) of total impulse with thrust duration not less than 0.050 second. Prior to assembly, the letters observed, the propellant would not be exempt as a propellant actuated device in any amount.

The 1994 letters are admittedly confusing in that they can be interpreted to intertwine the separate and distinct issues of the "propellant actuated device" exemption found in 27 CFR 55.141(a)(8) (now, § 555.141(a)(8)) and the long-standing ATF policy exempting rocket motors containing 62.5 grams or less of propellant that has its roots in the exemption then found at 27 CFR 55.141(a)(7). Had these 1994 letters been drafted to reflect accurately ATF's interpretation of the regulations in existence at the time, they would have indicated that sport rocket motors were not propellant actuated devices for purposes of the regulatory exemption found in § 55.141(a)(8) but instead that motors containing 62.5 grams or less of propellant were exempt from regulation pursuant to the exemption for "toy propellant devices" then found at § 55.141(a)(7). Although the "toy propellant device" exemption was removed from the regulations and, due to administrative error, was not replaced as intended with a specific reference to the 62.5-gram threshold, ATF continued to treat hobby rocket motors containing 62.5 grams or less of propellant as exempt from regulation as clearly set forth in a 2000 letter to counsel for the National Association of Rocketry and the Tripoli Rocketry Association. The Department notes that the 62.5-gram exemption threshold is the subject of another rulemaking proceeding (see Notice No. 968, 68 FR 4406, January 29, 2003).

To remedy any perceived inconsistency and to clarify ATF's policy, this proposed rule sets forth an amended regulatory definition specifically stating that hobby rocket motors and rocket-motor reload kits consisting of or containing APCP, black powder, or other similar low explosives, regardless of amount, do not fall within the "propellant actuated device" exception and are subject to all applicable Federal explosives controls pursuant to 18 U.S.C. 841 *et seq.*, the regulations in 27 CFR part 555, and applicable ATF policy.

Implementation of this proposed amendment is important to public safety, and consistent regulatory enforcement efforts. The proposed rule will confirm the position that hobby rocket motors are not exempt from Federal explosives regulation, pursuant to the propellant actuated device exception. The rule also clarifies that hobby rocket motors cannot legally be classified as propellant actuated devices due to the nature of their design and function.

How This Document Complies With the Federal Administrative Requirements for Rulemaking

A. Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review" section 1(b), Principles of Regulation. The Department of Justice has determined that this proposed rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this proposed rule has been reviewed by the Office of Management and Budget. However, this proposed rule will not have an annual effect on the economy of $100 million, nor will it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health, or safety, or State, local or tribal governments or communities. Accordingly, this proposed rule is not an "economically significant" rulemaking as defined by Executive Order 12866.

This proposed rule merely clarifies ATF's position that hobby rocket motors and rocket-motor reload kits consisting of or containing APCP, black powder, or other similar low explosives, regardless of amount, do not fall within the "propellant actuated device" exception. The proposed rule will not in any way expand the universe of rocket motors and rocket-motor reload kits that will remain subject to ATF regulation. Accordingly, unless they fall within ATF's exemption for rocket motors containing 62.5 grams or less of propellant, rocket motors will remain subject to all applicable Federal explosives controls pursuant to 18 U.S.C. 841 *et seq.*, the regulations in part 555, and applicable ATF policy.

Rocketry hobbyists who acquire and use motors containing 62.5 grams of propellant or less, however, can continue to enjoy their hobby on an

exempt basis, i.e., without regard to the requirements of part 555. Without the 62.5 gram exemption, a typical rocket motor would be required to be stored in a type-4 magazine (costing approximately $400) because of the explosives contained in the motor. ATF has published a proposed rule that will incorporate its existing 62.5-gram exemption threshold into its explosives regulations (see Notice No. 968, 68 FR 4406, January 29, 2003).

As noted above, rocket motors containing more than 62.5 grams of propellant will continue to be regulated by ATF. In 2002, Congress enacted the Safe Explosives Act (SEA) which, in part, imposed new licensing and permitting requirements on the intrastate possession of explosives. Under the SEA, all persons who wish to receive explosive materials must hold a Federal explosives license or permit. Prior to its enactment, only persons who transported, shipped, or received explosive materials in interstate commerce were required to obtain a license or permit. Now, intrastate receipt, shipment, and transportation also are covered. ATF recognizes the possibility that some rocketry hobbyists may be operating under the false assumption that all rocket motors, regardless of size, were exempted from regulation under the "propellant actuated device" exception being clarified by this proposed rule. It remains the case, however, that rocketry hobbyists wishing to utilize rocket motors containing more than 62.5 grams of propellant must comply with the existing applicable requirements in order to obtain such rocket motors. The Department welcomes comments on the number of individuals who may be expected to terminate their participation in the use of rocket motors containing more than 62.5 grams of propellant once they become aware that they must comply with the applicable licensing and permitting requirements. The Department also welcomes comments on what impact any such decline in participation will have on the businesses that provide support to rocketry hobbyists in the form of parts, materials, rocket motors, and other launch accessories.

B. Executive Order 13132

This proposed 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. Therefore, in accordance with section 6 of Executive Order 13132, the Attorney General has determined that this proposed regulation does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988: Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The Attorney General has reviewed this proposed regulation and, by approving it, certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. As indicated, the proposed rule merely clarifies ATF's position that hobby rocket motors and rocket-motor reload kits consisting of or containing APCP, black powder, or other similar low explosives, regardless of amount, do not fall within the "propellant actuated device" exception and are subject to all applicable Federal explosives controls pursuant to 18 U.S.C. 841 *et seq.*, the regulations in part 555, and applicable ATF policy. The Department believes that the proposed rule will not have a significant impact on small businesses. Under the law and its implementing regulations, persons engaging in the business of manufacturing, importing, or dealing in explosive materials are required to be licensed (e.g., an initial fee of $200 for obtaining a dealer's license for a 3-year period; $100 renewal fee for a 3-year period). Other persons who acquire or receive explosive materials are required to obtain a permit. Licensees and permittees must comply with the provisions of part 555, including those relating to storage and other safety requirements, as well as recordkeeping and theft reporting requirements. This will not change if the regulations are adopted as proposed.

Rocket motors containing 62.5 grams or less of explosive propellants (e.g., APCP) and reload kits that can be used only in the assembly of a rocket motor containing a total of no more than 62.5 grams of propellant are exempt from regulation, including permitting and storage requirements. Typically, rocket motors containing more than 62.5 grams of explosive propellant would be required to be stored in a type-4 magazine that costs approximately $400; however, this proposed rule would not impact ATF's storage requirements nor would it affect the applicability of ATF's 62.5-gram exemption.

E. Small Business Regulatory Enforcement Fairness Act of 1996

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

F. Unfunded Mandates Reform Act of 1995

This proposed 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.

G. Paperwork Reduction Act of 1995

This proposed rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

Public Participation

ATF is requesting comments on the proposed regulations from all interested persons. ATF is also specifically requesting comments on the clarity of this proposed rule and how it could be made easier to understand.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of

the person submitting a comment is not exempt from disclosure.

A. Submitting Comments by Fax

You may submit written comments by facsimile transmission to (202) 927–0506. Facsimile comments must:

- Be legible;
- Include your mailing address;
- Reference this document number;
- Be 8½″ x 11″ in size;
- Contain a legible written signature; and
- Be not more than five pages long.

ATF will not acknowledge receipt of facsimile transmissions. ATF will treat facsimile transmissions as originals.

B. Request for Hearing

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

C. Disclosure

Copies of this proposed rule and the comments received will be available for public inspection by appointment during normal business hours at: ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–7890.

Regulation Identification Number

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

Drafting Information

The author of this document is James P. Ficaretta; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives.

List of Subjects in 27 CFR Part 555

Administrative practice and procedure, Authority delegations, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

Authority and Issuance

Accordingly, for the reasons discussed in the preamble, 27 CFR part 555 is proposed to be amended as follows:

PART 555—COMMERCE IN EXPLOSIVES

1. The authority citation for 27 CFR part 555 continues to read as follows:

Authority: 18 U.S.C. 847.

2. Section 555.11 is amended by revising the definition for "Propellant actuated device" to read as follows:

§ 555.11 Meaning of terms.

* * * * *

Propellant actuated device. (a) Any tool or special mechanized device or gas generator system that is actuated by a propellant or which releases and directs work through a propellant charge.

(b) The term does not include—

(1) Hobby rocket motors consisting of ammonium perchlorate composite propellant, black powder, or other similar low explosives, regardless of amount; and

(2) Rocket-motor reload kits that can be used to assemble hobby rocket motors containing ammonium perchlorate composite propellant, black powder, or other similar low explosives, regardless of amount.

* * * * *

Dated: August 7, 2006.

Paul J. McNulty,

Acting Attorney General.

[FR Doc. E6–13201 Filed 8–10–06; 8:45 am]

BILLING CODE 4410–FY–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1625

RIN 3046–AA78

Coverage Under the Age Discrimination in Employment Act

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission ("EEOC" or "Commission") proposes to amend its regulations concerning the Age Discrimination in Employment Act (the "Act" or "ADEA") to reflect a Supreme Court decision interpreting the Act as permitting employers to favor older individuals because of age. This amendment will revise and clarify EEOC regulations that currently describe the ADEA as prohibiting such age-based favoritism.

DATES: Comments must be received on or before October 10, 2006. The Commission will consider any comments received on or before the closing date and thereafter adopt final regulations. Comments received after the closing date will be considered to the extent practicable.

ADDRESSES: You may submit written comments by mail to Stephen Llewellyn, Acting Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 1801 "L" Street, NW., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile ("FAX") machine to (202) 663–4114. (There is no toll free FAX number). Only comments of six or fewer pages will be accepted via FAX transmittal, in order to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4078 (voice) or (202) 663–4077 (TTY). (These are not toll free numbers). Copies of the comments submitted by the public will be available for inspection in the EEOC Library, FOIA Reading Room, by advanced appointment only, from 9 a.m. to 5 p.m., Monday through Friday except legal holidays, from October 10, 2006 until the Commission publishes the rule in final form. To schedule an appointment to inspect the comments, contact the EEOC Library by calling (202) 663–4630 (voice), (202) 663–4641 (TDD) (These are not toll free numbers).

FOR FURTHER INFORMATION CONTACT: Raymond Peeler, Senior Attorney Advisor, Office of Legal Counsel, at (202) 663–4537 (voice) or (202) 663–7026 (TTY) (These are not toll free numbers). This notice also is available in the following formats: Large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Information Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: The ADEA states that employers may not discriminate against individuals who are age forty or older "because of such individual's age," but does not specify the meaning of the term "age." 29 U.S.C. 623(a)(1). When the Supreme Court addressed its meaning in *General Dynamics Land Systems, Inc.* v. *Cline*, 540 U.S. 581, 586 (2004), it noted that the term is ambiguous because it is commonly used in two different ways: to neutrally refer to the length of

someone's life, *i.e.*, chronological age, or to refer to old age. If the term "age" in section 623(a)(1) of the Act were a neutral reference to chronological age, then it would be unlawful under the Act for an employer [1] to favor older individuals over younger persons based on age, so long as all were at least forty years old. If, however, "age" is defined as old age, then such preferential treatment does not violate the Act.

EEOC Interpretation of "Age"

Until the *Cline* decision, the Commission had generally construed the term "age" in section 623(a) of the Act to mean chronological age.[2] This interpretation was based, at least in part, on a statement made during a colloquy on the Senate floor by Senator Yarborough, one of the Act's sponsors. He explained:

> It was not the intent of the sponsors of this legislation * * * to permit discrimination in employment on account of age, whether discrimination might be attempted between a man 38 and one 52 years of age, or between one 42 and one 52 years of age. If two men applied for employment under the terms of this law, and one was 42 and one was 52, * * * [the] employer * * * could not turn either one down on the basis of the age factor. * * * The law prohibits age being a factor in the decision to hire, as to one age over the other, whichever way his decision went.

113 Cong. Rec. 31,255 (1967). Thus, the Commission's current regulations prohibit any age-based preference between persons age forty or over, regardless of whether the treatment favors older or younger persons. 29 CFR 1625.2: A limited exception permits employers to provide additional benefits to older workers to "counteract problems related to age discrimination." 29 CFR 1625.2(b). Another provision prohibits employment advertising that expresses a preference for older applicants at the expense of younger applicants who also were covered by the Act, and vice versa. 29 CFR 1625.4. Similarly, the regulations inform employers that requests for job applicants to disclose their age "may deter older applicants or otherwise indicate discrimination based on age." 29 CFR 1625.5

Supreme Court Rejects EEOC Interpretation

In *Cline*, the Supreme Court rejected claims that favoritism toward older workers violated the ADEA.[3] It concluded that such claims were outside the scope of the Act, because Congress only intended "to protect a relatively old worker from discrimination that works to the advantage of the relatively young." *Cline*, 540 U.S. at 591. Noting that the "reference to 'age'" in section 623(a) was ambiguous and "could be read to look two ways," the Court based its conclusion on the Act's coverage of only those age forty and above, the "social history" of the term "age discrimination," the Act's stated purposes, and the legislative record as a whole. *Cline*, 540 U.S. at 586.

The Court deemed it significant that Congress decided to cover only those age forty and above, observing that:

> [i]f Congress had been worrying about protecting the younger against the older, it would not likely have ignored everyone under 40. The youthful deficiencies of inexperience and unsteadiness invite stereotypical and discriminatory thinking about those a lot younger than 40, and prejudice suffered by a 40-year-old is not typically owing to youth, as 40-year-olds sadly tend to find out.

Id. at 591. Similarly, as a matter of social history, the Court found that the record surrounding the Act contained no evidence that younger workers were suffering while their elders were favored. Noting that America is often seen as a "youth culture" in which younger is better, the *Cline* majority explained, "talk about discrimination because of age is naturally understood to refer to discrimination against the older." *Id.* at 591.

The Court also concluded that the stated purposes of the Act reflect Congress' intent to protect the relatively older from discrimination favoring the relatively younger.[4] The Court noted that the only phrase that does not directly refer to protecting older employees—prohibiting "arbitrary age discrimination"—actually is a reference "to age caps that exclude older applicants, necessarily to the advantage of younger ones." *Cline*, 540 U.S. at 590.

Finally, the Court found that the legislative history as a whole shows intent to protect the relatively older and not the relatively younger. It noted that the Act was drafted, at least in part, in response to a report issued by the Secretary of Labor concerning high unemployment rates among older workers ("Wirtz Report").[5] The Wirtz Report, the Court explained, "was devoid of any indication that the Secretary had noticed unfair advantages accruing to older employees at the expense of their juniors." *Cline*, 540 U.S. at 587. Further, the Court noted that "[t]he record [from Congressional hearings concerning the Wirtz Report] * * * reflects the common facts that an individual's chances to find and keep a job get worse over time; as between any two people, the younger is in the stronger position[.]" *Cline*, 540 U.S. at 589.

With respect to Senator Yarborough's statement, the Court found it to be the only endorsement of protection for younger employees against acts that favor their elders in the Act's entire legislative history. *Cline*, 540 U.S. at 599. Even though Senator Yarborough was a sponsor of the Act, the Court concluded that his lone statement could not reflect the intent of Congress, particularly in light of the clear emphasis placed on protecting older workers. *Id.* For all of the reasons described above, the Supreme Court found the Commission's regulation in § 1625.2(a) was "clearly wrong." *Id.* at 600.

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[1] The prohibitions described in this notice of proposed rulemaking apply to employment agencies and labor unions as well as employers, see 29 CFR 1625.1. However, for purposes of efficiency, the Commission will generically refer to all three with the term "employers."

[2] Brief of Amicus Curiae Equal Employment Opportunity Commission at 26, *General Dynamics Land Systems, Inc.* v. *Cline*, 540 U.S. 581 (2004) (No. 02–1080). The Department of Labor, which originally held enforcement authority over the Act, interpreted section 623(a) in the same manner, 33 FR 9172 (June 21, 1968). The Commission assumed authority over the Act on July 1, 1979, pursuant to Reorganization Plan No. 1, 43 FR 19807 (May 9, 1978). Upon obtaining this authority, the Commission reviewed the Department of Labor's interpretations of the Act, 44 FR 37974 (June 29, 1979). The Commission made no substantive change to the Department of Labor's regulations regarding section 623(a)'s reference to "age," see 44 FR 68858 (Nov. 30, 1979).

[3] The plaintiffs, a group of employees between the ages of forty and fifty, challenged their employer's decision to eliminate its future obligation to pay retiree health benefits to any employee then under fifty years old, while preserving future entitlement to such benefits for employees aged fifty or older, *Cline*, 540 U.S. at 584–5. Some courts refer to such claims as "reverse age discrimination claims," see, e.g., *id.* at 585 (noting that the district court referred to the plaintiff's ADEA claim as "one of 'reverse age discrimination'").

[4] *Cline*, 540 U.S. at 589–90. "It is therefore the purpose of this [Act] to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; [and] to help employers and workers find ways of meeting problems arising from the impact of age on employment." 29 U.S.C. 621(b).

[5] See *Cline*, 540 U.S. at 589 (noting that the introductory provisions of the ADEA mirrored the statement of purpose in the Department of Labor's report). Although Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et seq.*, did not include protection from age discrimination, it required the Secretary of Labor to complete a study of age-based employment decisions and their consequences, and report its findings to Congress, see Pub. L. 88–352, 78 Stat. 265 (1964). The Department of Labor issued the report in 1965, entitled "The Older American Worker: Age Discrimination in Employment," and commonly referred to as the "Wirtz Report." Subsequently, the Department made a specific proposal for legislation, at the request of Congress, *Cline*, 540 U.S. at 587, n.2 (citing 113 Cong. Rec. 1377 (1967)).

Revisions to Agency Regulations

Section 1625.2 is being revised as follows. The caption will be changed from "Discrimination between individuals protected by the Act" to "Discrimination prohibited by the Act" to reflect the Supreme Court's holding that the ADEA permits employers to make age-based employment decisions that favor relatively older employees. The text of the regulation will be similarly revised, and § 1625.2(b), which explicitly permits employers to give older employees preferential benefits in some circumstances, will be removed as redundant. Thus, the new regulation will not have paragraphs (a) and (b), and will simply be referred to as § 1625.2. Other language changes in § 1625.2 are made for the sake of clarity.

Although the question examined by the Supreme Court in *Cline* was the meaning of "because of age" in section 623(a) of the Act, its holding that "discrimination because of age" refers only to discrimination against relatively older persons unquestionably applies to the Act as a whole. When the term "age" is used in other contexts in the statute, it must be interpreted in a manner consistent with the statute's overarching purpose.[6] Thus, section 623(e)'s prohibition against age discriminatory job advertisements[7] must be construed to bar only advertisements that favor younger individuals. Accordingly, the portion of 29 CFR 1625.4(a) that prohibited job advertisements favoring older persons has been revised to make clear that it is permissible to encourage relatively older persons to apply.

In §§ 1625.4(b) and 1625.5, which address the fact that advertisements or applications that ask job applicants to disclose their age may deter older persons from applying for the job, the phrase "otherwise indicate discrimination based on age" has been changed to "otherwise indicate discrimination against older individuals." Other minor revisions have been made to those sections to improve clarity. No substantive changes are intended other than those necessary to explain that the ADEA permits employers to favor older individuals.

Comments

The Commission invites comments on this proposed rule from all interested parties, and will consider such comments received within the previously noted time frames and formats. In proposing this rule, the Commission coordinated with other federal agencies in accord with Executive Order 12067, 43 FR 28967 (June 30, 1978), and, where appropriate, incorporated agency comments into the proposal.

Executive Order 12866, Regulatory Planning and Review

The proposed rule has been drafted and reviewed in accordance with Executive Order 12866, 58 FR 51735 (Sept. 30, 1993), section 1(b), Principles of Regulation. It is considered to be a "significant regulatory action" pursuant to section 3(f)(4) of Executive Order 12866 in that it arises out of the Commission's legal mandate to enforce the Act, and therefore was circulated to the Office of Management and Budget for review. This regulation is necessary to bring the Commission's regulations into compliance with a recent Supreme Court interpretation of the Act, and revise regulatory provisions that were explicitly invalidated by the Court as outside the scope of the Act. The proposed rule is intended to add to the predictability and consistency between judicial interpretations and executive enforcement of the Act.

The proposed rule would apply to all employers with at least 20 employees. *See* 29 U.S.C. 630(b).[8] Nonetheless, the Commission does not believe that the proposed rule will have a significant impact on small business entities under the Regulatory Flexibility Act, because it imposes no economic or reporting burdens on such firms. To the contrary, the proposed rule expressly allows employers to make certain previously forbidden age-based decisions without fear of liability. Further, the proposed rule makes no change to employers' compliance obligations under the Act in any manner or form, because employers already were bound to follow the Supreme Court's interpretation of the Act. For the reasons described above, the Commission also believes that the proposed rule also imposes no burden that requires additional scrutiny under either the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, concerning the collection of information, or the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501, *et seq.*, concerning the burden imposed on state, local, or tribal governments.

List of Subjects for 29 CFR Part 1625

Advertising, Aged, Employee benefit plans, Equal employment opportunity, Retirement.

Dated: August 4, 2006.

For the Commission.

Cari M. Dominguez,

Chair.

For the reasons discussed in the preamble, the Equal Employment Opportunity Commission proposes to amend 29 CFR chapter XIV part 1625 as follows:

PART 1625—AGE DISCRIMINATION IN EMPLOYMENT ACT

Subpart A—Interpretations

1. Revise the authority citation for part 1625 to read as follows:

Authority: 29 U.S.C. 621–634; 5 U.S.C. 301; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807; E.O. 12067, 43 FR 28967.

2. Revise § 1625.2 to read as follows:

§ 1625.2 Discrimination prohibited by the Act.

It is unlawful for an employer to discriminate against an individual in any aspect of employment because that individual is 40 years old or older, unless one of the statutory exceptions applies. Favoring an older individual over a younger individual because of age is not unlawful discrimination under the Act, even if the younger individual is at least 40 years old.

3. Revise § 1625.4 to read as follows:

§ 1625.4 Help wanted notices or advertisements.

(a) Help wanted notices or advertisements may not contain terms and phrases that limit or deter the employment of older individuals. Notices or advertisements that contain terms such as *age 25 to 35*, *young*, *college student*, *recent college graduate*, *boy*, *girl*, or others of a similar nature violate the Act unless one of the statutory exceptions applies. Employers may post help wanted notices or advertisements expressing a preference for older individuals with terms such as *over age 60*, *retirees*, or *supplement your pension*.

(b) Help wanted notices or advertisements that ask applicants to disclose or state their age do not, in

[6] In *Cline*, the Supreme Court explicitly endorsed the use of different meanings for the term "age" in order to comply with the statute's purpose. It noted, for example, "[f]or the very reason that reference to context shows that 'age' means 'old age' when teamed with 'discrimination,' the provision of an affirmative defense when age is a bona fide occupational qualification readily shows that 'age' as a qualification means comparative youth." *Cline*, 540 U.S. at 596.

[7] "It shall be unlawful for an employer * * * to print or cause to be printed or published, any notice or advertisement relating to employment by such an employer * * * or any classification or referral for employment * * * indicating any preference, limitation, specification, or discrimination based on age." 29 U.S.C. 623(e).

[8] According to Census Bureau Information, approximately 1,976,216 establishments employed 20 or more employees in 2000, *see* Census Bureau, U.S. Department of Commerce, Statistics of U.S. Businesses (2000).

themselves, violate the Act. But because asking applicants to state their age may tend to deter older individuals from applying, or otherwise indicate discrimination against older individuals, employment notices or advertisements that include such requests will be closely scrutinized to assure that the requests were made for a lawful purpose.

4. Revise the first paragraph of § 1625.5 to read as follows:

§ 1625.5 Employment Applications.

A request on the part of an employer for information such as *Date of Birth* or *age* on an employment application form is not, in itself, a violation of the Act. But because the request that an applicant state his age may tend to deter older applicants or otherwise indicate discrimination against older individuals, employment application forms that request such information will be closely scrutinized to assure that the request is for a permissible purpose and not for purposes proscribed by the Act. That the purpose is not one proscribed by the statute should be made known to the applicant by a reference on the application form to the statutory prohibition in language to the following effect:

* * * * *

[FR Doc. E6–13138 Filed 8–10–06; 8:45 am]

BILLING CODE 6570–01–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

32 CFR Part 323

[Docket: DoD–2006–OS–0022]

RIN 0790–AI00

Privacy Act; Implementation

AGENCY: Defense Logistics Agency.

ACTION: Proposed rule.

SUMMARY: The Defense Logistics Agency (DLA) is proposing to update the DLA Privacy Act Program Rules, 32 CFR, part 323, by replacing the (k)(2) exemption with a (k)(5) exemption to more accurately describe the basis for exempting the records.

DATES: Comments must be received on or before October 10, 2006 to be considered by this agency.

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

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

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

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION: Executive Order 12866, "Regulatory Planning and Review". It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

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

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 323

Privacy.

Accordingly, 32 CFR part 323 is proposed to be amended as follows:

PART 323—DLA PRIVACY ACT PROGRAM

1. The authority citation for 32 CFR part 323 continues to read as follows:

Authority: Public Law 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Appendix H to part 323 is amended by revising the current paragraphs a.1. through a.4. with the following:

Appendix H to Part 323, DLA Exemption Rules

* * * * *

a. ID: S500.10 (Specific Exemption)

1. *System name:* Personnel Security Files.

2. *Exemption:* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identify of a confidential source. Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

3. *Authority:* 5 U.S.C. 552a(k)(5).

4. *Reasons:* (i) From subsection (c)(3) and (d) when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential source to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to

provide information considered essential to the Department in making the required determinations.

(ii) From (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

* * * * *

Dated: August 7, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–6848 Filed 8–10–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD01–06–026]

RIN 1625–AA01

Anchorage Regulations; Falmouth, ME, Casco Bay

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the existing special anchorage area in Falmouth, Maine, on Casco Bay. This proposed action is necessary to facilitate safe navigation and provide a safe and secure anchorage for vessels of not more than 65 feet in length. This action is intended to increase the safety of life and property on Casco Bay, improve the safety of anchored vessels, and provide for the overall safe and efficient flow of vessel traffic and commerce.

DATES: Comments and related material must reach the Coast Guard on or before October 10, 2006.

ADDRESSES: You may mail comments and related material to Commander (dpw) (CGD01–06–026), First Coast Guard District, 408 Atlantic Ave., Boston, Massachusetts 02110, or deliver them to room 628 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. 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 room 628, First Coast Guard District Boston, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Mauro, Commander (dpw), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110, Telephone (617) 223–8355 or e-mail at *John.J.Mauro@uscg.mil.*

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 (CGD01–06–026), 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 the Waterways Management Branch 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 rule is intended to reduce the risk of vessel collisions by enlarging the current special anchorage area in Falmouth, Maine, by an additional 206 acres. The proposed rule would expand the existing special anchorage, described in 33 CFR 110.5(d), to allow anchorage for approximately 150 additional vessels. When at anchor in any special anchorage, vessels not more than 65 feet in length need not carry or exhibit the white anchor lights required by the Navigation Rules.

In developing this proposed rule, the Coast Guard has consulted with the Army Corps of Engineers, Northeast, located at 696 Virginia Rd., Concord, MA 01742.

Discussion of Proposed Rule

The proposed rule would amend the existing special anchorage located at the Town of Falmouth, Maine, on Casco Bay. The Mussel Cove and adjacent waters at Falmouth Foreside, Falmouth special anchorage would include all waters of Casco Bay enclosed by a line beginning at the Dock House (F.S.) located at latitude 43°44′22″ N, longitude 70°11′41″ W; thence to latitude 43°44′19″ N, longitude 70°11′33″ W; thence to latitude 43°44′00″ N, longitude 70°11′44″ W; thence to latitude 43°43′37″ N, longitude 70°11′37″ W; thence to latitude 43°43′04″ N, longitude 70°12′13″ W; thence to latitude 43°41′56″ N, longitude 70°12′53″ W; thence to latitude 43°41′49″ N, longitude 70°13′05″ W; thence to latitude 43°42′11″ N, longitude 70°13′30″ W; thence along the shoreline to the point of beginning. All proposed coordinates are North American Datum 1983 (NAD 83).

This special anchorage area would be limited to vessels no greater than 65 feet in length. Vessels not more than 65 feet in length are not required to sound signals as required by rule 35 of the Inland Navigation Rules (33 U.S.C. 2035) nor exhibit anchor lights or shapes required by rule 30 of the Inland Navigation Rules (33 U.S.C 2030) when at anchor in a special anchorage area.

Additionally, mariners using the anchorage areas are encouraged to contact local and state authorities, such as the local harbormaster, to ensure compliance with any additional applicable state and local laws. Such laws may involve, for example, compliance with direction from the local harbormaster when placing or using moorings within the anchorage.

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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This finding is based on the fact that this proposal conforms to the changing needs of the Town of Falmouth, the changing needs of recreational, fishing and commercial vessels, and makes the best use of the available navigable water. This proposed special area, while in the interest of safe navigation and protection of the vessels moored at the Town of Falmouth, does not impede the passage of vessels intending to transit

within Casco Bay. Thus, the special anchorage area will have a minimal 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 proposed rule would affect the following entities, some of which might be small entities: The owners or operators of recreational or commercial vessels intending to transit in a portion of the Casco Bay in and around the anchorage area. However, this anchorage area would not have a significant economic impact on these entities for the following reasons: The proposed special area does not impede the passage of vessels intending to transit in and around Falmouth, which include both small recreational and large commercial vessels. Thus, the special anchorage area will not impede safe and efficient vessel transits on Casco Bay.

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 John J. Mauro, Waterways Management Branch, First Coast Guard District Boston at (617) 223–8355 or e-mail at *John.J.Mauro@uscg.mil*. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not 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 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 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)(f), of the Instruction, from further environmental documentation. This rule

fits the category selected from paragraph (34)(f) as it would expand a special anchorage area.

A preliminary "Environmental Analysis Check List" is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05–1(g); and Department of Homeland Security Delegation No. 0170.1.

2. Amend § 110.5, by revising paragraph (d) to read as follows:

§ 110.5 Casco Bay, Maine.

* * * * *

(d) *Mussel Cove and adjacent waters at Falmouth Foreside, Falmouth.* All of the waters enclosed by a line beginning at the Dock House (F.S.) located at latitude 43°44′22″ N, longitude 70°11′41″ W; thence to latitude 43°44′19″ N, longitude 70°11′33″ W; thence to latitude 43°44′00″ N, longitude 70°11′44″ W; thence to latitude 43°43′37″ N, longitude 70°11′37″ W; thence to latitude 43°43′04″ N, longitude 70°12′13″ W; thence to latitude 43°41′56″ N, longitude 70°12′53″ W; thence to latitude 43°41′49″ N, longitude 70°13′05″ W; thence to latitude 43°42′11″ N, longitude 70°13′30″ W; thence along the shoreline to the point of beginning. DATUM: NAD 83.

Note to paragraph (d). The area designed by paragraph (g) of this section is reserved for yachts and other small recreational craft. Fore and aft moorings will be allowed in this area. Temporary floats or buoys for marking anchors or moorings in place will be allowed. Fixed mooring piles or stakes are prohibited. All moorings must be so placed so that no vessel when anchored is at any time extended into the thoroughfare. All anchoring in the area is under the supervision of the local harbor master or such other authority as may be designated by the authorities of the Town of Falmouth, Maine.

Dated: July 31, 2006.

Timothy S. Sullivan,

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

[FR Doc. E6–13199 Filed 8–10–06; 8:45 am]

BILLING CODE 4910–15–P

Notices

Federal Register
Vol. 71, No. 155
Friday, August 11, 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

Commodity Credit Corporation

Warehouse Rates for Peanuts Pledged as Collateral for a Marketing Assistance Loan

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: This notice advises warehouse operators operating under a Commodity Credit Corporation (CCC) Peanut Storage Agreement of the storage and handling rates applicable to the 2006 crop of peanuts.

EFFECTIVE DATE: August 11, 2006.

FOR FURTHER INFORMATION CONTACT: Any questions about this notice may be directed to Mark Overbo, Deputy Director, Warehouse and Inventory Division, Farm Service Agency, USDA, STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250–0553. Telephone: (202) 720–4647. E-mail: *mark.overbo@wdc.usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, *etc.*) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: The marketing assistance loan program for peanuts was authorized by the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7901 *et seq.*, May 13, 2002) ("2002 Act"). Section 1307(a)(6) of the 2002 Act (7 U.S.C. 7957(a)(6)) requires CCC to pay storage, handling, and other associated costs for the 2002 through 2006 crops of peanuts that are pledged as collateral for marketing assistance loans. Further, CCC regulations governing the marketing assistance loan program at 7 CFR 1421.103 provide that, "* * * approved warehouse storage shall consist of a public warehouse for which a CCC storage agreement for the commodity is in effect that is approved by CCC for price support purposes." Thus, for a warehouse with an approved Peanut Storage Agreement (Form CCC–22), CCC will pay for receiving, storing, and other charges.

The Peanut Storage Agreement provides that the amounts payable by CCC will be at the rates stated in the Schedule of Rates (Form CCC–22–2) in effect when the services are performed, unless otherwise provided. In lieu of amending the Schedule of Rates CCC is issuing this notice to announce those rates that CCC will pay for storage, handling, and other associated costs for the 2006 crop of peanuts. Accordingly, the rates that CCC will pay for the 2006 crop of peanuts for those warehouses with an approved Peanut Storage Agreement are as follows:

A. Receiving.

CCC will pay $30.00 per ton receiving charges associated with warehouse-stored loans directly to the warehouse after the loan has been disbursed, plus the per ton initial grading and inspection fee as determined by the Federal State Inspection Service (FSIS).

B. Initial Grading and Inspection.

The per ton initial grading and inspection fees as determined by FSIS for the 2006 crop year are: $5.75 Alabama, $5.90 Florida, $5.20 Georgia, $7.00 Mississippi, $5.50 New Mexico, $6.75 North Carolina, $7.35 Oklahoma, $7.00 South Carolina, $5.00 Texas, and $7.95 Virginia. CCC will pay the warehouse the rate for the applicable State, based on the location of the buying point.

C. Storage.

Storage amounts may be earned at the rate of $.089 per ton per day, based on a monthly storage rate of $2.71 per ton. Accrued storage charges will be deducted from the CCC loan repayment amount. In the event peanuts are forfeited to CCC, storage charges will be paid by CCC through the loan maturity date for the quantity forfeited, from the later of the following: (1) The date the peanuts are received or deposited in the warehouse; (2) the date the storage charges start; (3) the day following the date through which storage charges have been paid; (4) the date all required marketing assistance loan documents are received in the county office. Subsequent payments for the storage of CCC-owned peanuts will be made based on the schedule as provided in the Peanut Storage Agreement.

D. Loadout.

The loadout rate of $8.00 per ton includes all items associated with loading out CCC-loan or CCC-owned peanuts, including weighing and placing peanuts aboard railcars or trucks. CCC will pay loadout charges only when this service is ordered by CCC.

E. Receiving Charges for CCC-Owned Peanuts.

CCC will pay $8.00 per ton receiving charges associated with the delivery of CCC-owned peanuts. Other charges, including but not limited to inspection charges, are included in the CCC-loan receiving charge previously paid according to paragraph A. of this notice.

Signed at Washington, DC, August 3, 2006.

Teresa C. Lasseter,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. E6–13206 Filed 8–10–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comment; National Visitor Use Monitoring

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the revision of a currently approved information collection, National Visitor Use Monitoring.

DATES: Comments must be received in writing on or before October 10, 2006 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Dr. Donald B.K. English, Recreation and Heritage Resources, Mailstop 1125, Forest Service, USDA, 1400 Independence Ave., SW., Washington, DC 20250.

Comments also may be submitted via facsimile to (202) 205–1145 or by E-mail to: *denglish@fs.fed.us.*

The public may inspect comments received at Room 4 Central, Yates Building, Recreation and Heritage Resources Staff, 1400 Independence Ave., SW., Washington, DC 20250 during normal business hours. Visitors are encouraged to call ahead to (202) 205–9595 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Donald B.K. English, Recreation and Heritage Resources staff, at (202) 205–9595. Individuals who use TDD may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: National Visitor Use Monitoring.

OMB Number: 0596–0110.

Expiration Date of Approval: January 31, 2007.

Type of Request: Revision of a currently approved collection.

Abstract: The Government Performance and Results Act of 1993 requires that Federal agencies establish measurable goals and monitor their success at meeting those goals. Two of the items the Forest Service must measure are: (1) The number of visits that occur on the national forest lands for recreation and other purposes, and (2) the views and satisfaction levels of recreational visitors to National Forest System lands about the services, facilities, and settings. The agency receives requests for this kind of information from a variety of organizations, including Congressional staffs, newspapers, magazines, and recreational trade organizations.

The data from this collection provides vital information for strategic planning efforts, decisions regarding allocation of resources, and revisions of land and resource management plans for national forests. It provides managers with reliable estimates of the number of recreational visitors to a national forest, activities of those visitors (including outdoor physical activities), customer satisfaction, and visitor values. The knowledge gained from this effort helps identify recreational markets as well as the economic impact visitors have on an area. The information collected is also used by the Office of Management and Budget as part of the Program Analysis Reporting Tool measures for the Forest Service recreation program. For the Forest Service, the collection is designed for a five-year cycle of coverage across all national forests. Conducting the collection less frequently puts information updates out of cycle with forest planning and other data preparation activities.

To conform to the Southern Nevada Public Land Management Act (SNPLMA), the Bureau of Land Management, and Fish and Wildlife Service (all United States Department of Interior (USDI) agencies) will be utilizing this collection to obtain credible and mutually comparable estimates of recreational use on lands they administer in Clarke County, Nevada. This collection helps ensure a timely response to SNPLMA requirements.

At recreation sites or access points, agency personnel or contractors will conduct on-site interviews of visitors as they complete their visit. Interviewers will ask about the purpose and length of the visit; the trip origin; activities; annual visitation rates; trip-related spending patterns; use of recreation facilities; satisfaction with agency services and facilities; and the composition of the visiting party. Primary analysis of the information for the Forest Service and partnering agencies will be performed by Forest Service staff in the Washington Office and by scientists in one or more of the agency's research stations.

Estimate of Annual Burden: 9 minutes (average).

Type of Respondents: Visitors to lands managed by the USDA—Forest Service and within Clarke County, Nevada to lands managed by the USDI—Bureau of Land Management, Fish and Wildlife Service, and National Park Service.

Estimated Annual Number of Respondents: 65,400.

Estimated Annual Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 9,425.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: August 1, 2006.

Gloria Manning,

Associate Deputy Chief.

[FR Doc. E6–13192 Filed 8–10–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Aerial Herbicide Application; Caribou-Targhee National Forest; Caribou and Franklin Counties, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Montpelier Ranger District, Caribou-Targhee National Forest will be preparing an Environmental Impact Statement (EIS) to analyze the effects of adding aerial herbicide applications to the existing integrated noxious weed management activities within the Cache Valley Front on 31,000 acres of the Caribou-Targhee National Forest. The project area is in the Idaho tract of the Cache National Forest. It includes a portion of the west slope of the Bear River Range that extends from Highway 36 to Soda Point. The project area is south of Soda Springs, and east of Grace, ID, and is within the Montpelier Ranger District, Caribou-Targhee National Forest, Idaho. The scope of this analysis is limited to the addition of aerial herbicide application to existing integrated weed management activities within the Caribou-Targhee National Forest boundary. The project impact zone includes Caribou and Franklin Counties, Idaho, and Idaho Fish and Game Hunting Unit (75). Implementation of this project is scheduled to begin in fiscal year 2007. The decision would authorize aerial application of herbicide within the Cache Valley Front on 31,000 acres of the Caribou-Targhee National Forest.

DATES: Written comments concerning the scope of the analysis described in this Notice should be received within 30 days of the date of publication of this Notice in the **Federal Register**. No scoping meetings are planned at this time. Information received will be used in preparation of the Draft EIS and Final EIS.

ADDRESSES: Send written comments to Montpelier Ranger District, Attn. Dennis

Duehren, 322 North 4th St., Montpelier, Idaho 83254. The responsible official for this decision is Dennis Duehren, District Ranger.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be directed to Heidi Heyrend, Rangeland Management Specialist, at (208) 847–0375.

SUPPLEMENTARY INFORMATION: The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS and Final EIS. For most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of this Notice in the **Federal Register**.

Agency representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comment periods include during the scoping process (the next thirty days following the publication of this Notice in the **Federal Register**) and during the formal review period of the Draft EIS.

The Forest Service estimates the Draft EIS will be filed within 4 months of this Notice of Intent, approximately December 2006. The Final EIS will be filed within 4 months of that date, approximately April 2007.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts, *City of Angoon* v, *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: July 28, 2006.

Dennis Duehren,

District Ranger, Caribou-Targhee National Forest, Intermountain Region, USDA Forest Service.

[FR Doc. 06–6845 Filed 8–10–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Roadless Area Conservation National Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Roadless Area Conservation National Advisory Committee (Committee) will meet in Washington, DC. The purpose of this meeting is to review and draft recommendations to the Secretary of Agriculture on state petitions for inventoried roadless area management. Petitions to be reviewed include those received from New Mexico, California, and possibly any petitions received between the publication of this notice and meeting dates.

DATES: The meeting will be held August 30–31, 2006 from 8 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held at the Forest Service's Yates Building at 201 14th Street, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Garth Smelser, Committee Coordinator, at *gsmelser@fs.fed.us* or (202) 205–0992, USDA Forest Service, 1400 Independence Avenue, SW., Mailstop 1104, Washington, DC 20250.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The state petitions scheduled for review and other relevant meeting materials will be available online at *http://www.roadless.fs.fed.us.*

The meeting is open to the public and interested parties are invited to attend; building security requires you to provide your name to the Committee Coordinator (contact information listed above) by August 20, 2006. You will need photo identification to enter the building.

While meeting discussion is limited to Forest Service staff and Committee members, the public will be allowed to offer written and oral comments for the Committee's consideration. Attendees wishing to comment orally will be allotted a specific amount of time to speak during a public comment period at the end of each day. To offer oral comments on either day, please contact the Committee Coordinator at the contact number above. Oral and written comments should (1) specifically address the state petitions being reviewed, (2) focus on the basis for agreement/disagreement with a petition, and (3) if in disagreement, recommend an alternative.

Dated: August 3, 2006.

Frederick L. Norbury,

Associate Deputy Chief, National Forest System.

[FR Doc. E6–13120 Filed 8–10–06; 8:45 am]

BILLING CODE 3410–11–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from Procurement List.

SUMMARY: This action adds to the Procurement List products and services 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:* September 10, 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 June 9 and June 16, 2006, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (71 FR 33437, 33438; 34884, 34885) 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 services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services 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 and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSNs: Bag, Fecal Incontinent. 6530–00–NSH–0044.
NPA: Work, Incorporated, North Quincy, MA.
Contracting Activity: Veterans Affairs National Acquisition Center, Hines, Illinois.

Product/NSNs: SKILCRAFT Cellulose Mop & Refill.
M.R. 1089—Cellulose Sponge Mop with Plastic Mop Head, Metal Handle.
M.R. 1099—Refill, Cellulose Sponge Mop.
SKILCRAFT Melamine Mop & Refill.
M.R. 1088—Big Butterfly Mop with Melamine Sponge and Scrubber Strip.
M.R. 1098—Refill, Melamine Sponge Mop.
NPA: L.C. Industries for the Blind, Inc., Durham, North Carolina.
Contracting Activity: Defense Commissary Agency (DeCA), Fort Lee, Virginia.

Product/NSNs: SKILCRAFT Spritz n' Mop.
M.R. 1087.
M.R. 1097—Refill.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.
Contracting Activity: Defense Commissary Agency (DeCA), Fort Lee, Virginia.

Services

Service Type/Location: Custodial Services, Army Corps of Engineers—Eastern Area Office, 926 SW. Adams Street, Suite 110, Peoria, Illinois.
NPA: Community Workshop and Training Center, Inc., Peoria, Illinois.
Contracting Activity: U.S. Army Corps of Engineers, Rock Island, Illinois.

Service Type/Location: Custodial Services, Denver Federal Center, Buildings 41, 44, and 48, Denver, Colorado.
NPA: Aspen Diversified Industries, Inc., Colorado Springs, Colorado.
Contracting Activity: GSA, PBS Region 8, Denver, Colorado.

Service Type/Location: Custodial Services, Frank Peregory U.S. Army Reserve Center, 1634 Cherry Ave, Charlottesville, Virginia.
NPA: WorkSource Enterprises, Charlottesville, Virginia.
Contracting Activity: 99th Regional Support Command, Coraopolis, Pennsylvania.

Service Type/Location: Custodial Services, Social Security Administration Building, 88 South Laurel Street, Hazelton, Pennsylvania.
NPA: United Rehabilitation Services, Inc., Wilkes-Barre, Pennsylvania.
Contracting Activity: GSA Public Buildings Service, Region 3, Pittsburgh, Pennsylvania.

Service Type/Location: Custodial Services, Tahoma National Cemetery, 18600 240th Avenue, SE., Kent, Washington.
NPA: Northwest Center for the Retarded, Seattle, Washington.
Contracting Activity: Department of Veterans Affairs, Tacoma, Washington.

Service Type/Location: Custodial Services, Wayne L. Morse Federal Courthouse, 455 E. 8th Avenue, Eugene, Oregon.
NPA: Garten Services, Inc., Salem, Oregon.
Contracting Activity: GSA, Public Buildings Service—Region 10, Auburn, Washington.

Service Type/Location: Document Destruction, Internal Revenue Service, 474 South Court Street, Room 361, Montgomery, Alabama.
NPA: United Cerebral Palsy of Greater Birmingham, Inc., Birmingham, Alabama.
Contracting Activity: U.S. Treasury, IRS, Chamblee, Georgia.

Service Type/Location: Grounds/Custodial/Security Services, Lake Okeechobee and Outlying Areas, Army Corps of Engineers, Lake Okeechobee, Florida.
NPA: Gulfstream Goodwill Industries, Inc., West Palm Beach, Florida.
Contracting Activity: U.S. Army Corps of Engineers, Jacksonville,-Florida.

Service Type/Location: Warehousing, National Institute of Environmental Health Science, Research Triangle Park, Durham, North Carolina.
NPA: Employment Source, Inc., Fayetteville, North Carolina.
Contracting Activity: National Institute of Environmental Health Science, Durham, North Carolina.

Deletion

On June 9, 2006, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 33438) of proposed deletion to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the product 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 product 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 product deleted from the Procurement List.

End of Certification

Accordingly, the following product is deleted from the Procurement List:

Product

Product/NSNs: Shampoo, Coal Tar. 6505–00–997–8531.
NPA: NYSARC, Inc., Seneca-Cayuga Counties Chapter, Waterloo, New York.
Contracting Activity: Department of Veterans

Affairs, Washington, DC.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E6–13162 Filed 8–10–06; 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 a product and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must be Received on or Before: September 10, 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 product and service 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 product and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and service 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 product and service 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 product and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Product/NSNs: Coat, Airman's Battle Uniform, Men's (ABU)
8415–01–536–4578—Size 42 X-Short.
8415–01–536–4224—Size 36 Regular.
8415–01–536–4188—Size 34 Regular.
8415–01–536–4182—Size 34 X-Short.
8415–01–536–4193—Size 36 X-Short.
8415–01–536–4192—Size 34 X-Long.
8415–01–536–4227—Size 36 Long.
8415–01–536–4585—Size 42 X-Long.
8415–01–536–4583—Size 42 Regular.
8415–01–536–4577—Size 40 X-Long.
8415–01–536–4640—Size 48 Regular.
8415–01–536–4682—Size 50 Regular.
8415–01–536–4241—Size 38 Short.
8415–01–536–4239—Size 38 X-Short.
8415–01–536–4593—Size 46 Short.
8415–01–536–4592—Size 44 X-Long.
8415–01–536–4588—Size 50 X-Short.
8415–01–536–4586—Size 44 Short.
8415–01–536–4584—Size 42 Long.
8415–01–536–4574—Size 40 Regular.
8415–01–535–4170—Size 32 X-Short.
8415–01–536–4712—Size 50 Long.
8415–01–536–4639—Size 48 Short.
8415–01–536–4651—Size 48 Long.
8415–01–536–4367—Size 38 Regular.
8415–01–536–4369—Size 38 Long.
8415–01–536–4674—Size 50 Short.
8415–01–536–4576—Size 40 Long.
8415–01–536–4606—Size 46 X-Long.
8415–01–536–4596—Size 46 Regular.
8415–01–536–4600—Size 46 Long.
8415–01–536–4197—Size 36 Short.
8415–01–536–4573—Size 40 Short.
8415–01–536–4581—Size 42 Short.
8415–01–536–4178—Size 32 Regular.
8415–01–536–4237—Size 36 X-Long.
8415–01–536–4591—Size 44 Long.
8415–01–536–4590—Size 44 Regular.
8415–01–536–4180—Size 32 Long.
8415–01–536–4189—Size 34 Long.
8415–01–536–4134—Size 32 Short.
8415–01–536–4184—Size 34 Short.
8415–01–536–4572—Size 40 X-Short.
8415–01–536–4571—Size 38 X-Long.

Product/NSNs: Coat, Airman's Battle Uniform, Women's, (ABU)
8410–01–536–3760—Size 6 Short.
8410–01–536–3000—Size 6 X-Short.
8410–01–536–2994—Size 4 Regular.
8410–01–536–3763—Size 6 Regular.
8410–01–536–2980—Size 4 X-Short.
8410–01–536–2977—Size 2 Regular.
8410–01–536–2974—Size 2 Short.
8410–01–536–2982—Size 4 Short.
8410–01–536–3825—Size 20 Regular.
8410–01–536–3819—Size 18 Regular.
8410–01–536–3822—Size 18 Long.
8410–01–536–3816—Size 18 Short.
8410–01–536–3814—Size 16 Long.
8410–01–536–3812—Size 16 Regular.
8410–01–536–3808—Size 16 Short.
8410–01–536–3807—Size 16 X-Short.
8410–01–536–3805—Size 14 Long.
8410–01–536–3804—Size 14 Regular.
8410–01–536–3803—Size 14 Short.
8410–01–536–3800—Size 14 X-Short.
8410–01–536–3799—Size 12 Long.
8410–01–536–3797—Size 12 Regular.
8410–01–536–3795—Size 12 Short.
8410–01–536–3793—Size 12 X-Short.
8410–01–536–3792—Size 10 Long.
8410–01–536–3789—Size 10 Regular.
8410–01–536–3787—Size 10 Short.
8410–01–536–3784—Size 10 X-Short.
8410–01–536–3782—Size 8 Long.
8410–01–536–3779—Size 6 Long.
8410–01–536–3776—Size 8 Regular.
8410–01–536–3772—Size 8 Short.
8410–01–536–3769—Size 8 X-Short.

NPA: Goodwill Industries of South Florida, Inc., Miami, FL.

NPA: Four Rivers Resource Services, Inc., Linton, IN (at its facility in Sullivan, IN).

Coverage: The requirement being proposed for addition to the Procurement List is a quantity of no more than 100,000 units of any combination of the above NSNs for Coat, Airman's Battle Uniform, Men's or Coat, Airman's Battle Uniform, Women's.

Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA.

Product/NSNs: Trousers, Airman's Battle Uniform, Men's (ABU)
8415–01–536–4121—Size 46 Long.
8415–01–536–4111—Size 46 Regular.
8415–01–536–4103—Size 44 Short.
8415–01–536–4102—Size 44 Regular.
8415–01–536–4088—Size 42 Long.
8415–01–536–4077—Size 42 Short.
8415–01–536–4075—Size 40 X-Long.
8415–01–536–4073—Size 40 Long.
8415–01–536–4067—Size 40 Short.
8415–01–536–4021—Size 38 X-Long.
8415–01–536–3935—Size 38 Long.
8415–01–536–3920—Size 38 Short.
8415–01–536–3916—Size 38 X-Short.
8415–01–536–3912—Size 36 X-Long.
8415–01–536–3905—Size 36 Long.
8415–01–536–3903—Size 36 Regular.
8415–01–536–3893—Size 36 Short.
8415–01–536–3890—Size 40 X-Short.
8415–01–536–3874—Size 34 X-Long.
8415–01–536–3869—Size 34 Long.
8415–01–536–3855—Size 34 Regular.
8415–01–536–3849—Size 34 Short.
8415–01–536–3846—Size 34 X-Short.
8415–01–536–3844—Size 32 X-Long.
8415–01–536–3836—Size 32 Long.
8415–01–536–3833—Size 32 Regular.
8415–01–536–3830—Size 32 Short.
8415–01–536–3880—Size 36 X-Short.
8415–01–536–3826—Size 32 X-Short.
8415–01–536–3823—Size 30 X-Long.
8415–01–536–3821—Size 30 Long.
8415–01–536–3817—Size 30 Regular.

8415–01–536–3809—Size 30 X-Short.
8415–01–536–3794—Size 30 Short.
8415–01–536–3791—Size 28 X-Long.
8415–01–536–3927—Size 38 Regular.
8415–01–536–3777—Size 28 Long.
8415–01–536–3774—Size 28 Regular.
8415–01–536–3759—Size 28 Short.
8415–01–536–4071—Size 40 Regular.
8415–01–536–3758—Size 28 X-Short.
8415–01–536–4109—Size 44 Long.
8415–01–536–4081—Size 42 Regular.

Product/NSNs: Trousers, Airman's Battle Uniform, Women's, (ABU)
8410–01–536–2748—Size 12 Short.
8410–01–536–2746—Size 12 X-Short.
8410–01–536–2744—Size 10 Long.
8410–01–536–2740—Size 10 Short.
8410–01–536–2739—Size 10 X-Short.
8410–01–536–2736—Size 8 Long.
8410–01–536–2725—Size 8 Short.
8410–01–536–2723—Size 8 X-Short.
8410–01–536–2721—Size 6 Long.
8410–01–536–2720—Size 6 Regular.
8410–01–536–2719—Size 6 Short.
8410–01–536–2718—Size 6 X-Short.
8410–01–536–2715—Size 4 Regular.
8410–01–536–2714—Size 4 X-Short.
8410–01–536–2711—Size 2 Regular.
8410–01–536–2709—Size 2 Short.
8410–01–536–2734—Size 8 Regular.
8410–01–536–2742—Size 10 Regular.
8410–01–536–2749—Size 12 Regular.
8410–01–536–2785—Size 22 Regular.
8410–01–536–2783—Size 20 Long.
8410–01–536–2780—Size 20 Regular.
8410–01–536–2778—Size 18 Long.
8410–01–536–2774—Size 18 Regular.
8410–01–536–2773—Size 18 Short.
8410–01–536–2771—Size 16 Long.
8410–01–536–2770—Size 16 Regular.
8410–01–536–2766—Size 16 Short.
8410–01–536–2765—Size 16 X-Short.
8410–01–536–2761—Size 14 Long.
8410–01–536–2760—Size 14 Regular.
8410–01–536–2756—Size 14 Short.
8410–01–536–2801—Size 4 Short.
8410–01–536–2754—Size 14 X-Short.
8410–01–536–2752—Size 12 Long.

NPA: Goodwill Industries of South Florida, Inc., Miami, FL.
NPA: CASCO Area Workshop, Inc., Harrisonville, MO.
Coverage: The requirement being proposed for addition to the Procurement List is a quantity of no more than 200,000 units of any combination of the above NSNs for Trousers, Airman's Battle Uniform, Men's or Trousers, Airman's Battle Uniform, Women's.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA

Service

Service Type/Location: Grounds Maintenance, Naval Operations Support Center, 800 Dan Street, Akron, OH.
Service Type/Location: Grounds Maintenance/Refuse Removal/Snow Removal, Naval Operations Support Center, 7221 Second Street, Columbus, OH.
Service Type/Location: Custodial/Grounds Maintenance, Naval Operations Support Center, 28828 Glenwood Road, Perrysburg, OH.
NPA: VGS, Inc., Cleveland, OH.
Contracting Activity: Naval Facilities Engineering Field Activity Midwest, Great Lakes, IL.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. E6–13163 Filed 8–10–06; 8:45 am]
BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

DATE AND TIME: Friday, August 18, 2006, 9:30 a.m., Commission Meeting.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Rm. 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of July 28, Meeting
III. Announcements
IV. Staff Director's Report
V. Program Planning
- Record Items for the Briefing on Benefits of Diversity in Elementary and Secondary Education.
- Outline and Discovery Plan for FY 2007 Statutory Enforcement Report on Elementary and Secondary School Desegregation.
- Anti-Semitism Brochure.

VI. Management and Operations
- Strategic Plan Performance Measures.
- Memorandum of Understanding With Thurgood Marshall Library.

VII. State Advisory Committee Issues
- Acting Chair for Maine State Advisory Committee.
- Re-Charter Package for California State Advisory Committee.
- Re-Charter Package for Georgia State Advisory Committee.

VIII. Closed Meeting To Discuss Personnel Matters
IX. Future Agenda Items
X. Adjourn

CONTACT PERSON FOR FURTHER INFORMATION: Audrey Wright, Office of the Staff Director, (202) 376–7700.

David P. Blackwood,
General Counsel.
[FR Doc. 06–6891 Filed 8–9–06; 11:36 am]
BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Data Physics Corporation, Data Physics China, Sri Welaratna, Bill Chen; Correction

In the Federal Register of Tuesday, May 23, 2006, the Bureau of Industry and Security published an Order at 29613. This notice is being published to correct the name and add an additional address of one of the respondents listed in the caption and text in that order. The correct name and address are as follows: Sri Ramya Welaratna, 767 Sunshine Dr., Los Altos, CA 94024.

Dated: July 14, 2006

Darryl W. Jackson,
Assistant Secretary for Export Enforcement.
[FR Doc. 06–6853 Filed 8–10–06; 8:45am]
BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–588–046

Polychloroprene Rubber from Japan: Notice of Initiation and Preliminary Results of Changed Circumstances Review, and Intent to Revoke Antidumping Duty Finding in Part

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

EFFECTIVE DATE: August 11, 2006.

SUMMARY: On June 30, 2006, the Department of Commerce (the Department) received a request on behalf of the petitioner, DuPont Performance Elastomers L.L.C. (DuPont)[1] for a changed circumstances review and a request to revoke, in part, the antidumping duty (AD) finding on certain polychloroprene rubber products from Japan. In its June 30, 2006, submission, DuPont stated that it no longer has any interest in antidumping relief from imports of such polychloroprene rubber with respect to the subject merchandise defined in the "Scope of the Finding" section below. Interested parties are invited to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor or Mark Manning, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

[1] DuPont is the sole petitioner in this antidumping proceeding. *See Polychloroprene Rubber From Japan: Final Results of the Expedited Sunset Review of the Antidumping Duty Finding*, 69 FR 64276 (November 4, 2004).

Avenue, N.W., Washington D.C. 20230; telephone (202) 482–5831 and (202) 482–5253, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1973, the Department of Treasury published in the **Federal Register** (38 FR 33593) the antidumping finding on polychloroprene rubber from Japan. On June 30, 2006, DuPont requested revocation in part of the AD finding pursuant to sections 751(b)(1) and 782(h) of the Tariff Act of 1930, as amended (the Act), with respect to (1) aqueous dispersions of polychloroprenes that are dipolymers of chloroprene and methacrylic acid, where the dispersion has a pH of 8 or lower (this category is limited to aqueous dispersions of these polymers and does not include aqueous dispersions of these polychloroprenes that contain comonomers other than methacrylic acid); (2) aqueous dispersions of polychloroprenes that are dipolymers of chloroprene and 2,3–dichlorobutadiene–1,3 modified with xanthogen disulfides, where the dispersion has a solids content of greater than 59 percent (this category is limited to aqueous dispersions of these polymers and does *not* include aqueous dispersions of polychloroprenes that contain comonomers other than 2,3–dichlorobutadiene–1,3); and (3) solid polychloroprenes that are dipolymers of chloroprene and 2,3–dichlorobutadiene–1,3 having a 2,3–dichlorobutadiene–1,3 content of 15 percent or greater (this category is limited to polychloroprenes in solid form and does *not* include aqueous dispersions).

Scope of the Finding

Imports covered by this finding are shipments of polychloroprene rubber, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 4002.41.00, 4002.49.00, 4003.00.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). HTSUS item numbers are provided for convenience and customs purposes. The Department's written description of the scope remains dispositive.

Initiation and Preliminary Results of Changed Circumstances Review, and Intent to Revoke Finding in Part

In this case, the Department finds that the information submitted by DuPont provides sufficient evidence of changed circumstances to warrant a review. In accordance with sections 751(b)(1) and 751(d)(1) of the Act and 19 CFR 351.216 (b), based on the information provided by DuPont, the Department is initiating a changed circumstances review of polychloroprene rubber from Japan to determine whether partial revocation of the AD finding is warranted with respect to the aforementioned certain polychloroprene rubber products from Japan. Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have no further interest in the order, in whole or in part. DuPont is the sole petitioner and U.S. producer of polychloroprene rubber and accounts for all of the production of the domestic like product to which the finding pertains.[2] *See* DuPont's June 30, 2006, submission at page 2. In addition, in the event the Department determines that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

In accordance with sections 751(d)(1) and 782(h)(2) of the Act, and 19 CFR 351.222(g)(l)(i), we are conducting this changed circumstances review because the sole petitioner and domestic producer of polychloroprene rubber has expressed a lack of interest in applying the AD finding to the specific polychloroprene rubber from Japan covered by this request. In accordance with 19 CFR 351.221(c)(3)(ii), we have determined that expedited action is warranted. Our decision to expedite this review stems from the fact that the sole petitioner and domestic producer of the subject merchandise, DuPont, requested expedited action.

Based on the expression of no interest by the sole domestic producer, we have preliminarily determined that producers accounting for substantially all of the domestic like product have no interest in the continued application of the AD finding on polychloroprene rubber that is subject to this request. Therefore, we are notifying the public of our intent to revoke, in part, the AD finding as it relates to imports of certain polychloroprene rubber products from Japan.

Therefore, we intend to amend the scope of the finding on polychloroprene rubber from Japan to read as follows: Imports covered by this review are shipments of polychloroprene rubber, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 4002.41.00, 4002.49.00, 4003.00.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). HTSUS item numbers are provided for convenience and customs purpose. The Department's written description of the scope remains dispositive.

In addition, the following types of polychloroprene rubber are excluded from the scope of the finding: (1) aqueous dispersions of polychloroprenes that are dipolymers of chloroprene and methacrylic acid, where the dispersion has a pH of 8 or lower (this category is limited to aqueous dispersions of these polymers and does *not* include aqueous dispersions of these polychloroprenes that contain comonomers other than methacrylic acid); (2) aqueous dispersions of polychloroprenes that are dipolymers of chloroprene and 2,3–dichlorobutadiene–1,3 modified with xanthogen disulfides, where the dispersion has a solids content of greater than 59 percent (this category is limited to aqueous dispersions of these polymers and does *not* include aqueous dispersions of polychloroprenes that contain comonomers other than 2,3–dichlorobutadiene–1,3); and (3) solid polychloroprenes that are dipolymers of chloroprene and 2,3–dichlorobutadiene–1,3 having a 2,3–dichlorobutadiene–1,3 content of 15 percent or greater (this category is limited to polychloroprenes in solid form and does *not* include aqueous dispersions).

Public Comment

Interested parties are invited to comment on these preliminary results. Written comments may be submitted no later than 14 days after the date of publication of this notice. Rebuttals to written comments, limited to issues raised in such comments, may be filed no later than 21 days after the date of publication of this notice. Also, interested parties may request a hearing within 14 days of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303 and shall be served on all interested parties. The Department will issue the final results of this changed circumstances review, which will include the results of its analysis raised in any such written comments, no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary results. *See* 19 CFR 351.216(e).

If final partial revocation occurs, we will instruct U.S. Customs and Border Protection to end the suspension of

[2] DuPont has been the sole U.S. producer of polychloroprene rubber since 1998, when Bayer closed its polychloroprene rubber plant in Houston, Texas. *See* Polychhloroprene Rubber from Japan, Inv. No. AA-1921-129 (Second Review), U.S. ITC Pub. 3786, at 4-5 (June 2005).

liquidation for the merchandise covered by the revocation on the effective date of the notice of revocation and to release any cash deposit or bond. *See* 19 CFR 351.222(g)(4). The current requirement for a cash deposit of estimated AD duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

This initiation and preliminary results of review and notice are in accordance with sections 751(b) and 777(i) of the Act and 19 CFR 351.216, 351.221, and 351.222.

Dated: August 7, 2006.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E6–13168 Filed 8–10–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–821–802

Continuation of Suspended Antidumping Duty Investigation: Uranium From the Russian Federation

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

SUMMARY: As a result of the determination by the Department of Commerce ("the Department") that termination of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation ("Suspension Agreement") would likely lead to continuation or recurrence of dumping and the determination by the International Trade Commission ("ITC") that termination of the suspended antidumping duty investigation on uranium from the Russian Federation would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, the Department is publishing this notice of continuation of the Suspension Agreement on uranium from Russia.

EFFECTIVE DATE: August 11, 2006.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0162.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2005, the ITC instituted, and the Department initiated, a sunset review of the Suspension Agreement, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). *See ITC Investigation Nos. 731–TA–539–C (Second Review), Uranium from Russia*, 70 FR 38212 (July 1, 2005) and *Initiation of Five-year (Sunset) Reviews*, 70 FR 38101 (July 1, 2005). As a result of its review, pursuant to sections 751(c) and 752 of the Act, the Department determined that termination of the Suspension Agreement would likely lead to a continuation or recurrence of dumping and notified the ITC of the magnitude of the margin likely to prevail should the Suspension Agreement be terminated. *See Final Results of Five-year Sunset Review of Suspended Antidumping Duty Investigation on Uranium from the Russian Federation*, 71 FR 32517 (June 6, 2006).

On August 7, 2006, pursuant to section 751(c) of the Act, the ITC determined that termination of the suspended investigation on uranium from the Russian Federation would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* Uranium from Russia, 71 FR 44707 (August 7, 2006) and USITC Publication 3872 (August 2006), entitled "Uranium From Russia, Investigation No. 731–TA–539–C (Second Review)." Therefore, pursuant to Section 351.218(f)(4) of the Department's regulations, the Department is publishing this notice of the continuation of the Suspension Agreement.

Scope

According to the June 3, 1992, preliminary determination, the suspended investigation of uranium from Russia encompassed one class or kind of merchandise.[1] The merchandise included natural uranium in the form of uranium ores and concentrates; natural uranium metal and natural uranium compounds; alloys, dispersions (including cermets), ceramic products, and mixtures containing natural uranium or natural uranium compound; uranium enriched in U235 and its compounds; alloys dispersions (including cermets), ceramic products and mixtures containing uranium enriched in U235 or compounds or uranium enriched in U235; and any other forms of uranium within the same class or kind. The uranium subject to this investigation was provided for under subheadings 2612.10.00.00, 2844.10.10.00, 2844.10.20.10, 2844.10.20.25, 2844.10.20.50, 2844.10.20.55, 2844.10.50, 2844.20.00.10, 2844.20.00.20, 2844.20.00.30, and 2844.20.00.50 of the Harmonized Tariff Schedule of the United States ("HTSUS").[2] In addition, the Department preliminarily determined that highly–enriched uranium ("HEU") (uranium enriched to 20 percent or greater in the isotope uranium–235) is not within the scope of the investigation. On October 30, 1992, the Department issued a suspension of the antidumping duty investigation of uranium from Russia and an amendment of the preliminary determination.[3] The notice amended the scope of the investigation to include HEU.[4] Imports of uranium ores and concentrates, natural uranium compounds, and all other forms of enriched uranium were classifiable under HTSUS subheadings 2612.10.00, 2844.10.20, 2844.20.00, respectively. Imports of natural uranium metal and forms of natural uranium other than compounds were classifiable under HTSUS subheadings 2844.10.10 and 2844.10.50.[5]

In addition, Section III of the Suspension Agreement provides that uranium ore from Russia that is milled into U3O8 and/or converted into UF6 in another country prior to direct and/or indirect importation into the United States is considered uranium from Russia and is subject to the terms of the Suspension Agreement, regardless of any subsequent modification or blending.[6] In addition, Section M.1 of the Suspension Agreement in no way

[1] The Department based its analysis of the comments on class or kind submitted during the proceeding and determined that the product under investigation constitutes a single class or kind of merchandise. The Department based its analysis on the "Diversified"' criteria (*see Diversified Products Corp. v. United States, 6 CIT 1555 (1983); see also Preliminary Determination of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determination of Sales at Not Less Than Fair Value: Uranium from Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan*, 57 FR 23380, 23382 (June 3, 1992).

[2] *See Preliminary Determination of Sales at Less Than Fair Value: Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine and Uzbekistan; and Preliminary Determination of Sales at Not Less Than Fair Value: Uranium from Armenia, Azerbaijan, Byelarus, Georgia, Moldova and Turkmenistan*, 57 FR 23380, 23381 (June 3, 1992).

[3] *See Antidumping; Uranium from Kazakhstan, Kyrgyszstan, Russia, Tajikistan, Ukraine, and Uzbekistan; Suspension of Investigations and Amendment of Preliminary Determinations*, 57 FR 49220 (October 30, 1992).

[4] *See* Id. at 49235.

[5] *See* Id.

[6] *See* Id. at 49235.

prevents Russia from selling directly or indirectly any or all of the HEU in existence at the time of the signing of the agreement and/or low–enriched uranium ("LEU") produced in Russia from HEU to the Department of Energy ("DOE"), its governmental successor, its contractors, or U.S. private parties acting in association with DOE or the USEC and in a manner not inconsistent with the Suspension Agreement between the United States and Russia concerning the disposition of HEU resulting from the dismantlement of nuclear weapons in Russia.

There were three amendments to the Suspension Agreement on Russian uranium. In particular, the second amendment to the Suspension Agreement, published on November 4, 1996, provided for, among other things, the sale in the United States of the natural uranium feed associated with the Russian LEU derived from HEU and included within the scope of the Suspension Agreement Russian uranium which has been enriched in a third country prior to importation into the United States.[7]

On August 6, 1999, USEC, Inc. and its subsidiary, United States Enrichment Corporation (collectively, "USEC") requested that the Department issue a scope ruling to clarify that enriched uranium located in Kazakhstan at the time of the dissolution of the Soviet Union is within the scope of the Russian Suspension Agreement. Respondent interested parties filed an opposition to the scope request on August 27, 1999. That scope request is pending before the Department.

Determination

As a result of the determinations by the Department and the ITC that termination of the suspended investigation would likely lead to continuation or recurrence, respectively, of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the Suspension Agreement. The effective date of continuation of this Suspension Agreement will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to sections 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year sunset review of this Suspension Agreement not later than July 2011.

This five-year (sunset) review and notice are in accordance with section 751(c) of the Act and published pursuant to section 777(I)(1) of the Act.

Dated: August 7, 2006.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E6–13195 Filed 8–10–06; 8:45 am]

BILLING CODE 3510–DS–S

[7] *See Amendments to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation*, 61 FR 56665 (November 4, 1996). According to the amendment, the latter modification remained in effect until October 3, 1998.

DEPARTMENT OF COMMERCE

International Trade Administration

C–580–851

Dynamic Random Access Memory Semiconductors from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review

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

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on dynamic random access memory semiconductors from the Republic of Korea for the period January 1, 2004, through December 31, 2004. We preliminarily find that Hynix Semiconductor, Inc. received countervailable subsidies during the period of review. If the final results remain the same as these preliminary results, we will instruct U.S. Customs and Border Protection ("CBP") to assess countervailing duties as detailed in 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, below).

EFFECTIVE DATE: August 11, 2006.

FOR FURTHER INFORMATION CONTACT: Steve Williams and Andrew McAllister , Office of Antidumping/Countervailing Duty Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3069, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482- 4619 or (202) 482–1174, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On August 11, 2003, the Department of Commerce ("the Department") published a countervailing duty order on dynamic random access memory semiconductors ("DRAMS") from the Republic of Korea ("ROK"). *See Notice of Countervailing Duty Order: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 47546 (August 11, 2003) ("CVD Order"). On August 1, 2005, the Department published a notice of "Opportunity to Request Administrative Review" for this countervailing duty order. On August 30, 2005, we received a request for review from the petitioner, Micron Technology, Inc. ("Micron"). On August 31, 2005, we received a request from Hynix Semiconductor, Inc. ("Hynix"). In accordance with 19 CFR 351.221(c)(1)(i) (2004), we published a notice of initiation of the review on September 28, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631 (September 28, 2005) ("*Initiation Notice*").

On November 2, 2005, we issued countervailing duty questionnaires to the Government of the Republic of Korea ("GOK") and Hynix. We received responses to these questionnaires in December 2005. Micron submitted comments on Hynix's questionnaire responses in January 2006. In March 2006, we issued supplemental questionnaires to the GOK and Hynix, and we received responses to these supplemental questionnaires in April 2006.

On January 12, 2006, we received a new subsidies allegation from Micron. On April 26, 2006, Micron submitted a supplement to its January 12, 2006, new subsidies allegation. On June 8, 2006, we initiated an investigation of two of the five new subsidies that Micron alleged in this administrative review. *See New Subsidy Allegations Memorandum*, dated June 8, 2006, available in the Central Records Unit ("CRU"), Room B–099 of the main Department building.

On April 25, 2006, we published a postponement of the preliminary results in this review until August 7, 2006. *See Dynamic Random Access Memory Semiconductors from the Republic of Korea: Extension of Time Limit for Preliminary Results of Countervailing Duty Review*, 71 FR 23898 (April 25, 2006).

In June 2006, we issued supplemental questionnaires to the GOK and Hynix regarding the new subsidies alleged by Micron. We received responses to the supplemental questionnaires on June 30, 2006. On July 13, 2006, Micron submitted pre–preliminary comments and a separate compilation of rebuttal factual information. On July 18, 2006, Hynix responded to Micron's July 13,

2006 submissions. On July 21, 2006, Micron submitted comments on the GOK and Hynix's supplemental questionnaire responses. On July 26, 2006, we issued another supplemental questionnaire to Hynix, and we received Hynix's response on August 2, 2006.

Scope of the Order

The products covered by this order are DRAMS from the Republic of Korea, whether assembled or unassembled. Assembled DRAMS include all package types. Unassembled DRAMS include processed wafers, uncut die, and cut die. Processed wafers fabricated in the ROK, but assembled into finished semiconductors outside the ROK are also included in the scope. Processed wafers fabricated outside the ROK and assembled into finished semiconductors in the ROK are not included in the scope.

The scope of this order additionally includes memory modules containing DRAMS from the ROK. A memory module is a collection of DRAMS, the sole function of which is memory. Memory modules include single in–line processing modules, single in–line memory modules, dual in–line memory modules, small outline dual in–line memory modules, Rambus in–line memory modules, and memory cards or other collections of DRAMS, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules that contain additional items which alter the function of the module to something other than memory, such as video graphics adapter boards and cards, are not included in the scope. This order also covers future DRAMS module types.

The scope of this order additionally includes, but is not limited to, video random access memory and synchronous graphics random access memory, as well as various types of DRAMS, including fast page–mode, extended data–out, burst extended data–out, synchronous dynamic RAM, Rambus DRAM, and Double Data Rate DRAM. The scope also includes any future density, packaging, or assembling of DRAMS. Also included in the scope of this order are removable memory modules placed on motherboards, with or without a central processing unit, unless the importer of the motherboards certifies with CBP that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this order does not include DRAMS or memory modules that are re–imported for repair or replacement.

The DRAMS subject to this order are currently classifiable under subheadings 8542.21.8005 and 8542.21.8020 through 8542.21.8030 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The memory modules containing DRAMS from the ROK, described above, are currently classifiable under subheadings 8473.30.10.40 or 8473.30.10.80 of the HTSUS. Removable memory modules placed on motherboards are classifiable under subheadings 8471.50.0085, 8517.30.5000, 8517.50.1000, 8517.50.5000, 8517.50.9000, 8517.90.3400, 8517.90.3600, 8517.90.3800, 8517.90.4400, and 8543.89.9600 of the HTSUS.

Scope Rulings

On December 29, 2004, the Department received a request from Cisco Systems, Inc. ("Cisco"), to determine whether removable memory modules placed on motherboards that are imported for repair or refurbishment are within the scope of the *CVD Order*. The Department initiated a scope inquiry pursuant to 19 CFR 351.225(e) on February 4, 2005. On January 12, 2006, the Department issued a final scope ruling, finding that removable memory modules placed on motherboards that are imported for repair or refurbishment are not within the scope of the *CVD Order* provided that the importer certifies that it will destroy any memory modules that are removed for repair or refurbishment. *See Final Scope Ruling Memorandum from Stephen J. Claeys to David M. Spooner*, dated January 12, 2006

Period of Review

The period for which we are measuring subsidies, *i.e.*, the period of review ("POR"), is January 1, 2004, through December 31, 2004.

Changes in Ownership

Effective June 30, 2003, the Department adopted a new methodology for analyzing privatizations in the countervailing duty context. *See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act*, 68 FR 37125 (June 23, 2003) ("*Modification Notice*"). The Department's new methodology is based on a rebuttable "baseline" presumption that non–recurring, allocable subsidies continue to benefit the subsidy recipient throughout the allocation period (which normally corresponds to the average useful life ("AUL") of the recipient's assets). However, an interested party may rebut this baseline presumption by demonstrating that, during the allocation period, a change in ownership occurred in which the former owner sold all or substantially all of a company or its assets, retaining no control of the company or its assets, and that the sale was an arm's–length transaction for fair market value.

Hynix's ownership changed during the AUL period as a result of debt–to–equity conversions in October 2001, and December 2002, and various asset sales. However, Hynix has not rebutted the Department's baseline presumption that the non–recurring, allocable subsidies received prior to the equity conversions and asset sales continue to benefit the company throughout the allocation period. *See* Hynix's March 30, 2006 supplemental questionnaire response ("Hynix SQNR") at 4. *See also Dynamic Random Access Memory Semiconductors from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*, 70 FR 54523, 54524 (September 15, 2005) ("*AR1 Preliminary Results*").

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non–recurring subsidies are allocated over a period corresponding to the AUL of the renewable physical assets used to produce the subject merchandise. Section 351.524(d)(2) of the Department's regulations creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (the "IRS Tables"). For DRAMS, the IRS Tables prescribe an AUL of five years. During this review, none of the interested parties disputed this allocation period. Therefore, we continue to allocate non–recurring benefits over the five–year AUL.

Discount Rates and Benchmarks for Loans

For loans that we found countervailable in the investigation or in the first administrative review, and which continued to be outstanding during the POR, we have used the benchmarks used in the first administrative review (these are described below).

Long–Term Rates

For long–term, won–denominated loans originating in 1986 through 1995, we used the average interest rate for three–year corporate bonds as reported by the Bank of Korea or the International Monetary Fund ("IMF"). For long–term, won–denominated fixed–rate loans originating in 1996

through 1999, we used an annual weighted–average of the rates on Hynix's corporate bonds, which were not specifically related to any countervailable financing. We did not use the rates on Hynix's corporate bonds for 2000–2003 for any calculations because Hynix either did not obtain bonds or obtained bonds through countervailable debt restructurings during those years.

For U.S. dollar–denominated loans, we relied on the lending rates as reported in the IMF's *International Financial Statistics Yearbook*.

For the years in which we previously determined Hynix to be uncreditworthy (2000 through 2003), we used the formula described in 19 CFR 351.505(a)(3)(iii) to determine the benchmark interest rate. For the probability of default by an uncreditworthy company, we used the average cumulative default rates reported for the Caa- to C- rated category of companies as published in Moody's Investors Service, "Historical Default Rates of Corporate Bond Issuers, 1920–1997" (February 1998). For the probability of default by a creditworthy company, we used the cumulative default rates for investment grade bonds as published in Moody's Investor Services: "Statistical Tables of Default Rates and Recovery Rates" (February 1998). For the commercial interest rates charged to creditworthy borrowers, we used the rates for won–denominated corporate bonds as reported by the BOK and the U.S. dollar lending rates published by the IMF for each year.

Short–Term Loans

Consistent with the methodology used in the first administrative review, we use the money market rates as reported in the IMF's *International Financial Statistics Yearbook* for short–term interest rates. For countries (or currencies) for which a money market rate was not reported, we are utilizing the lending rate from the same source.

Creditworthiness

We have not analyzed Hynix's creditworthiness for 2004.

Analysis of Programs

I. Programs Previously Determined to Confer Subsidies

We examined the following programs determined to confer subsidies in the investigation and first administrative review, and preliminarily find that Hynix continued to receive benefits under these programs during the POR.

A. GOK Entrustment or Direction Prior to 2004

In the investigation, the Department determined that the GOK entrusted or directed creditor banks to participate in financial restructuring programs, and to provide credit and other funds to Hynix, in order to assist Hynix through its financial difficulties. The financial assistance provided to Hynix by its creditors took various forms, including new loans, convertible and other bonds, extensions of maturities and interest rate reductions on existing debt (which we treated as new loans), Documents Against Acceptance ("D/A") financing, usance financing, overdraft lines of credit, debt forgiveness, and debt–for–equity swaps. The Department determined that these were financial contributions that constituted countervailable subsidies during the POI.

In the first administrative review, the Department found that the GOK continued to entrust or direct Hynix's creditors to provide financial assistance to Hynix throughout 2002 and 2003. The financial assistance provided to Hynix during this period included the December 2002 debt–for–equity swaps and the extensions of maturities and/or interest rate deductions on existing debt.

In an administrative review, we do not revisit the validity of past findings unless new factual information or evidence of changed circumstances has been placed on the record of the proceeding that would compel us to reconsider those findings. *See e.g., Certain Pasta from Italy: Preliminary Results and Partial Rescission of Seventh Countervailing Duty Administrative Review*, 69 FR 45676 (July 30, 2004), affirmed in Certain Pasta From Italy: Final Results of Seventh Countervailing Duty Administrative Review, 69 FR 70657 (December 7, 2004). No such new information has been presented in this review and, thus, we preliminarily find that a re–examination of the Department's findings in the investigation and first administrative review is unwarranted.

Therefore, we are including in our benefit calculation the financial contributions countervailed in the investigation and in the first administrative review: bonds, debt–to–equity swaps, debt forgiveness, and long–term debt outstanding during the POR. In calculating the benefit, we have followed the same methodology used in the first administrative review.

Because we found Hynix to be unequityworthy at the time of the debt–for–equity swaps in 2001 and 2002, we have treated the full amount swapped as grants and allocated the benefit over the five–year AUL. *See* 19 CFR 351.507(a)(6) and (c). We used a discount rate that reflects our finding that Hynix was uncreditworthy at the time of the debt–to–equity conversions. For the loans, we have followed the methodology described at 19 CFR 351.505(c) using the benchmarks described in the "Subsidies Valuation Information" section of this notice.

We divided benefits from the various financial contributions by Hynix's POR sales to calculate a countervailable subsidy rate of 31.79 percent *ad valorem* for the POR.

B. Operation G–7/HAN Program

Implemented under the Framework on Science and Technology Act, the Operation G–7/HAN Program ("G–7/HAN Program") began in 1992 and ended in 2001. The purpose of this program was to raise the GOK's technology standards to the level of the G–7 countries. The Department found that the G7/HAN Program ended in 2001. *See Investigation Decision Memorandum* at 25. However, during the POR, Hynix had outstanding interest–free loans that it had previously received under this program. *See* Hynix' December 22, 2005, Questionnaire Response at 19 and Exhibit 12. The Operation G–7/Han Program was found to provide countervailable subsidies in the investigation. No new evidence has been provided that would lead us to reconsider our earlier finding. Therefore, we have calculated a benefit for these loans.

To calculate the benefit of these loans during the POR, we compared the interest actually paid on the loans during the POR to what Hynix would have paid under the benchmark described in the "Subsidy Valuation Information" section of this notice. We then divided the total benefit by Hynix's total sales of subject merchandise for the POR to calculate the countervailable subsidy. On this basis, we preliminarily determine that countervailable benefits of 0.07 percent *ad valorem* existed for Hynix.

C. 21st Century Frontier R&D Program

The 21st Century Frontier R&D Program ("21st Century Program") was established in 1999 with a structure and governing regulatory framework similar to those of the G–7/HAN Program, and for a similar purpose, *i.e.*, to promote greater competitiveness in science and technology. The 21st Century program provides long–term interest–free loans in the form of matching funds. Repayment of program funds is made in

the form of "technology usance fees" upon completion of the project, pursuant to a schedule established under a technology execution, or implementation contract.

Hynix reported that it had loans from this program outstanding during the POR. *See* Hynix's December 22, 2005, Questionnaire Response at Exhibits 12 and 13.

In the investigation, we determined that this program conferred a countervailable benefit on Hynix. No new evidence has been provided that would lead us to reconsider our earlier finding. Therefore, we have calculated a benefit for these loans.

To calculate the benefit of these loans during the POR, we compared the interest actually paid on the loans during the POR to what Hynix would have paid under the benchmark described in the "Subsidy Valuation Information" section of this notice. We then divided the total benefit by Hynix's total sales in the POR to calculate the countervailable subsidy rate. On this basis, we calculated a preliminarily subsidy rate of less than 0.005 percent *ad valorem* for this program and, therefore, we did not include this program in our preliminary net countervailing duty rate, which is consistent with our past practice. *See e.g., Notice of Preliminary Results of Countervailing Duty Review: Certain Softwood Lumber Products from Canada*, 70 FR 33088, 33091 (June 7, 2005).

II. Programs Preliminarily Determined to Not Confer Subsidies During the POR

A. GOK Entrustment or Direction of Debt Reductions

In the investigation and the first administrative review, the Department determined that Hynix received countervailable subsidies from creditors that were entrusted or directed by the GOK to provide Hynix with financial support in the form of loans, debt–to-equity conversions and debt forgiveness. We reached these determinations on the basis of a two–part test: First, we determined that the GOK had in place a governmental policy to support Hynix's financial restructuring to prevent the company's failure. Second, we found that the GOK acted upon that policy through a pattern of practices to entrust or direct Hynix's creditors to provide financial contributions to Hynix. *See Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Dynamic Random Access Memory Semiconductors from the Republic of Korea*, June 16, 2003 ("*Investigation Decision Memorandum*") at 47–61 and *Issues and Decision Memorandum for the Final Results in the First Administrative Review of the Countervailing Duty Order on Dynamic Random Access Memory Semiconductors from the Republic of Korea*, March 14, 2006 ("*AR1 Decision Memorandum*") at 5–10. We also found that "this policy and pattern of practices continued throughout the entire restructuring process through its logical conclusion." *See Investigation Decision Memorandum* at 47–61. These findings covered the period through 2003.

According to Micron, the GOK's "policy to prevent Hynix's failure continued unabated beyond the original investigation into the first and second periods of review," and the GOK acted to ensure that Hynix's corporate and financial restructurings were carried out by Hynix's creditors during 2004. *See* Micron's January 12, 2005 submission at 13–15. As such, Micron contends, the GOK entrusted or directed Hynix's creditors to facilitate the sale of Hynix's assets, such as its System IC unit, by providing acquisition financing and by forgiving portions of Hynix's debt before and after the System IC sale.

The Department declined to investigate the alleged subsidies conferred by the sales of Hynix's assets in 2003 and 2004, but is investigating the alleged debt forgiveness that occurred before and after the System IC sale. *See New Subsidy Allegations Memorandum*, dated June 8, 2006. Specifically, the alleged subsidies that we are investigating in this review involve debt that was reduced as part of the following financial transactions: 1) Tranche A of the acquisition financing for the sale of the System IC unit to MagnaChip Semiconductor LLC ("MagnaChip"); 2) the October 2004 Cash Buyout ("CBO"); and 3) the December 2004 CBO. According to Micron, Hynix's creditors were entrusted or directed by the GOK to forgive debt as part of each of these financial transactions.

As in the investigation and the first administrative review, the question before the Department in this segment of the proceeding is whether the GOK entrusted or directed Hynix's creditors to provide financial contributions to Hynix in 2004, within the meaning of section 771(5)(B)(iii) of the Tariff Act of 1930, as amended ("the Act"). To answer that question, we applied the two–part test that we used in the investigation and first administrative review to determine whether the GOK entrusted or directed creditors to reduce Hynix's debt in 2004. As such, the focus of our analysis has been to determine whether the record evidence demonstrates that the GOK maintained its policy to save Hynix and that a pattern of GOK practices to implement such a policy existed during the period of review (*i.e.*, calendar year 2004).

In the final results of the first administrative review, the Department found that the nexus of Hynix's poor financial condition in 2002, the GOK's involvement in various solutions to Hynix's financial woes (including the possible sale of Hynix to Micron), the GOK's dominance of the Creditors' Council (through its ownership and control of various member–creditors), GOK threats towards Hynix's creditors, and various statements made by high–ranking GOK officials with respect to dealing with Hynix's troubles, among other things, demonstrated that the GOK entrusted or directed Hynix's creditors to participate in the December 2002 financial restructuring. *See AR1 Decision Memorandum* at 5–10 and Comment 1. Most of the evidence supporting the Department's finding was contemporaneous with Hynix's financial restructurings in 2002. The record evidence in this review, however, either fails to demonstrate that the GOK entrusted or directed Hynix's creditors in 2004 or relates to GOK actions that occurred prior to 2004.

First, the record evidence in this review demonstrates that the GOK–entrusted or -directed financial restructurings of Hynix in 2001 and 2002 largely achieved the GOK's objective of preventing Hynix's collapse by 2004. Specifically, the record evidence shows that Hynix's financial condition in 2004 was drastically improved in comparison to 2001 through 2003. For instance, Hynix consistently generated significant revenue, profit, and return on equity throughout 2004. *See* Hynix's June 30, 2006 supplemental questionnaire response at 4, 8–9, and Exhibit NA–3. In fact, Hynix reported a record net profit of 26 percent in 2004, in contrast to the double–digit negative profit margins that Hynix generated during 2001 through 2003. Similarly, Hynix reported a strong return on equity during 2004, as opposed to significant negative returns on equity during 2001 to 2003. *Id.* at 11 and Exhibit NA–3. As a result, the key financial measures that creditors turn to in their evaluations of credit risk were quite positive in 2004. *Id.* at 6–7 and Exhibit NA–1. *See also* Hynix's January 27, 2006 rebuttal factual information submission at Exhibits 28–30.

In addition, industry analysts held favorable views of Hynix throughout the POR. For example, Merrill Lynch

reported in October 2004 that "{w}e do not see any financial distress from Hynix." *See* Hynix's January 27, 2006 Rebuttal Factual Information at Exhibit 22. Additional evidence of Hynix's financial health in 2004 are in Hynix's January 27, 2006 Rebuttal Factual Information at Exhibits 3, 10, 19, 21, 26, 27, 33, and 35.

Thus, Hynix was no longer at risk of failure during the POR, as it was in prior years, which eliminated the principal motivation and basis for the GOK's past policy regarding Hynix.

Nevertheless, Micron has submitted various information as evidence that the GOK continued to entrust or direct Hynix's creditors to provide support for Hynix during the POR. For example, Micron cites to a July 2004 report from the Korea Development Bank ("KDB") to the Korean National Assembly's Committee on Finance and Economy as evidence that the GOK's policy to support Hynix continued in 2004. *See* Micron's January 12, 2006, New Subsidies Allegation ("*Initial Allegation*") at Exhibit 31. This report describes various activities of the KDB, which include "{w}ork toward 2004 key objectives of supporting government goals, such as balanced national development and building a Northeast Asian economic hub...," as well as, "{c}ontinue to push for corporate restructuring," and, "{a}s of June 2004, pushing for restructuring of 36 corporations through court receivership, joint management by creditor groups, etc." Id. at 11 and 16. The report identifies Hynix among the "affected companies" and "sale of business divisions" as the "restructuring method." *Id.* at 11 and 16. Although this document shows that the KDB supported the sale of Hynix's business divisions as part of the company's restructuring, we do not find that this document demonstrates that the GOK continued a policy to prevent Hynix's failure in 2004, or took actions to entrust or direct Hynix's other creditors to forgive debt in 2004.

Micron also points to a September 15, 2004 newspaper article entitled, "Revival of Government–Directed Banking," to show that the GOK continued to interfere in the lending decisions of Korean banks, and in the lending decisions of Hynix's creditors in particular. *See Initial Allegations* at Exhibit 64. According to this article,

> Government–directed banking has now been transformed from explicit to something implicit. Despite the very questionable legitimacy of government control, this transition is taking place under the banner touting 'soundness and transparency'...Interfering with the management of financial institutions through the willful enforcement of vague regulations and accounting standards is the newest form of government–directed banking, and it must be abolished...Jeong–tae Kim has...strongly objected to the recovery measures offered by the government on behalf of Hynix Semiconductor in 2001, SK Global in 2003, and LG Card earlier this year. *Id.*

While this article may serve as evidence of the GOK's well–documented actions to entrust or direct Korean banks to assist Korean companies in financial crisis, including Hynix in 2001, we do not consider this evidence of GOK entrustment or direction of Hynix's creditors in 2004. Moreover, we note that this article specifically identifies the GOK's involvement in Hynix's 2001 financial restructuring, but makes no mention of GOK entrustment or direction of Hynix's creditors in 2004.

Similarly, an April 5, 2005 Korea Times article, entitled "Too–Big-To–Fail Myth Dies Hard," reaffirms the Department's past findings regarding GOK entrustment or direction of Hynix's creditors, yet makes no mention of the GOK's policies or actions in 2004, with regard to Hynix:

> The government led the bailout of LG Card and Hynix Semiconductor to prevent them from triggering systemic risks over the past several years...Hynix is another sign of the government's intervention policy...The government's moves to direct banks to provide massive loans to Hynix from late 2000 to early 2002 are frankly not seen as credible by non–interested parties outside Korea. *Initial Allegations* at Exhibit 66.

Again, although we find that this article supports the Department's prior findings with respect to GOK entrustment or direction in 2001–2003, it fails to establish that the GOK entrusted or directed Hynix's creditors in 2004.

Other record evidence in this review relates to periods well before the POR and, therefore, does not pertain to the question of whether the GOK entrusted or directed Hynix's creditors to forgive debt in 2004. For example, Micron points to the January 8, 2003, "Meeting Agenda for the Ministers in the Economic Sector, Direction of Steering the Economy for Year 2003." This document indicates the GOK's plans to

> ...complete processing of pending cases of insolvent corporations at expeditious stage. To implement restructuring of insolvent corporations that have become the main issue of our economy with creditor group at the forefront. As for Hynix, business restructuring such as debt restructuring and sales shall be implemented more aggressively following the restructuring method that is confirmed through discussion of the creditor group. *Initial Allegation* at Exhibit 43.

Micron also cites to a January 9, 2003 newspaper article, which states, "{t}he Government will try to conclude dealing with insolvent companies including Hanbo Steel and Hynix Semiconductor as soon as possible, and improve the system to help create an environment for on–going corporate restructuring." *See Initial Allegation* at Exhibit 48. Although these documents clearly relate to the GOK's activities in 2003, there is no indication that they relate to the GOK's actions or policies towards Hynix in 2004. Additional examples of record evidence that do not relate to the GOK's actions or policies in 2004 are exhibits 47, 49, 50, and 51 of Micron's *Initial Allegation*.

In the first administrative review, the Department found that Hynix's Creditors' Council was dominated by GOK- owned or controlled banks, which were subject to significant GOK influence. We also found that the GOK influenced the remaining creditors through these banks. *See AR1 Decision Memorandum* at 10 and Section B and C of Comment 1. However, the record evidence in this review suggests that the GOK did not maintain its dominance of the Creditors' Council in 2004, because of the change in ownership of Korea Exchange Bank ("KEB") and the arrival of new, foreign–owned creditors on the Creditors' Council.

In September 2003, Lone Star, a Texas–based private equity firm, purchased a 51 percent ownership stake in KEB, and thus became the largest single shareholder in the bank. The GOK maintained a 20 percent ownership stake in KEB in 2003 and 2004. *See Initial Allegation* at Exhibit 56 and the August 7, 2006 Preliminary Calculations Memorandum at Attachment 3. Throughout 2003 and 2004, KEB's other foreign–owned shareholder, Commerzbank, maintained its ownership stake of just under 15 percent. Combined with Lone Star's ownership, KEB's total foreign ownership was approximately 65 percent in 2004. *Id.* By comparison, in 2002, the GOK was KEB's single largest shareholder (36 percent) and Commerzbank was the only foreign

shareholder. The Department found, "that through its ownership of KEB, the GOK was indeed able to, and did, influence KEB's credit decisions with respect to Hynix's financial restructurings in 2002." *See AR1 Decision Memorandum* at 34–35.

In prior segments of this proceeding, we found that the GOK was able to influence the lending decisions of Korea First Bank ("KFB"), despite the fact that a U.S. firm, Newbridge Capital, owned 51 percent of KFB. We based this finding, in part, on the GOK's 49 percent ownership stake in KFB. However, record evidence also demonstrated that the GOK threatened KFB to ensure that it participated in Hynix's 2001 financial restructuring. We also found that Commerzbank's 23.6 percent ownership of KEB in 2002 did not immunize KEB from GOK influence or control because the GOK was KEB's single largest shareholder. *See AR1 Decision Memorandum* at 34. The record evidence in this review, however, does not indicate that the GOK threatened, or otherwise entrusted or directed KEB to forgive Hynix's debt in 2004.

Micron cites to a newspaper article which states that "{Lone Star} has expressed its intention to separate the state–funded bank's {(*i.e.* KEB's)} ownership from management." *See Initial Allegation* at Exhibit 56. However, that same article quoted a market analyst's opinion that "the professional management may not easily pursue its own strategy and exclude the bank's largest shareholder," despite Lone Star's reported desire to separate ownership from management. *Id.* According to this article, "KEB appointed seven new outside directors, including five recommended by Lone Star following the acquisition," and that Lone Star was waiting to "announce its official position on management strategy after paying out its takeover money." *Id.*

As we stated in the *AR1 Decision Memorandum*, we considered creditors in which the GOK was the majority or single largest shareholder as GOK–owned or -controlled. *See AR1 Decision Memorandum* at Comment 1–C. Thus, given Lone Star's majority ownership of KEB and significant presence on KEB's board of directors, coupled with Commerzbank's continuing minority stake in KEB, we find that in 2004 the KEB was no longer a GOK–owned or -controlled creditor. As a result, the GOK no longer had the same ability to influence or control KEB's lending decisions as it did in prior periods.

The GOK also no longer held a controlling majority of the voting rights on Hynix's Creditors' Council. In fact, the voting rights held by GOK–owned or -controlled creditors in 2004 did not even constitute a majority of the votes on the Creditors' Council. *See* the Department's August 7, 2006 Preliminary Calculations Memorandum at Attachment 3. Therefore, we find that the GOK–owned or -controlled banks no longer dominated the Creditors' Council. Thus, even if the GOK did continue to have a policy to save Hynix in 2004 (and, as we indicated above, the record evidence does not show that they did), a key factor that permitted the GOK to effectuate such a policy - control of the Creditors' Council - was no longer in place in 2004.

In sum, Hynix's improved financial situation in 2004, the lack of evidence demonstrating a GOK policy or pattern of practices to entrust or direct Hynix's creditors to provide financial assistance to Hynix in 2004, and the GOK's lack of sufficient voting rights to dominate the Creditors' Council in 2004 lead us to conclude that the GOK did not entrust or direct Hynix's creditors to reduce or forgive Hynix's debt in 2004. We also note that, unlike prior segments of this proceeding, the record in this review contains no evidence that the GOK threatened or otherwise pressured Hynix's creditors during 2004. Therefore, we preliminarily find that debt reductions or debt forgiveness Hynix received from non–GOK entities in 2004 are not countervailable.

In prior segments of this proceeding, we have distinguished between those banks found to be "government authorities" within the meaning of section 771(5)(B) the Act, and banks found to be "entrusted or directed" by the GOK within the meaning of section 771(5)(B)(iii) of the Act. *See AR1 Decision Memorandum* at 6–7. The record information in this review does not show any new evidence or changed circumstances that would lead us to revisit our prior determinations that the KDB and other "specialized" banks are government authorities and that the financial contributions made by these entities fall within the meaning of section 771(5)(B)(i) of the Act. Therefore, although we have preliminarily determined that the GOK did not entrust or direct non–GOK entities to provide financial contributions in 2004, we must further address whether government authorities provided countervailable subsidies. For the reasons discussed below, we preliminarily find that the debt reductions provided by the KDB and other GOK entities in connection with the financial transactions newly alleged and under investigation in this review do not confer countervailable subsidies.

Tranche A of the Acquisition Financing for the Sale of the System IC Unit to MagnaChip

Record information indicates that in July 2004, Hynix's Creditors' Council agreed to provide acquisition financing for MagnaChip's purchase of the System IC unit from Hynix. Concurrently, the Creditors' Council agreed to the terms for the October CBO. *See* Hynix's March 30, 2006 submission at Exhibit 9. Tranche A of the System IC acquisition financing involved the transfer of new loans received by Hynix and previously existing loans from Hynix to MagnaChip. The total debt transferred to MagnaChip under Tranche A was KRW 154.9 billion, which formed part of the purchase price MagnaChip paid for System IC. Hynix also reported that, prior to the transfer of the existing loans, Hynix's creditors reduced the original debt amount through an application process established by the Creditors' Council. According to Micron, this debt reduction constitutes a direct transfer of funds in the form of debt forgiveness, within the meaning of section 771(5)(D)(ii) of the Act.

No GOK entities participated in Tranche A financing. Instead, the banks that agreed to discount the Hynix debt that was transferred to MagnaChip were wholly–owned foreign banks or non–GOK entities. Absent GOK entrustment or direction to participate in Tranche A financing, any debt reductions provided by these creditors do not constitute a financial contribution and, therefore, are not countervailable. *See* Hynix's March 30, 2006 supplemental questionnaire response at 6. Consequently, we focused our analysis on the October and December CBOs, in which the Korean government authorities did participate.

The October and December CBOs

According to Hynix, the expected cash proceeds from the System IC sale and income from its normal business operations enabled Hynix to repay numerous outstanding loans in 2004, prior to their maturity.[1] These repayments were made under the October CBO, which occurred concurrently with the System IC sale and Tranche A acquisition financing. Hynix also repaid debt early and at a discount under the December CBO, which occurred after the System IC sale. *See* Hynix's March 30, 2006 submission at 5–8 and Exhibit 9. *See also* Hynix's

[1] We note that all of the loans affected by these early repayments are loans that the Department has previously found to have been provided to Hynix at the entrustment or direction of the GOK.

June 30, 2006 submission at Exhibit NA–9.

The terms of the October CBO included a maximum cash buyout rate of 70% for unsecured loans and a fixed cash buyout rate of 96% for secured loans. In other words, the Creditors' Council established maximum early payment discounts of 30 percent and 4 percent on unsecured and secured loans, respectively. The Creditors' Council also established a target amount for repayment for the entire CBO, limitations on the amount of secured debt that would be repaid under the CBO, and a hierarchy of loans that were eligible for the CBO. *See* Hynix's March 30, 2006 submission at 5–8 and Exhibit 9. *See also* Hynix's June 30, 2006 submission at Exhibit NA–9.

In addition, the Creditors' Council established a bidding process under which each creditor would bid or apply to participate in the CBO. Therefore, the types of debt repaid under the CBO would largely depend on which creditors applied to participate in the CBO and the type of debt that they held. According to the terms set by the Creditors' Council, the discount rates for the October CBO applied equally to all participating creditors, even though some creditors offered discount rates greater than 30 percent on unsecured debt. *See* Hynix's March 30, 2006 submission at 5–8 and Exhibit 9. *See also* Hynix's June 30, 2006 submission at Exhibit NA–9.

Similarly, Hynix repaid existing loans prior to their maturity under the December CBO at a discount. According to Hynix, the discount rates for the December CBO were established by Hynix, not the Creditors' Council. (However, the discount rates were similar to the rates for the October CBO.) Like the October CBO, the December CBO relied upon an application process under which creditors applied to participate and identified the types of loans that they wanted repaid by Hynix. *See* Hynix's June 30, 2006 submission at Exhibits NA–11 and NA–12.

We preliminarily determine that the October and December CBOs were early repayment plans under which creditors could exchange loans with a maturity in 2006 for a discounted amount (*i.e.*, cash) in 2004. We further preliminarily determine that the discounts taken by the participating creditors do not constitute debt forgiveness, as described in section 351.508 of the Department's regulations. Instead, the discounts reflect the value to Hynix of repaying the loans and the value to its creditors of obtaining repayment prior to the scheduled maturity of the loans. Thus, the issue we need to address is whether the terms of repayment of these loans conferred a benefit on Hynix.

According to section 771(5)(E)(ii) of the Act, a benefit is conferred from a loan "if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Under the CBOs, the amount that Hynix paid on the loans was determined by the discount rates its creditors were willing to accept. Therefore, whether a benefit was conferred on Hynix as a result of the CBOs depends on whether the repayment terms on the loans held by government authorities differed from the repayment terms on the loans held by commercial lenders.

For the reasons explained below, we preliminarily determine that there was significant participation by commercial creditors in the CBOs, that the Korean government authorities participated on the same terms as the commercial creditors and, consequently, that Hynix received no benefit from early repayment of its debt at a discount.

In the investigation and first administrative review, we found that wholly–owned foreign creditors operating in Korea, such as Citibank, were not entrusted or directed by the GOK to participate in government–led bailouts of Hynix. As such, these wholly–owned foreign banks could have been used as commercial benchmarks, although they were not used because their portion of the loans and equity infusions being reviewed was so small. *See AR1 Decision Memorandum* at Comments 5 and 6. In the instant review, wholly–owned foreign creditors accounted for over 30 percent and 80 percent of the discounted debt in the October and December CBOs, respectively. On an aggregate basis, wholly–owned foreign creditors accounted for over 40 percent of the debt discounted under the two CBOs. *See* the August 7, 2006 Preliminary Calculations Memorandum at Attachment 3. Therefore, we find that the wholly–owned foreign creditors held a significant portion of the debt discounted in the October and December CBOs.

With regard to Citibank, we acknowledge that in the first administrative review, we cited an additional reason for not using Citibank as a commercial benchmark: although we did not find Citibank to be entrusted or directed by the GOK *per se*, we found that GOK influence extended to Citibank during the POR of the first administrative review because of the GOK's dominance of the Creditors' Council. *See AR1 Decision Memorandum* at Comment 6. However, as discussed above, the GOK no longer dominated the Creditors' Council in 2004. Consequently, a key factor we previously found to have given the GOK the ability to influence Hynix's other creditors - control of the Creditors' Council - was no longer present in 2004. Moreover, the Department finds no other record evidence in the present review indicating that Citibank's participation in the October or December 2004 CBOs was subject to GOK influence.

We further determine that the government authorities and the wholly–owned foreign banks participated in the October and December CBOs on the same terms. As noted above, creditors were free to apply for early repayment, and the discount rates in the CBOs applied equally to all participants.

Therefore, we preliminarily find that Hynix's early repayments of debt to GOK entities at a discount do not confer a benefit on Hynix and, consequently, are not countervailable. We further note that even if the Department were to find that the GOK entrusted or directed Hynix's creditors to participate in the CBOs, such financial contributions to Hynix would not constitute countervailable subsidies because the participation by Citibank and other wholly–owned foreign banks on identical terms means the no benefit is conferred on Hynix.

Specificity

With regard to any benefits attributable to the current POR, because we have found that the GOK did not entrust or direct Hynix's creditors to forgive debt in 2004, and that debt reductions provided by GOK entities in 2004 did not confer a benefit to Hynix, we need not address the issue of specificity with respect to those alleged subsidies.

With regard to earlier subsidies that we have previously examined, the Department determined in the investigation that the GOK entrusted or directed credit to the semiconductor industry through 1998. *See Investigation Decision Memorandum* at 12–21. For the period 1999 through June 30, 2002, the Department determined that the subsidies were specific to Hynix under section 771(5A)(D)(iii) of the Act because the GOK's entrustment or direction to provide financial contributions, and the benefits thereby conferred, involved current or former Hyundai Group companies, and Hynix in particular. *Id.* at 17–19. In the first administrative review, the Department

found the December 2002 restructuring was *de facto* specific to Hynix within the meaning of section 771(5A)(D)(iii)(I) of the Act. *See AR1 Decision Memorandum* at 10–11.

Nothing on the record of this review would lead us to reconsider these prior specificity findings.

III. Programs Previously Found Not to Have Been Used or Provided No Benefits

We preliminarily determine that the following programs were not used during the POR: *See* Hynix's December 22, 2005, Questionnaire Response at 24 and the GOK's December 22, 2005, Questionnaire Response at 13.

A. Short–term Export Financing
B. 1.Tax Programs Under the TERCL and/or the RSTA
2. Tax Credit for Investment in Facilities for Productivity Enhancement (Article 25 of RSTA/ Article 25 of TERCL)
3. Tax Credit for Investment in Facilities for Special Purposes (Article 25 of RSTA)
4. Reserve for Overseas Market Development (formerly, Article 17 of TERCL)
5. Reserve for Export Loss (formerly, Article 16 of TERCL)
6. Tax Exemption for Foreign Technicians (Article 18 of RSTA)
7. Reduction of Tax Regarding the Movement of a Factory That Has Been Operated for More Than Five Years (Article 71 of RSTA)
C. Tax Reductions or Exemption on Foreign Investments under Article 9 of the Foreign Investment Promotion Act ("FIPA")/ FIPA (Formerly Foreign Capital Inducement Law)
D. Duty Drawback on Non–Physically Incorporated Items and Excessive Loss Rates
E. Export Insurance
F. Electricity Discounts Under the RLA Program
G. System IC 2010 Project

In the first administrative review, the Department found that "any benefits provided to Hynix under the System IC 2010 Project are tied to non–subject merchandise" and, therefore, that "Hynix did not receive any countervailable benefits under this program during the POR," in accordance with 19 CFR 351.525(b)(5). *See AR1 Decision Memorandum* at 15. No new information has been provided with respect to this program. Therefore, we preliminarily find that Hynix did not receive any countervailing benefits from the System IC 2010 Project during the POR.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for Hynix Semiconductor, Inc., the producer/ exporter covered by this administrative review. We preliminarily determine that the total estimated net countervailable subsidy rate for Hynix for calendar year 2004 is 31.86 percent *ad valorem*.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct CBP, within 15 days of publication of the final results of this review, to liquidate shipments of DRAMS by Hynix entered or withdrawn from warehouse, for consumption from January 1, 2004, through December 31, 2004, at 31.86 percent *ad valorem* of the F.O.B. invoice price.

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties at 31.86 percent *ad valorem* of the F.O.B. invoice price on all shipments of the subject merchandise from Hynix, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

We will instruct CBP to continue to collect cash deposits for non–reviewed companies covered by this order at the most recent company–specific rate applicable to the company. Accordingly, the cash deposit rate that will be applied to non–reviewed companies covered by this order will be the rate for that company established in the investigation. *See Notice of Amended Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 44290 (July 28, 2003). The "all others" rate shall apply to all non–reviewed companies until a review of a company assigned this rate is requested. The Department has previously excluded Samsung Electronics Co., Ltd. from this order. *Id.*

Public Comment

Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this Notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing the case briefs. Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice. Unless otherwise specified, the hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 7, 2006.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E6–13167 Filed 8–10–06; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Visiting Committee on Advanced Technology.

SUMMARY: NIST invites and requests nomination of individuals for appointment to the Visiting Committee on Advanced Technology (VCAT). The terms of some of the members of the VCAT will soon expire. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before August 28, 2006.

ADDRESSES: Please submit nominations to Carolyn Peters, Administrative Coordinator, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1000, Gaithersburg, MD 20899–1000. Nominations may also be submitted via FAX to 301–869–8972.

Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic home page at: *http://www.nist.gov/director/vcat/vcat.htm.*

FOR FURTHER INFORMATION CONTACT: Carolyn Peters, Administrative Coordinator, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1000, Gaithersburg, MD 20899–1000,

telephone 301–975–5607, fax 301–869–8972; or via E-mail at *carolyn.peters@nist.gov.*

SUPPLEMENTARY INFORMATION:

VCAT Information

The VCAT was established in accordance with 15 U.S.C. 278 and the Federal Advisory Committee Act (5 U.S.C. app. 2).

Objectives and Duties

1. The Committee shall review and make recommendations regarding general policy for NIST, its organization, its budget, and its programs, within the framework of applicable national policies as set forth by the President and the Congress.

2. The Committee functions solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.

3. The Committee shall report to the Director of NIST.

4. The Committee shall provide a written annual report, through the Director of NIST, to the Secretary of Commerce for submission to the Congress on or before January 31 each year. Such report shall deal essentially, though not necessarily exclusively, with policy issues or matters which affect the Institute, or with which the Committee in its official role as the private sector policy adviser of the Institute is concerned. Each such report shall identify areas of research and research techniques of the Institute of potential importance to the long-term competitiveness of United States industry, which could be used to assist United States enterprises and United States industrial joint research and development ventures. The Committee shall submit to the Secretary and the Congress such additional reports on specific policy matters as it deems appropriate.

Membership

1. The Committee is composed of fifteen members that provide representation of a cross-section of traditional and emerging United States industries. Members shall be selected solely on the basis of established records of distinguished service and shall be eminent in one or more fields such as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. No employee of the Federal Government shall serve as a member of the Committee.

2. The Director of the National Institute of Standards and Technology shall appoint the members of the Committee, and they will be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance.

Miscellaneous

1. Members of the VCAT are not paid for their service, but will, upon request, be allowed travel expenses in accordance with 5 U.S.C. 5701 *et seq.*, while attending meetings of the Committee or of its subcommittees, or while otherwise performing duties at the request of the chairperson, while away from their homes or a regular place of business.

2. Meetings of the VCAT take place at the NIST headquarters in Gaithersburg, Maryland, and once each year at the NIST headquarters in Boulder, Colorado. Meetings are one or two days in duration and are held quarterly.

3. Committee meetings are open to the public.

Nomination Information

1. Nominations are sought from all fields described above.

2. Nominees should have established records of distinguished service and shall be eminent in fields such as business, research, new product development, engineering, labor, education, management consulting, environment and international relations. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledge the responsibilities of serving on the VCAT, and will actively participate in good faith in the tasks of the VCAT. Besides participation in two-day meetings held each quarter, it is desired that members be able to devote the equivalent of two days between meetings to either developing or researching topics of potential interest, and so forth in furtherance of their Committee duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse VCAT membership.

Dated: August 3, 2006.

James E. Hill,

Acting Deputy Director.

[FR Doc. E6–13157 Filed 8–10–06; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership National Advisory Board

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Manufacturing Extension Partnership National Advisory Board.

SUMMARY: NIST invites and requests nomination of individuals for appointment to the Manufacturing Extension Partnership National Advisory Board. NIST will consider nominations received in response to this notice for appointment to the Board, in addition to nominations already received.

DATES: Please submit nominations on or before August 28, 2006.

ADDRESSES: Please submit nominations to Ms. Karen Lellock, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, MD 20899–4800. Nominations may also be submitted via fax to 301–963–6556.

Additional information regarding the Board, including its charter and current membership list may be found on its electronic home page at: *http://www.mep.nist.gov/index-nist.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Karen Lellock, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, MD 20899–4800; telephone 301–975–4269, fax 301–963–6556; or via e-mail at *karen.lellock@nist.gov.*

SUPPLEMENTARY INFORMATION: The Board will advise the Director of the National Institute of Standards and Technology (NIST) on MEP programs, plans, and policies.

The Board will consist of five to eleven individuals appointed by the Director of the National Institute of Standards and Technology (NIST) under the advisement of the Director of MEP. Membership on the Board shall be balanced to represent the views and needs of customers, providers, and others involved in industrial extension throughout the United States.

The Board will function solely as an advisory body, in compliance with the provisions of the Federal Advisory Committee Act.

Authority: Federal Advisory Committee Act: 5 U.S.C. App. 2 and General Services Administration Rule: 41 CFR subpart 101–6.10.

Dated: August 3, 2006.

James E. Hill,

Acting Deputy Director.

[FR Doc. E6–13159 Filed 8–10–06; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF DEFENSE

[DOD–2006–OS–0178]

Defense Logistics Agency; Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 11, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on June 9, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 7, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S500.10 DLA–I

SYSTEM NAME:

Personnel Security Files (November 16, 2004, 69 FR 67112).

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete "DLA–I" from entry.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with: "Public Safety Office, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6220, fort Belvoir, VA 22060–6221 and Public Safety Offices of the Defense Logistics Agency Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Add "contractors" to entry.

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with: "Individual's name, Social Security Number, home address and telephone number, and personal history statements; evidence of security eligibility determinations and security clearance granted to individuals; report of investigations conducted by investigative agencies and organizations; and certifications of security briefings and debriefings signed by individuals."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with: "5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; E.O. 10450, Security Requirements for Government Employment; E.O. 12958, Classified National Security Information; DoD Regulation 5200.2, DoD Personnel Security Program; and E.O. 9397 (SSN)."

PURPOSE(S):

Delete entry and replace with: "Records are used for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, federal contracts, or access to classified information. DLA Security Managers, supervisors, and management officials use the records to determine whether an individual is eligible to occupy a sensitive position and/or have been cleared for or granted access to classified information."

* * * * *

STORAGE:

Add "electronic storage media" to entry.

RETRIEVABILITY:

Add "Social Security Number" to entry.

SAFEGUARDS:

Delete entry and replace with: "Access is limited to those individuals who require the records for the performance of their official duties. Paper records are maintained in buildings with controlled or monitored access. During non-duty hours, records are secured in locked or guarded buildings, locked offices, and/or locked or guarded cabinets. The electronic records system employs user identification and password or smart card technology protocols."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with: "Chief, Personnel Security, Headquarters, Defense Logistics Agency, ATTN: DES–SC, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221; and the Personnel Security Specialists of the DLA Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices."

NOTIFICATION PROCEDURE:

Delete entry and replace with: "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221."

Requests should contain the subject individual's full name, Social Security Number, date and place of birth, current address, and telephone number.

RECORD ACCESS PROCEDURES:

Delete entry and replace with: "Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221."

Requests should contain the subject individual's full name, Social Security Number, date and place of birth, current address, and telephone number.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format. The unsworn declaration statement must be signed and dated.

If executed within the United States, its territories, possessions, or commonwealths the statement must read: 'I declare under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

If executed outside the United States, its territories, possessions, or commonwealths the statement must read: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."'

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Information is provided by the record subject or from investigative reports."

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with "Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identify of a confidential source.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3)(c) and (e) and published in 32 CFR part 323. For additional information contact the system manager."

* * * * *

S500.10

SYSTEM NAME:

Personnel Security Files.

SYSTEM LOCATION:

Public Safety Office, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221 and Public Safety Offices of the Defense Logistics Agency Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian employees, military personnel and contractors who have been the subject of a National Agency Check with Written Inquiries (NACI); a Background Investigation (BI); Special Background Investigation (SBI); or other personnel security investigation pertaining to their qualifications and eligibility to occupy sensitive positions, perform sensitive duties, or for access to classified information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, home address and telephone number, and personal history statements; evidence of security eligibility determinations and security clearances granted to individuals; reports of investigations conducted by investigative agencies and organizations; and certifications of security briefings and debriefings signed by individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; E.O. 10450, Security Requirements for Government Employment; E.O. 12958, Classified National Security Information; DoD Regulation 5200.2, DoD Personnel Security Program; and E.O. 9397 (SSN).

PURPOSE(S):

Records are used for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, federal contracts, or access to classified information. DLA Security Managers, supervisors, and management officials use the records to determine whether an individual is eligible to occupy a sensitive position and/or have been cleared for or granted access to classified information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Records are retrieved alphabetically by name and Social Security Number.

SAFEGUARDS:

Access is limited to those individuals who require the records for the performance of their official duties. Paper records are maintained in buildings with controlled or monitored access. During non-duty hours, records are secured in locked or guarded buildings, locked offices, and/or locked or guarded cabinets.

The electronic records system employs user identification and password or smart card technology protocols.

RETENTION AND DISPOSAL:

Records of security eligibility determinations, evidence of security clearances and related documents are retained as long as the person is employed or assigned to DLA. After the person leaves DLA, the reports are placed in an inactive file for two years, and then destroyed. Reports of investigations are destroyed 90 days after a security eligibility determination is made.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Personnel Security, Headquarters, Defense Logistics Agency, ATTN: DES–SC, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221; and the Personnel Security Specialists of the DLA Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

Requests should contain the subject individual's full name, Social Security Number, date and place of birth, current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained

in this system should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

Requests should contain the subject individual's full name, Social Security Number, date and place of birth, current address, and telephone number.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format. The unsworn declaration statement must be signed and dated.

If executed within the United States, its territories, possessions, or commonwealths the statement must read: 'I declare under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

If executed outside the United States, its territories, possessions, or commonwealths the statement must read: 'I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DES–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Information is provided by the record subject or from investigative reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3)(c) and (e) and published in 32 CFR part 323. For additional information contact the system manager.

[FR Doc. 06–6847 Filed 8–10–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the U.S. Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 6,989,749: ELECTRONIC CHECK OUT SYSTEM.

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice.

ADDRESSES: Requests for copies of the patents cited should be directed to: Naval Air Warfare Center Weapons Division, Code 498400D, 1900 N. Knox Road Stop 6312, China Lake, CA 93555–6106, and must include the patent number.

FOR FURTHER INFORMATION CONTACT: Michael D. Seltzer, Ph.D., Head, Technology Transfer Office, Naval Air Warfare Center Weapons Division, Code 498400D, 1900 N. Knox Road Stop 6312, China Lake, CA 93555–6106, telephone 760–939–1074 or e-mail *michael.seltzer@navy.mil.*

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: August 3, 2006.

Saundra K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. E6–13128 Filed 8–10–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry as the Board shall deem necessary into the state of morale and discipline curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The meeting will include discussions of personnel issues at the Naval Academy, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on Monday, September 25, 2006, from 8 a.m. to 10 a.m. The closed executive session will be held from 10 a.m. to 1 p.m.

ADDRESSES: The meeting will be held in the Lyndon B. Johnson Room at the U.S. Capitol, Washington DC.

FOR FURTHER INFORMATION CONTACT: Major Craig C. Clemans, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000, telephone 410–293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of personnel issues at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Secretary of the Navy has determined in writing that the meeting shall be partially closed to the public because it will be concerned with matters listed in section 552b(c)(2), (5), (6), (7) and (9) of title 5, United States Code.

Dated: August 3, 2006.

Saundra K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. E6–13127 Filed 8–10–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 11, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New

Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 8, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Application for the Ronald E. McNair Postbaccalaureate Achievement Program.

Frequency: Annually; competitive year.

Affected Public: Not-for-profit institutions; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 75.

Burden Hours: 2,550.

Abstract: The application form is needed to conduct a national competition for the Fiscal Year 2007 for the Ronald E. McNair Postbaccalaureate Achievement Program. The program provides grants to institutions of higher education and combinations of such institutions to establish and operate projects designed to provide disadvantaged college students with effective preparation for doctoral study.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 3168. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 06–6850 Filed 8–10–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Intent To Compromise Claim Against the State of Michigan State Department of Corrections

AGENCY: Department of Education.

ACTION: Notice of intent to compromise a claim with request for comments.

SUMMARY: The U.S. Department of Education (Department) intends to compromise a claim against the Michigan State Department of Corrections (MDC) now pending before the Office of Administrative Law Judges (OALJ), Docket No. 05–37–R. Before compromising the claim, the Department must publish its intent to do so in the **Federal Register** and provide the public an opportunity to comment on that action (20 U.S.C. 1234a(j)).

DATES: We must receive your comments on the proposed action on or before September 25, 2006.

ADDRESSES: Address all comments concerning the proposed action to John R. Mason, Esq., Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 6E112, Washington, DC 20202–2110.

FOR FURTHER INFORMATION CONTACT: John R. Mason, Esq. Telephone (202) 401–6057. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in alternative format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding this proposed action. During and after the comment period, you may inspect all public comments in room 6E112, FB–6, 400 Maryland Avenue, SW., Washington, DC between the hours of 8:30 a.m. and 4 p.m. Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing Comments

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

The claim in question arose when the Department's Assistant Deputy Secretary for Safe and Drug-Free Schools issued a program determination letter (PDL) on April 29, 2005. The PDL demanded a refund of $114,923 of funds awarded to the MDC by the Department under the Youth Offenders program for fiscal years 2001 through 2003. This program, authorized by 20 U.S.C. 1151, provides State grants for workplace and community transition training for incarcerated youth offenders. The Assistant Deputy Secretary determined that a total of $114,923 had been misspent for inappropriate space rental charges, excess costs for materials and textbooks, and payments for classes not begun by certain prisoners.

MDC filed a timely request for review of the PDL with the OALJ. The Administrative Law Judge suspended proceedings so that the parties could discuss settlement. During settlement discussions, the MDC provided the Assistant Deputy Secretary additional documentation and materials for review. After consideration of those materials, the Department proposes to compromise the claim of $114,923 for $78,965, nearly sixty-nine percent of the amount the Assistant Deputy Secretary disallowed in the PDL.

Based on the amount that would be repaid by MDC, the additional materials and documentation submitted by MDC while this appeal has been pending before the OALJ, and litigation risks and costs of proceeding through the administrative, and possibly, court

process for this appeal, the Department has determined that it would not be practical or in the public interest to continue this proceeding. Rather, under the authority in 20 U.S.C. 1234a(j), the Department has determined that compromise of this claim for a refund of $78,965 is appropriate. The public is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by calling or writing to John R. Mason, Esq. at the telephone number listed under **FOR FURTHER INFORMATION CONTACT** or the address listed under **ADDRESSES**.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1234a(j).

Dated: August 9, 2006.

Lawrence A. Warder,

Chief Financial Officer.

[FR Doc. 06–6887 Filed 8–10–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services Overview Information; Personnel Development To Improve Services and Results for Children With Disabilities—Preparation of Leadership Personnel; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.325D.

Dates: Applications Available: August 11, 2006.

Deadline for Transmittal of Applications: October 10, 2006.

Deadline for Intergovernmental Review: December 11, 2006.

Eligible Applicants: Institutions of higher education (IHEs).

Estimated Available Funds: The Administration has requested $90,626,000 for the Personnel Development to Improve Services and Results for Children with Disabilities program for FY 2007, of which we intend to use an estimated $4,800,000 for the Preparation of Leadership Personnel competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $171,969—200,000.

Estimated Average Size of Awards: $196,200.

Maximum Award: We will reject any application that proposes a budget exceeding $200,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 24.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for highly qualified personnel—in special education, related services, early intervention, and regular education—to work with infants or toddlers with disabilities, or children with disabilities; and (2) ensure that those personnel have the skills and knowledge—derived from practices that have been determined through research and experience to be successful—that are needed to serve those children.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 662(d) and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2007 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Preparation of Leadership Personnel

This priority supports and is limited to projects that train personnel at the preservice doctoral or postdoctoral level in early intervention, special education or related services and at the advanced graduate level (masters and specialists) in special education administration/supervision. In order to be eligible under this priority, programs must provide training and support for scholars to complete their training within the performance period of the grant.

Therefore, only the following types of programs of study will meet the requirements of this priority:

1. A major in special education, related services or early intervention at the doctoral or post-doctoral level; and

2. Training at the advanced graduate level (masters and specialists programs) in special education administration/supervision.

Note: Training that leads to a Doctor of Audiology (D Aud) degree is not included as part of this priority because training programs that lead to a D Aud degree are eligible to apply for funding under the Combined Priority for Personnel Preparation competition (CFDA 84.325K) announced in a notice inviting applications published elsewhere in this issue of the **Federal Register**.

Projects funded under this absolute priority must—

(a) Demonstrate, in the narrative section of the application under "Quality of Project Services," how—

(1) The program prepares personnel to address the specialized needs of children with disabilities from diverse cultural and language backgrounds, including limited English proficient children with disabilities, by—

(i) Identifying the competencies needed by leadership personnel to understand and work with culturally and linguistically diverse populations (the competencies identified should reflect the current knowledge base); and

(ii) Preparing personnel to use those competencies through early intervention, special education, and related services training programs;

(2) All relevant coursework for the proposed program reflects current research and pedagogy on—

(i) Participation and achievement in the general education curriculum and improved outcomes for children with disabilities; and

(ii) The provision of coordinated services in natural environments to improve outcomes for infants and toddlers with disabilities and their families;

(3) The program offers integrated training and practice opportunities that will enhance the collaborative competencies of all personnel who share responsibility for providing effective services for children with disabilities;

(4) For programs that train personnel in early intervention, special education or related services, the program ensures

that scholars are knowledgeable about: (i) The provisions of the No Child Left Behind Act of 2001 (NCLB); (ii) the IDEA and NCLB requirement that teachers be highly qualified; and (iii) the need to foster collaboration between regular and special education teachers;

(5) The proposed training program is aligned with State academic content standards for children, if applicable;

(b) Submit annual data on each scholar who receives grant support. Projects funded under this priority must submit this scholar data electronically within 60 days after the end of each grant budget year. Applicants are encouraged to visit the Personnel Prep Data (PPD) Web site at *http://www.osepppd.org* for further information. This data collection is in addition to and does not supplant the annual grant performance report required of each grantee for continuation funding (see 34 CFR 75.590);

(c) Budget for a three-day Project Director's meeting in Washington, DC, during each year of the project;

(d) If the project maintains a Web site, include relevant information and documents in a format that meets a government or industry-recognized standard for accessibility;

(e) Provide a detailed description of the program, including the sequence of the courses offered in the program that describes the comprehensive curriculum designed to meet program goals and obtain mastery of the following required professional domains:

(1) Research methodology.

(2) Personnel preparation.

(3) Policy/advocacy or professional practice;

(f) Include, in the application narrative under "Quality of Project Evaluation", a clear and effective plan for evaluating the extent to which graduates of the training program have the knowledge and competencies necessary to provide research-based instruction and services that result in improved outcomes for children with disabilities;

(g) Communicate the results of the evaluation conducted in accordance with paragraph (f) of this priority to the Office of Special Education Programs (OSEP) in required annual performance reports for continuation funding and the project final performance report;

(h) Certify that all scholars will be recruited into the program with the intention of graduating from the program during the performance period of the grant;

(i) Certify that the institution will not require scholars recruited into the program to work as a condition of receiving a scholarship, *e.g.*, as graduate assistants, unless the work is required to complete their training program;

(j) If the program is addressing national or regional needs, demonstrate the existence of the needs through appropriate research data; and

(k) Designate at least 65 percent of the total requested budget for scholarship support or provide justification for any designation less than 65 percent. Examples of sufficient justification for proposing less than 65 percent of the budget for scholarship support might include:

- A project servicing rural areas that provides long distance training, and that may require Web Masters, adjunct professors, or mentors to operate effectively.
- A project that is expanding or adding a new emphasis area to the program, and as a result of this expansion, may need additional faculty or other resources such as expert consultants, additional training supplies, or equipment that would enhance the program.

Please note that projects funded to develop, expand, or add a new area of emphasis to special education or related services programs must provide information on how these new areas will be sustained once Federal funding ends.

Statutory Requirements: To be considered for an award, an applicant must also satisfy the following requirements contained in section 662(e) through (h) of IDEA—

(a) Demonstrate that the activities described in the application will address needs identified by the State or States the applicant proposes to serve and that the State or States intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards or other requirements in State law or regulation for serving children with disabilities or serving infants and toddlers with disabilities (see sections 662(e)(2)(A) and 662(f)(2) of IDEA). Letters from the State or States that the project proposes to serve could be one method for addressing this requirement;

(b) Demonstrate that the applicant will cooperate with one or more State educational agencies—or, if appropriate, State appointed lead agencies responsible for providing early intervention services—or local educational agencies in carrying out and monitoring the proposed project (see section 662(e)(2)(B) of IDEA);

(c) Meet State and professionally recognized standards for the preparation of leadership personnel in special education, related services, or early intervention fields (see section 662(f)(2) of IDEA); and

(d) Ensure that individuals who receive financial assistance under the project agree to pay all or part of the amount of the scholarship, in accordance with section 662(h)(1) of IDEA and 34 CFR part 304. Applicants must describe how they will inform scholarship recipients of this service obligation requirement.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of the IDEA makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1462 and 1481.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 304.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $90,626,000 for the Personnel Development to Improve Services and Results for Children with Disabilities program for FY 2007, of which we intend to use an estimated $4,800,000 for the Preparation of Leadership Personnel competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $171,969–$200,000.

Estimated Average Size of Awards: $196,200.

Maximum Award: We will reject any application that proposes a budget exceeding $200,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 24.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.325D.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under *For Further Information Contact* in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: August 11, 2006.

Deadline for Transmittal of Applications: October 10, 2006.

Applications for grants under this competition may be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements. Deadline for Intergovernmental Review: December 11, 2006.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications. We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new governmentwide *Grants.gov* Apply site in FY 2007. Preparation of Leadership Personnel—CFDA Number 84.325D is one of the competitions included in this project. We request your participation in *Grants.gov.*

If you choose to submit your application electronically, you must use the *Grants.gov* Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Preparation of Leadership Personnel competition—CFDA Number 84.325D at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in *Grants.gov* is voluntary.
- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the *Grants.gov* system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the *Grants.gov* system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from *Grants.gov,* we will notify you if we are rejecting your application because it was date/time stamped by the *Grants.gov* system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through *Grants.gov.*
- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this competition to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via *Grants.gov,* you must complete all of the steps in the *Grants.gov* registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the *Grants.gov* 3-Step Registration Guide (see *http://www.grants.gov/section910/GrantsgovRegistrationBrochure.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via *Grants.gov.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text) or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The Department will retrieve your application from *Grants.gov* and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under *For Further Information Contact,* and provide an explanation of the technical problem you experienced with *Grants.gov,* along with the *Grants.gov* Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.325D), 400 Maryland Avenue, SW., Washington, DC 20202–4260 or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.325D), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

US Department of Education,
Application Control Center,
Attention: (CFDA Number 84.325D),
550 12th Street, SW., Room 7041,
Potomac Center Plaza, Washington,
DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note: *Note for Mail or Hand Delivery of Paper Applications:*

If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Treating a Priority as Two Separate Competitions:* In the past, there have been problems in finding peer reviewers without conflicts of interest for competitions in which many entities throughout the country submit applications. The Standing Panel requirements under IDEA also have

placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary competitions, applications may be separated into two or more groups and ranked and selected for funding within the specific group. This procedure will ensure the availability of a much larger group of reviewers without conflicts of interest. It also will increase the quality, independence and fairness of the review process and permit panel members to review applications under discretionary competitions for which they have also submitted applications. However, if the Department decides to select for funding an equal number of applications in each group, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. In addition, to satisfy the requirements of the priority in this notice, you must submit annual data on each scholar who receives grant support through this program.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures that are designed to yield information on the effectiveness of the Personnel Development program. These measures include: (1) The percentage of projects that incorporate scientifically- or evidence-based practices; (2) the percentage of scholars who exit training programs prior to completion due to poor academic performance; (3) the percentage of degree or certification recipients employed upon program completion who are working in the area(s) for which they were trained; and (4) the percentage of degree or certification recipients employed upon program completion who are working in the area(s) for which they were trained and are fully qualified under IDEA.

Grantees will be required to collect and report data on grant-supported scholars through the PPD Web site at *http://www.oespppd.org* (see paragraph (b) under the *Absolute Priority* section of this notice).

The Department also has developed long-term measures that are designed to yield information on various aspects of program quality. These measures include: (1) The percentage of scholars completing IDEA-funded training programs who are knowledgeable and skilled in scientifically-or evidence-based practices for infants, toddlers, children and youth with disabilities; and (2) the percentage of program graduates who maintain employment for three or more years in the area(s) for which they were trained). Grantees may be asked to participate in assessing and providing information on such long-term aspects of program quality.

VII. Agency Contact

For Further Information Contact: Robert Gilmore Ph.D., U.S. Department of Education, 400 Maryland Avenue, SW., room 4083, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–7354.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

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VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*

Dated: August 8, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–13194 Filed 8–10–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services Overview Information; Personnel Development To Improve Services and Results for Children With Disabilities—Combined Priority for Personnel Preparation; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.325K.

Note: This notice includes one absolute priority with four focus areas, and funding information for each focus area of the competition.

Dates: Applications Available: August 11, 2006.

Deadline for Transmittal of Applications: October 10, 2006.

Deadline for Intergovernmental Review: December 11, 2006.

Eligible Applicants: Institutions of higher education (IHEs).

Estimated Available Funds: The Administration has requested $90,626,000 for the Personnel Development to Improve Services and Results for Children with Disabilities program for FY 2007, of which we intend to use an estimated $11,692,000 for the Combined Priority for Personnel Preparation competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

For funding information regarding each of the specific focus areas of the absolute priority, see the chart in the Award Information section of this notice.

Estimated Range of Awards: See chart.

Estimated Average Size of Awards: See chart.

Maximum Awards: See chart.

Estimated Number of Awards: See chart.

Project Period: Up to 48 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) Help address State-identified needs for highly qualified personnel—in special education, related services, early intervention, and regular education—to work with children with disabilities; and (2) ensure that those personnel have the skills and knowledge—derived from practices that have been determined through research and experience to be successful—that are needed to serve those children.

Priorities: In this competition, we are establishing one absolute priority (with four focus areas), a competitive preference priority within one of these four focus areas, one separate competitive preference priority, and two invitational priorities. In accordance with 34 CFR 75.105(b)(2)(v), these priorities are from allowable activities specified in the statute (see sections 662 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2007 this priority is, except as otherwise specified, an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Combined Priority for Personnel Preparation Background: State agencies, university training programs, local schools, and other community-based entities confirm the importance and difficulty of improving training programs for personnel to serve children with disabilities or infants and toddlers with disabilities.

The national demand for fully credentialed special education, related services and early intervention personnel to serve children with disabilities also exceeds available supply. Thus, Federal support is required to improve both the quality and supply of personnel who serve children with disabilities.

Priority: The purpose of this priority is to increase the number and quality of personnel who are fully credentialed to serve children with disabilities—especially in areas of chronic shortage—by supporting projects that prepare special education, early intervention, and related services personnel at the associate, baccalaureate, master's and specialist levels. In order to be eligible under this priority, programs must provide training and support for students to complete, within the term of the project, a degree, State certification, professional license, or State endorsement in early intervention, special education or related services. Programs preparing students to be special education paraprofessionals, related services assistants or educational interpreters are also eligible under this priority.

Combined Personnel Preparation Priority Requirements: To be considered for an award under this priority, applicants must—

(a) Demonstrate, in the narrative section of the application under "Quality of Project Services", how—

(1) Training requirements and required coursework for the proposed training program incorporate research-based practices that improve outcomes for children with disabilities (including relevant research citations);

(2) The program is designed to offer integrated training and practice opportunities that will enhance the skills of appropriate personnel who share responsibility for providing effective services to children with disabilities;

(3) The program prepares personnel to address the specialized needs of children with disabilities from diverse cultural and language backgrounds, including limited English proficient children with disabilities, by—

(i) Identifying the skills that personnel need to work effectively with culturally and linguistically diverse populations; and

(ii) Preparing personnel to use those skills through early intervention, special education, and related services training programs;

(4) If preparing beginning special educators, the program is designed to provide extended clinical learning opportunities, field experiences, or supervised practica (such as an additional year) and ongoing high quality mentoring and induction opportunities;

(5) The program includes field-based training opportunities for scholars (as defined in 34 CFR 304.3(g)) in diverse settings including schools and settings in high-poverty communities, rural areas, and urban areas;

(6) The proposed training program will enable scholars to be highly qualified in accordance with section 602(10) of IDEA in the State(s) to be served by the applicant;

(7) The training program equips scholars with the knowledge and skills necessary to assist children effectively in achieving State learning standards; and

(8) The training program provides student support systems (including tutors, mentors, and other innovative practices) to enhance student retention and success in the program;

(b) Include in the narrative section of the application under "Quality of Project Evaluation", a clear, effective plan for evaluating the extent to which graduates of the training program have the knowledge and skills necessary to provide scientifically based or evidence-based instruction and services that result in improved outcomes for children with disabilities. Applicants also must clearly describe under "Quality of Project Evaluation" how the project will report these evaluation results to the Office of Special Education Programs (OSEP) in the grantee's annual performance reports and final performance report;

(c) Meet the following statutory requirements of IDEA: (1) Demonstrate that the activities described in the application will address needs identified by the State or States the applicant proposes to serve, the impact of the proposed project in meeting the need for personnel identified by the State(s), and that the State or States intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards, including standards established to implement the IDEA requirement that all teachers be highly qualified, or other requirements in State law or regulations for serving children with disabilities or serving infants and toddlers with disabilities (see sections 662(e)(2)(A), 662(e)(3), and 662(f)(1) and (2) of IDEA). Letters from one or more States that the project proposes to serve could be one method for addressing these requirements.

(2) Demonstrate that the applicant will cooperate with one or more State educational agencies—or, if appropriate, State appointed lead agencies responsible for providing early intervention services—or local educational agencies in carrying out and monitoring the proposed project (see section 662(e)(2)(B) of IDEA).

(3) Demonstrate how the project involves individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

(4) Ensure that individuals who receive financial assistance under the project agree to pay all or part of the amount of the scholarship, in

accordance with section 662(h)(1) of IDEA and 34 CFR part 304. Applicants must describe how they will inform scholarship recipients of this service obligation requirement; and

(d) Meet the following additional requirements: (1) Assure that at least 60 percent of the total requested budget per year be used for student training stipends.

(2) Budget for a three-day Project Director's meeting in Washington, DC, during each year of the project.

(3) If the project maintains a Web site, include relevant information and documents in a form that meets a government or industry-recognized standard for accessibility.

(4) Include, in the application appendix, all course syllabi for the proposed training program. Course syllabi must clearly reflect the incorporation of research-based curriculum and pedagogy as required under paragraph (a) of this priority.

(5) Agree to submit electronically annual data on each scholar who receives grant support within 60 days after the end of each grant budget year. Applicants are encouraged to visit the Personnel Prep Data (PPD) Web site at *http://www.osepppd.org* for further information. This data collection is in addition to and does not supplant the annual grant performance report required of each grantee for continuation funding (see 34 CFR 75.590).

Focus Areas

Within this absolute priority, the Secretary intends to support projects under the following four focus areas: (a) Training Personnel to Serve Infants, Toddlers, and Pre-school Age Children with Disabilities, (b) Training Personnel to Serve School Age Children with Low Incidence Disabilities, (c) Training Personnel to Provide Related Services, Speech/Language Services, and Adapted Physical Education to Infants, Toddlers, Children and Youth with Disabilities, and (d) Training Personnel in Minority Institutions to Serve Infants, Toddlers, Children and Youth with Disabilities.

Note: Applicants *must* identify the specific focus area (i.e., (a), (b), (c), or (d), under which they are applying as part of the competition title on the application cover sheet (ED form 424, line 4). Applicants may not submit the same proposal under more than one focus area.

Focus Area a: Training Personnel to Serve Infants, Toddlers, and Pre-school Age Children with Disabilities. For the purpose of this focus area, early intervention personnel are those who are trained to provide services to infants and toddlers with disabilities ages birth through two, and early childhood personnel are those who are trained to provide services to children with disabilities ages three through five (in States where the age range is other than ages three through five, we will defer to the State's certification for early childhood). In States where certification in early intervention (EI) is combined with certification in early childhood (EC), applicants may propose a combined EI/EC training project under this focus area. Projects training related services, speech/language, or adapted physical education personnel are not eligible under this focus area (see Focus Area c).

Focus Area b: Training Personnel to Serve School Age Children with Low Incidence Disabilities. For the purpose of this focus area, low incidence personnel are special education personnel, including paraprofessionals, trained to serve school-age children with low incidence disabilities including visual impairments, hearing impairments, simultaneous vision and hearing impairments, significant cognitive impairments (severe mental retardation), orthopedic impairments, autism, and traumatic brain injury. Programs preparing special education personnel to provide services to visually impaired or blind children that can be appropriately provided in Braille must prepare those individuals to provide those services in Braille. Projects training educational interpreters are eligible under this focus area. Projects training other related services, speech/language or adapted physical education personnel are not eligible under this focus area (see Focus Area c). Projects training special education pre-school personnel are eligible under Focus Area a.

Focus Area c: Training Personnel to Provide Related Services, Speech/Language Services, and Adapted Physical Education to Infants, Toddlers, Children and Youth with Disabilities. Programs training related services, speech/language or adapted physical education personnel to serve infants, toddlers, children and youth with high- or low incidence disabilities are eligible within this focus area. For the purpose of this focus area, related services include, but are not limited to, psychological services, physical therapy, occupational therapy, therapeutic recreation, social work services, counseling services, audiology services (including personnel trained at the Doctor of Audiology level), and speech/language services. Training programs in States where personnel trained to serve children with speech/language impairments are considered to be special educators are eligible under this focus area. Projects training educational interpreters are not eligible under this focus area, but should apply under Focus Area b.

Focus Area d: Training Personnel in Minority Institutions to Serve Infants, Toddlers, Children and Youth with Disabilities. Programs in minority institutions that are training special education personnel, including adapted physical education and related services personnel, to serve infants, toddlers, children and youth with high- or low incidence disabilities are eligible within this focus area. Minority institutions include institutions with a minority student enrollment of 25 percent or more, which may include Historically Black Colleges and Universities, Tribal Colleges, and Predominantly Hispanic Serving Colleges and Universities. Within this focus area, institutions that are recommended for funding in FY 2007 and that have not received support under the IDEA Personnel Development Program in FY 2006 will receive 10 competitive preference points.

Under Focus Area d, a project may budget for less than the required percentage (60 percent) for student training support if the applicant can provide sufficient justification for any designation less than 60 percent for student scholarships. Sufficient justification for proposing less than 60 percent of the budget for student support would include support for activities such as program development, program expansion, or the addition of a new area of emphasis. Some examples include the following:

- A project that is starting a new program may request up to a year for program development and capacity building. In the initial project year, no student support would be required. Instead, a project could hire a new faculty member or a consultant to assist in program development.
- A project that is proposing to build capacity may hire a field supervisor so that additional students can be trained.
- A project that is expanding or adding a new emphasis area to the program may hire additional faculty or other resources such as expert consultants, additional training supplies, or equipment that would enhance the program.

Projects that are funded to develop, expand, or to add a new area of emphasis to special education or related services programs must provide information on how these new areas will be maintained once Federal funding ends.

Competitive Preference Priority: For FY 2007, this priority is a competitive

preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional five points to an application depending on how well the application meets this priority.

This competitive preference priority is: *Recruitment of Individuals with Disabilities and Individuals from Underrepresented Groups:* We give competitive preference to IHEs based on the extent to which they successfully recruit individuals with disabilities and individuals from groups that are underrepresented in the profession for which they are preparing individuals. In the case of a new project, the applicant must submit a plan with strategies on how it will meet this competitive preference priority.

Note: The statute does not authorize the selection of trainees on the basis of race, ethnicity, gender, or disability status.

Invitational Priorities: For FY 2007 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

(1) In Focus Areas b and d, the Secretary is particularly interested in programs that prepare special educators who provide instruction in core academic areas to children with disabilities.

(2) The Secretary is also particularly interested in programs that provide enhanced support for beginning special educators (see section 662(b)(3) of IDEA).

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 681(d) of the IDEA makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1462 and 1481.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 304.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $90,626,000 for the Personnel Development to Improve Services and Results for Children with Disabilities program for FY 2007, of which we intend to use an estimated $11,692,000 for the Combined Priority for Personnel Preparation competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

For funding information regarding each of the specific focus areas of the absolute priority, see the chart in this section of this notice.

Estimated Range of Awards: See chart.

Estimated Average Size of Awards: See chart.

Maximum Awards: See chart.

Estimated Number of Awards: See chart.

Project Period: Up to 48 months.

PERSONNEL DEVELOPMENT TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES APPLICATION NOTICE FOR FISCAL YEAR 2007

CFDA Number and name	Estimated range of awards	Estimated average size of awards	Maximum award (per year) *	Estimated number of awards
84.325K Combined Priority for Personnel Preparation:				
Focus Area a: Training Personnel to Serve Infants, Toddlers, and Preschool Age Children with Disabilities	$150,000–$200,000	$175,000	$200,000	13
Focus Area b: Training Personnel to Serve School Age Children with Low Incidence Disabilities	$150,000–$200,000	$175,000	$200,000	17
Focus Area c: Training Personnel to Provide Related Services, Speech/Language Services, and Adapted Physical Education to Infants, Toddlers, Children and Youth with Disabilities	$150,000–$200,000	$175,000	$200,000	14
Focus Area d: Training Personnel in Minority Institutions to Serve Infants, Toddlers, Children and Youth with Disabilities	$150,000–$200,000	$175,000	$200,000	14

* We will reject any application that proposes a budget exceeding the maximum award specified for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the FEDERAL REGISTER.

Note: The Department is not bound by any estimates in this notice.

III. Eligibility Information

1. *Eligible Applicants:* IHEs.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.325K.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in

the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:* Applications Available: August 11, 2006.

Deadline for Transmittal of Applications: October 10, 2006.

Applications for grants under this competition may be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: December 11, 2006.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new governmentwide *Grants.gov* Apply site in FY 2007. The Combined Priority for Personnel Preparation competition—CFDA Number 84.325K is one of the competitions included in this project. We request your participation in *Grants.gov.*

If you choose to submit your application electronically, you must use the *Grants.gov* Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Combined Priority for Personnel Preparation competition—CFDA Number 84.325K at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in *Grants.gov* is voluntary.
- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the *Grants.gov* system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the *Grants.gov* system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from *Grants.gov,* we will notify you if we are rejecting your application because it was date/time stamped by the *Grants.gov* system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) Registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text) or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.325K), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier:
U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.325K), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.325K), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

2. *Treating a Priority as Two Separate Competitions:* In the past, there have been problems in finding peer reviewers without conflicts of interest for competitions in which many entities throughout the country submit applications. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary competitions, applications may be separated into two or more groups and ranked and selected for funding within the specific group. This procedure will ensure the availability of a much larger group of reviewers without conflicts of interest. It also will increase the quality, independence and fairness of the review process and permit panel members to review applications under discretionary competitions for which they have also submitted applications. However, if the Department decides to select for funding an equal number of applications in each group, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial

information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. In addition, to satisfy the requirements of the absolute priority in this notice, you must submit annual data on each scholar who receives grant support through your project.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures that are designed to yield information on the effectiveness of the Personnel Development program. These measures include: (1) The percentage of projects that incorporate scientifically- or evidence-based practices, (2) the percentage of scholars who exit training programs prior to completion due to poor academic performance, (3) the percentage of degree or certification recipients employed upon program completion who are working in the area(s) for which they were trained, (4) the percentage of degree or certification recipients employed upon program completion who are working in the area(s) for which they were trained and are fully qualified under IDEA; and (5) the percentage of degree/certification recipients who maintain employment in the area(s) for which they are trained for three or more years and are fully qualified under IDEA.

Grantees will be required to collect and report data on grant-supported scholars through the PPD Web site at *http://www.oespppd.org* (see paragraph (d)(5) under the absolute priority section of this notice).

The Department also has developed long-term measures that are designed to yield information on various aspects of program quality. These measures include: (1) The percentage of scholars completing IDEA-funded training programs who are knowledgeable and skilled in scientifically- or evidence-based practices for infants, toddlers, children and youth with disabilities; and (2) the percentage of low incidence positions that are filled by personnel who are fully qualified under IDEA. Grantees may be asked to participate in assessing and providing information on these long-term aspects of program quality.

VII. Agency Contact

For Further Information Contact: Maryann McDermott, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, room 4062, Washington, DC 20202–2600. Telephone: (202) 245–7439 or by e-mail: *maryann.mcdermott@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

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Dated: August 8, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–13213 Filed 8–10–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–36–018]

Dauphin Island Gathering Partners; Notice of Negotiated Rate

August 7, 2006.

Take notice that on July 10, 2006, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of August 9, 2006.

Twenty-Sixth Revised Sheet No. 9
Twenty-First Revised Sheet No. 10
Eighth Revised Sheet No. 359

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online 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. E6–13146 Filed 8–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[El Paso Natural Gas Company]

Notice of Report Filing

August 7, 2006.

Take notice that on August 1, 2006, El Paso Natural Gas Company (EPNG) submitted an "MDO Report" that details

the results of its recently completed open bidding process by which delivery point operators were able to request higher Maximum Daily Obligations (MDOs) under their related Rate Schedule OPAS agreements. EPNG requests that the Commission substitute this report for the MDO Report filed July 24, 2006 in the above listed 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 on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 15, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13147 Filed 8–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–81–027]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Negotiated Rate

August 7, 2006.

Take notice that on August 2, 2006 Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1–A, Seventh Revised Sheet No. 4H, to be effective August 1, 2006.

KMIGT states that a copy of this filing has been served upon all parties to this proceeding, KMIGT's customers and affected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13144 Filed 8–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–96–000]

Michigan South Central Power Agency; Notice of Filing

August 4, 2006.

Take notice that on August 1, 2006, pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, and 18 CFR Part 35 of the Commission's regulations, Michigan South Central Power Agency filed its revenue requirement and supporting data for the provision of cost-based Reactive Supply and Voltage Control under Schedule 2 of the Midwest Independent Transmission System Operator, Inc.'s Transmission and Energy Markets Tariff, to be effective October 1, 2006, pursuant to 18 CFR 35.3 of the Commission's requirements.

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, SE., 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 August 31, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13140 Filed 8–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Public Service Company of Oklahoma, (Docket No. EL06–95–000); Lawton Cogeneration, L.L.C., (Docket No. QF02–16–004); Notice of Filing

August 4, 2006.

Take notice on August 1, 2006, pursuant to Rule 215(a)(3)(i), Public Service Company of Oklahoma (PSO) filed an amended motion for revocation of the qualifying facility (QF) status of the cogeneration facility proposed by Lawton Cogeneration, L.L.C. (Lawton) which was obtained by self recertification and a petition for declaratory order asking the Commission to find: Any further amendments to the QF would render the Lawton Facility a new cogeneration facility pursuant to CFR 292.205(d); if the Lawton Facility does not meet the standards pursuant to § 292.205(a) when it commences operations, PSO will not have to purchase power from the Lawton Facility and cannot be compelled to enter into a contract that requires otherwise; if the Oklahoma Corporation Commission (OCC) compels PSO to pay Lawton an avoided energy cost based on heat rate of a peaking plant it would be in contravention of the Public Utility Regulatory Policies Act of 1978; and that the OCC has no authority to compel PSO to name Lawton as a designated Network Resource of PSO, as such as is preempted by the Federal Power Act, an in any event Order 888 does not compel utilities to purchase transmission service for any third party.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 31, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13143 Filed 8–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–464–000]

Southwest Gas Transmission Company, A Limited Partnership; Notice of Proposed Changes In FERC Gas Tariff

August 4, 2006.

Take notice that on August 1, 2006, Southwest Gas Transmission Company, A Limited Partnership (SGTC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 2, First Revised Sheet No. 16, to become effective August 31, 2006.

SGTC states that it has served copies of its filing on its affected customer and interested state regulatory commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13142 Filed 8–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–465–000]

Texas Eastern Transmission, LP; Algonquin Gas Transmission, LLC; Maritimes & Northeast Pipeline, L.L.C.; East Tennessee Natural Gas, LLC; Egan Hub Storage, LLC; Notice Requesting Temporary Waiver of Certain Tariff Provisions and NAESB Standards and Notice of Expedited Comment Period

August 4, 2006.

Take notice that on August 3, 2006, Texas Eastern Transmission, LP (Texas Eastern), Algonquin Gas Transmission, LLC (Algonquin), Maritimes & Northeast Pipeline, L.L.C. (Maritimes), East Tennessee Natural Gas, LLC (East Tennessee) and Egan Hub Storage, LLC (Egan Hub) (together referred to as the "Pipelines") requested temporary

waiver of the following due to the Electronic Bulletin Board ("LINK®") outages associated with the migration from the legacy computing platform and database:

Texas Eastern General Terms and Conditions ("GT&C"):
- Section 2—Electronic Communications.
- Section 3.14—Capacity Release.
- Section 4.1—Scheduling of Storage and Transportation Services.
- Section 16.1—Informational Postings.

Algonquin GT&C:
- Section 14—Capacity Release.
- Section 22—Nominations.
- Section 23.4—Scheduling Penalty.
- Section 31.2—Penalty Payment.
- Section 38.3—Informational Postings.
- Section 40—Electronic Communication.

East Tennessee GT&C:
- Section 15—Scheduling of Receipts and Deliveries,
- Section 17—Temporary Release or Permanent Assignment of Rights to Firm Transportation Service.
- Section 18—Temporary Release or Permanent Assignment of Rights to LNG Service.
- Section 23—Electronic Communication.
- Section 35.5—Informational Postings.
- Section 47.6—Unauthorized Delivery Imbalance Charge.

Maritimes GT&C:
- Section 2—Electronic Communication.
- Section 5—Service Nomination Procedure.
- Section 9—Capacity Release.
- Section 25.1—Informational Postings.

Egan GT&C:
- Section 4—Capacity Release.
- Section 8—Nominations and Scheduling.
- Section 22.1—Informational Postings.
- Section 32—Electronic Communications.
- Flowing Gas Related Standards.
- Electronic Delivery Mechanism Related Standards.
- Capacity Release Related Standards.

Federal Energy Regulatory Commission ("FERC") Regulations:
- Section 284.12—Standards for pipeline business operations and communications.
- Section 284.13—Reporting requirements for interstate pipelines.

The Pipelines state that the conversion of LINK® from the current mainframe platform to a client-server platform will cause essentially all functions of LINK® to be unavailable commencing at 5 p.m. CCT on Friday, August 18, 2006 and projected to end at 5 a.m. CCT on Monday, August 21, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed 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 August 9, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13139 Filed 8–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2145–060]

Rocky Reach Hydroelectric Project; Notice of Availability of the Final Environmental Impact Statement for the Rocky Reach Project

August 4, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR Part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects staff (staff) has reviewed the application for a New Major License for the Rocky Reach Project (FERC No. 2145–060), located on the Columbia River in Chelan County, Washington, and has prepared a Final Environmental Impact Statement (final EIS) for the project. The project occupies about 152 acres of Federal lands managed by the U.S. Bureau of Land Management and the U.S. Forest Service.

The final EIS contains staff's analysis of the applicant's proposal and the alternatives for relicensing the Rocky Reach Project. The final EIS documents the views of the Commission staff and of government agencies, non-government organizations, affected Indian tribes, the public, and the license applicant.

A copy of the final EIS is available for review in the Commission Public Reference Branch, Room 2A, located at 888 First Street, NE., Washington, DC 20426. The final EIS may also be viewed on the Commission's Web site at *http://www.ferc.gov* under the eLibrary link. Enter docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support. For further information, please contact Kim A. Nguyen at (202) 502–6105 or at *kim.nguyen@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13141 Filed 8–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

August 7, 2006.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Exempt:

Docket No.	Date received	Presenter or requester
1. CP05–420–000	8–1–06	Heinz J. Mueller.
2. CP06–12–000, CP06–13–000	8–1–06	Heinz J. Mueller.
3. CP06–369–000, CP06–275–000	7–27–06	Hon. Tim Murphy.
4. Project No. 1971–000	8–3–06	Donna L. Street.
5. Project No. 12053–000	8–1–06	Cindy Charles.
6. Project No. 12053–001	8–3–06	Alan Mitchnick.

Magalie R. Salas,

Secretary.

[FR Doc. E6–13145 Filed 8–10–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6678–2]

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. 20060096, ERP No. D–BOP–B81010–NH, Berlin, Coos County, Proposed Federal, Correctional Institution, Construction and, Operation, City of Berlin, Coos County, NH.

Summary: EPA expressed environmental concerns about wetland impacts and mitigation. Rating EC2.

EIS No. 20060143, ERP No. D–NPS–B61025–MA, Cape Cod National Seashore (CACO) Hunting Program, General Management Plan, Implementation, Barnstable County, MA.

Summary: EPA does not object to the proposed project.

Rating LO.

EIS No. 20060152, ERP No. D–BLM–K65308–00, Surprise Field Office Project, Resource, Management Plan, Implementation, Cedarville; Modoc and Lassen, CA and Washoe and Humboldt, Counties, NV.

Summary: EPA expressed environmental concerns about potential impacts to vegetation, soils, and riparian areas from the Preferred Alternative, and requested that additional mitigation and measures be incorporated.

Rating EC2.

EIS No. 20060208, ERP No. D–AFS–K65309–00, Heavenly Mountain Resort Master Plan Amendment 2005 (MPA 05), Improve and Enhance the Resorts Over Winter and Summer Recreation Opportunities, Special-Use-Permit, Lake Tahoe Basin, El Dorado County, CA and Douglas County, NV.

Summary: EPA expressed environmental concerns about impacts to water resources, habitat, and old growth forests.

Rating EC2.

Final EISs

EIS No. 20060107, ERP No. F–AFS–B65013–VT, Green Mountain National Forest, Propose Revised Land and Resource Management Plan, Implementation, Forest Plan Revision, Addison, Bennington, Rutland, Washington, Windham and Windsor Counties, VT.

Summary: EPA does not object to the proposed project.

EIS No. 20060291, ERP No. F–NOA–E91016–00, Consolidated Atlantic Highly Migratory Species Fishery Management Plan for Atlantic Tunas,

Swordfish, and Shark and the Atlantic Billfish Fishery Management Plan, Implementation, Atlantic Coast, Caribbean and Gulf of Mexico.

Summary: EPA does not object to the proposed action.

Dated: August 8, 2006.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6–13160 Filed 8–10–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6678–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 07/31/2006 Through 08/04/2006 Pursuant to 40 CFR 1506.9.

EIS No. 20060326, Final EIS, BOP, NH, Berlin, Coos County, Proposed Federal Correctional Institution, Construction and Operation, City of Berlin, Coos County, NH, Wait Period Ends: 09/11/2006, Contact: Pamela J. Chandler 202–514–6470.

EIS No. 20060327, Final Supplement, AFS, CA, Empire Vegetation Management Project, Additional Information to Clarify Previous Analysis, Vegetation, Fire/Fuels/Air Quality, Wildlife, Watershed, and Botanical Resource/Noxious Weeds, Mount Hough Ranger District, Plumas National Forest, Plumas County, CA, Wait Period Ends: 09/11/2006, Contact: Gary Rotta 530–283–0555.

EIS No. 20060328, Draft EIS, NRS, MA, Cape Cod Water Resources Restoration Project, Restore Degraded Salt Marshes, Restore Anadromous Fish Passages, and Improve Water Quality for Shellfishing Area, Cape Cod, Barnstable County, MA, Comment Period Ends: 09/25/2006, Contact: Carl Gustafson 413–253–4302.

EIS No. 20060329, Final EIS, NRS, MO, East Locust Creek Watershed Revised Plan, Installation of Multiple-Purpose Reservoir, Flood Prevention and Watershed Protection, Sullivan and Putnam Counties, MO, Wait Period Ends: 09/11/2006, Contact: Roger A. Hansen 573–876–0901.

EIS No. 20060330, Draft EIS, NOA, CA, Channel Islands National Marine Sanctuary (CINES) Project, Establishment of No-Take and Limited-Take Marine Zones, Protection of Sanctuary Biodiversity, CA, Comment Period Ends: 10/10/2006, Contact: Chris Mobley 805–966–7107.

EIS No. 20060331, Final EIS, FRC, WA, Rocky Reach Hydroelectric Project, (FERC/DEIS–0184D), Application for a New License for the Existing 865.76 Megawatt Facility, Public Utility District No. 1 (PUD), Columbia River, Chelan County, WA, Wait Period Ends: 09/11/2006, Contact: Todd Sedmak 1–866–208–FERC.

EIS No. 20060332, Final Supplement, NOA, 00, Amendment 26 to the Gulf of Mexico Reef Fish Fishery Management Plan, Proposed Individual Fishing Quota (IFQ) Program to Reduce Overcapacity in the Commercial Red Snapper Fishery, Wait Period Ends: 09/11/2006, Contact: Roy E. Crabtree 727–824–5308.

EIS No. 20060333, Draft EIS, USA, MD, U.S. Army Medical Research Institute of Infectious Diseases (USAMRIID), Construction and Operation of New USAMRIID Facilities and Decommissioning and Demolition and/or Re-use of Existing USAMRIID Facilities, Fort Detrick, MD, Comment Period Ends: 09/25/2006, Contact: Dave Hand 410–962–8154.

EIS No. 20060334, Final Supplement, UAF, 00, Realistic Bomber Training Initiative, Addresses Impacts of Wake Vortices on Surface Structures, Dyess Air Force Base, TX and Barksdale Air Force Base, LA, Wait Period Ends: 09/11/2006, Contact: Sheryl Parker 757–764–9334.

Amended Notices

EIS No. 20060318, Draft EIS, FHW, NC, Greenville Southwest Bypass Study, Transportation Improvements to NC 11 and U.S. 264 Business, U.S. Army COE Section 404 Permit, Pitt County, NC, Comment Period Ends: 09/18/2006, Contact: John F. Sullivan, III 919–856–4346. Revision of FR Notice Published in 08/04/2006: Correction to State from NY to NC.

Dated: August 8, 2006.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6–13207 Filed 8–10–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8208–6; Docket ID No. EPA–HQ–ORD–2004–0002]

Draft Toxicological Review of Dichlorobenzenes: In Support of Summary Information on the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Extension of Public Comment Period and Rescheduled External Peer Review Panel Meeting.

SUMMARY: The EPA is extending the public comment period and rescheduling an external peer review panel meeting to review selected sections of the final draft document titled, "Toxicological Review of Dichlorobenzenes: In Support of Summary Information on the Integrated Risk Information System (IRIS)" (EPA/635/R–03/015), related to the inhalation reference concentration (RfC) and inhalation cancer assessment for 1,4-dichlorobenzene. The document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development.

On July 11, 2006, EPA published a **Federal Register** notice (71 FR 39113) announcing a comment period that ended August 9 and an external peer review panel meeting that was scheduled for August 16. EPA is extending the public comment period to October 10, 2006, in response to requests. The external peer review panel meeting will be held on October 30, 2006.

As previously stated in 71 FR 39113, EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination. EPA will consider any public comments submitted in accordance with this notice when revising the document.

DATES: The period for submission of comments on the final draft document will end on October 10, 2006. Technical comments should be in writing and must be received by EPA by October 10, 2006. Comments submitted to the EPA by October 10, 2006, will be provided to the external peer review panel prior to the teleconference meeting. The peer review panel meeting will be conducted on October 30, 2006, by teleconference

and will begin at 1 p.m. and end at 4 p.m. Members of the public may call into the teleconference meeting and are invited to provide oral statements at the commencement of the teleconference. (For more information refer to the instructions for registration provided in the **ADDRESSES** section of this notice.)

ADDRESSES: The external peer review panel meeting will be held by teleconference. Under an Interagency Agreement between EPA and the Department of Energy, the Oak Ridge Institute of Science and Education (ORISE) is organizing, convening, and conducting the peer review panel meeting. To obtain the teleconference call-in number and access code, register by October 10, 2006, by calling ORISE, P.O. Box 117, MS 17, Oak Ridge, TN 37831–0117, at (865) 576–2922 or (865) 241–3168 (facsimile). Interested parties may also register on-line at: *http://www.orau.gov/dichlorobenzene.*

The draft "Toxicological Review of Dichlorobenzenes: In Support of Summary Information on the Integrated Risk Information System (IRIS)" (EPA/635/R–03/015) is available primarily via the Internet on NCEA's home page under the Recent Additions menu at *http://www.epa.gov/ncea.* A limited number of paper copies are available by contacting the IRIS Hotline at (202) 566–1676, (202) 566–1749 (facsimile), or *hotline.iris@epa.gov.* If you are requesting a paper copy, please provide your name, mailing address, the document title, and the EPA number of the requested publication. Copies are not available from ORISE.

Copies of the study by Aiso *et al.* (2005), referenced in the **SUPPLEMENTARY INFORMATION** section of this notice are available from the IRIS Hotline in paper or electronic format. If you are requesting a copy, please provide your name, mailing address or e-mail address, and document citation: Aiso *et al.* (2005) Carcinogenicity and chronic toxicity in mice and rats exposed by inhalation to para-dichlorobenzene for two years. J Vet Med Sci 67(10):1019–1029. EPA is providing this study in the interest of transparency. EPA does not endorse or support the study or its findings.

Technical comments may be submitted electronically via *http://www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Questions regarding registration and logistics for the external peer review panel teleconference should be directed to Margaret Lyday, ORISE, P.O. Box 117, MS 17, Oak Ridge, TN 37831–0117, at (865) 576–2922 or (865) 241–3168 (facsimile), *lydaym@orau.gov* (e-mail).

If you have questions about the document, contact Audrey Galizia, Chemical Manager, National Center for Environmental Assessment telephone: (732) 906–6887 facsimile: (732) 452–6429 e-mail: *galizia.audrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

IRIS is a database that contains Agency scientific positions on potential adverse human health effects that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The database (available on the Internet at *http://www.epa.gov/iris*) contains qualitative and quantitative health effects information for more than 500 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of the risk assessment process. When supported by available data, the database provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

1,4-Dichlorobenzene is widely used as a space deodorant for toilets and refuse containers, as a moth repellent in moth balls or crystals, and in other pesticide applications. The current IRIS assessment for 1,4-dichlorobenzene was placed on the database in 1994 and contains an inhalation RfC. A reassessment of the potential health effects of dichlorobenzenes has been undertaken. The draft assessment for dichlorobenzenes (including the 1,2-, 1,3-, and 1,4-isomers) was subject to an external peer review and 30-day public comment period in February 2004 (69 FR 4514, January 30, 2004). The scope of the current external peer review and public comment is limited to the analyses based on a chronic inhalation bioassay of 1,4-dichlorobenzene published in the peer-reviewed literature (Aiso *et al.*, 2005. J Vet Med Sci 67(10):1019–29) that was not included in the February 2004 external peer review draft. This study was identified originally as an unpublished study report by the Japan Bioassay Research Center (JBRC, 1995). Data from Aiso *et al.* (2005) were used subsequently in the quantitative dose-response assessments for the 1,4-dichlorobenzene RfC and inhalation cancer assessment.

II. How To Submit Technical Comments to the Docket at www.regulations.gov

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to *http://www.regulations.gov* are not affected by the flooding and will remain the same.

Submit your comments, identified by Docket ID No. EPA-HQ-ORD 2004–0002 by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- E-mail: *ORD.Docket@epa.gov.*
- Mail: Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is (202) 566–1752.
- Hand Delivery: The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments in writing, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2004–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information

claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: August 4, 2006.

P.W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E6–13205 Filed 8–10–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8209–3]

Meeting of the Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Mobile Sources Technical Review Subcommittee (MSTRS) will meet on October 4, 2006. This is an open meeting. The meeting will include discussion of current topics and presentations about activities being conducted by EPA's Office of Transportation and Air Quality. The preliminary agenda for the meeting, as well as the minutes from the previous (March 2006) meeting will be posted on the Subcommittee's Web site: *http://www.epa.gov/air/caaac/mobile_sources.html*. MSTRS listserver subscribers will receive notification when the agenda is available on the Subcommittee Web site. To subscribe to the MSTRS listserver, go to *https://lists.epa.gov/cgi-bin/lyris.pl?enter=mstrs*. The site contains instructions and prompts for subscribing to the listserver service.

DATES: Wednesday, October 4, 2006 from 9 a.m. to 5 p.m. Registration begins at 8:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn Rosslyn/Key Bridge, 1900 North Fort Myer Drive, Arlington, VA. Phone 703–807–2000. The hotel is located one block from the Rosslyn Metro Station, and is approximately 15 minutes from Washington National Airport by taxi.

FOR FURTHER INFORMATION CONTACT: For technical information: John Guy, Designated Federal Officer, Transportation and Regional Programs Division, Mailcode 6406J, U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460; Ph: 202–343–9276; e-mail, *guy.john@epa.gov*.

For logistical and administrative information: Ms. Patty Truesdale, U.S. EPA, Transportation and Regional Programs Division, Mailcode 6406J, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460; 202–343–9401.

Background on the work of the Subcommittee is available at: http://www.epa.gov/air/caaac/mobile_sources.html.

Individuals or organizations wishing to provide comments to the Subcommittee should submit them to Mr. Guy at the address above by September 26, 2006. The Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

SUPPLEMENTARY INFORMATION: During the meeting, the Subcommittee may also hear progress reports from some of its workgroups as well as updates and announcements on activities of general interest to attendees.

Dated: August 7, 2006.

Christopher Grundler,

Acting Director, Office of Transportation and Air Quality.

[FR Doc. E6–13156 Filed 8–10–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8209–1]

EPA Science Advisory Board; Notification of Public Meetings of the Integrated Human Exposure and Environmental Health Committees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces two public meetings of the Integrated Human Exposure Committee (IHEC) and Environmental Health Committee (EHC) to conduct a consultation on the efforts of the EPA to improve its risk assessment practices and to update its Exposure Guidelines.

DATES: September 6–7, 2006; the meeting regarding the EPA Risk Assessment Principles and Practices will be held from 9 a.m. to 5 p.m. (Eastern Time) on Wednesday, September 6, 2006, and the Guidelines for Exposure Assessment will be held from 9 am to 4 pm (Eastern Time) on Thursday September 7, 2006.

Location: The meetings will take place at the Science Advisory Board Conference Center, 1025 F St., NW., Washington DC 20004.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning this meeting should contact Dr. Sue Shallal, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9977; fax: (202) 233–0643; or e-mail at: *shallal.suhair@epa.gov*. General information concerning the EPA Science Advisory Board can be found on the EPA Web Site at: *http://www.epa.gov/sab*.

Technical Contact: Any questions concerning the Risk Assessment Principles and Practices Staff Paper should be directed to Dr. William Sette, OSA, at phone: (202) 564–0693, or e-mail: *sette.william@epa.gov*. Any

questions concerning the update of the EPA Guidelines for Exposure Assessment should be directed to Mr. Gary Bangs, RAF, at phone: (202) 564–6667 or e-mail: *bangs.gary@epa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the SAB Integrated Human Exposure Committee and the Environmental Health Committee will hold two public meetings to conduct a consultation on the efforts of the EPA to improve its risk assessment practices and to update its Exposure Guidelines. The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: In March 2004, EPA issued a staff paper entitled, "An Examination of EPA Risk Assessment Principles and Practices" (available at: *http://www.epa.gov/osa/pdfs/ratf-final.pdf*). The staff paper presented the perspectives of EPA risk assessors on their understanding of how risk assessments are conducted in EPA and staff recommendations for strengthening and improving its practices. EPA is seeking the SAB's recommendations regarding their current and planned activities to improve risk assessment.

In addition, in 1992, EPA's Guidelines for Exposure Assessment (available at: *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=15263*) was published. Exposure assessment has changed significantly with the advancement of probabilistic analyses, human activity factors, and consideration of susceptible populations and life stages. EPA is now seeking advice on the scope and content of this update from the SAB.

Availability of Meeting Materials: The draft agendas and other materials will be posted on the SAB Web site at: *http://www.epa.gov/sab/* prior to the meetings.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for these SAB committees to consider during the consultative process. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than a total of one hour for all speakers. Interested parties should contact Dr. Sue Shallal, DFO, in writing (preferably via e-mail), by August 29, 2006, at the contact information noted above, to be placed on the public speaker list for this meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by August 25, 2006, so that the information may be made available to the SAB committees for their consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Sue Shallal at (202) 343–9977 or *shallal.suhair@epa.gov.* To request accommodation of a disability, please contact Dr. Shallal preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: August 7, 2006.

Anthony F. Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. E6–13158 Filed 8–10–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0678; FRL–8085–8]

Notice of Filing of a Pesticide Petition for Establishment of Regulations for Residues of Acequinocyl and Its Metabolite Acequinocyl-OH in or on Tree Nuts (Crop Group 14) Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of acequinocyl (3-dodecyl-1,4-dihydro-1,4-dioxo-2-naphthyl acetate) and its metabolite 2-dodecyl-3-hydroxy-1,4-naphthoquinone (acequinocyl-OH) expressed as acequinocyl equivalents in or on tree nuts (Crop Group 14) commodities.

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

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0678 and pesticide petition number (PP) 6F7040, 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) Public Regulatory Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery*: OPP Public Regulatory Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 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–2006–0678. 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 Public Regulatory Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 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: Marilyn Mautz, Registration Division, (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6785; e-mail address:*mautz.marilyn@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 each 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 along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues 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 Tolerance

PP 6F7040. Arysta LifeScience North America Corporation, 15401 Weston Pkwy., Suite 150, Cary, NC 27513, proposes to establish a tolerance for residues of the insecticide acequinocyl (3-dodecyl-1,4-dihydro-1,4-dioxo-2-naphthyl acetate) and its metabolite 2-dodecyl-3-hydroxy-1,4-naphthoquinone (acequinocyl-OH) expressed as acequinocyl equivalents in or on food commodity tree nuts (Crop Group 14) at 0.02 parts per million (ppm). The analytical method to quantitate residues of acequinocyl and acequinocyl-OH in/on nut crops utilizes high pressure liquid chromatography (HPLC) using mass spectrometric (MS/MS) detection. The target limit of quantitation (LOQ) is 0.01 ppm.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 4, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–13172 Filed 8–10–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0530; FRL–8076–7]

Pyridalyl; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Georgia Department of Agriculture to use the pesticide pyridalyl (CAS No. 179101–81–6) to treat up to 32,000 acres of Brassica leafy vegetables and turnip greens to control diamondback moth larvae. The Applicant proposes the use of a new chemical which has not been registered by the EPA. EPA is soliciting public comment before making the

decision whether or not to grant the exemption.

DATES: Comments must be received on or before August 28, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0530, 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–2006–0530. 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: Andrea Conrath, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9356; e-mail address: *conrath.andrea@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 www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Georgia Department of Agriculture has requested the Administrator to issue a specific exemption for the use of pyridalyl on

Brassica leafy vegetables and turnip greens to control diamondback moth larvae. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that, the available alternative controls are no longer providing adequate control, and asserts that resistance to some of them may be developing. The Applicant claims that another control chemical is needed to use in rotation with registered materials, to maintain season long control of the diamondback moth in these crops, and that without adequate control, significant economic losses will be suffered.

The Applicant proposes to make no more than 4 applications of pyridalyl, at a rate of up to 0.2 lbs. active ingredient (a.i.) per acre (no more than 0.8 lbs. a.i. total), on up to 32,000 acres, to Brassica leafy vegetables (including but not limited to cabbage, collard greens, mustard greens, kale) and turnip greens, in Georgia, for use year round, resulting in use of up to a total of 25,600 lbs. a.i. total.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient) which has not been registered by the EPA. The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Georgia Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 2, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–13036 Filed 8–10–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0129; FRL–8071–9]

Final NAFTA Guidance for Conducting Terrestrial Field Dissipation Studies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under the North American Free Trade Agreement (NAFTA), EPA and the Canadian Pest Management Regulatory Agency (PMRA) have agreed to harmonize their testing guidelines so that one set of tests can be used for the registration of pesticides in Canada and the United States. The NAFTA harmonized guidance for terrestrial field dissipation (TFD) studies are conducted to demonstrate the transformation, transport, and fate of pesticides under representative actual use conditions. These field studies are needed to substantiate the physicochemical, mobility, and biotransformation data from laboratory studies. Environmental fate studies have shown that pesticide dissipation may proceed at different rates under field conditions and may result in degradates forming at levels different from those observed in laboratory studies. The objective of this guidance document is to help ensure that TFD studies are conducted in a manner that will provide risk assessors and risk managers with more confidence in the data generated and with a better understanding of the assumptions and limitations of the data and estimated half-lives of the pesticide. The proposed guidance document for TFD studies was published in the **Federal Register** on June 15, 2005 (FRL–7713–7). After reviewing the public comments for this Notice, EPA developed a final guidance document, which can be found at: *http://www.epa.gov/oppefed1/ecorisk_ders/terrestrial_field_dissipation_guidance.pdf*. EPA's response to public comments can be found in the public docket: EPA–HQ–OPP–2005–0129.

FOR FURTHER INFORMATION CONTACT: Mark Corbin, Environmental Fate and Effects Division (7507P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 605-0033; fax number: (703) 305-6309; e-mail address: *corbin.mark@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0129. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*.

II. Background

A. What Action is the Agency Taking?

The Terrestrial Field Dissipation study has been a basic requirement for registrants of new and existing pesticides since 1982. While laboratory environmental fate studies are designed to address one dissipation process at a time, terrestrial field dissipation studies address pesticide loss as a combined result of chemical and biological processes (e.g., hydrolysis, photolysis, microbial transformation) and physical migration (e.g., volatilization, leaching, plant uptake). Data from these studies can reduce potential overestimation of exposure and risk and can confirm assumptions of low levels of toxic degradates. Results can be used to propose scenario-specific effective risk mitigation.

In general, the terrestrial field dissipation study results should allow the risk assessor to:

• Compare predicted routes of dissipation identified in the laboratory with those measured in the field;
• Characterize the rates of dissipation of the parent compound and formation and decline of the major and/or toxicologically significant transformation products under field conditions;
• Characterize the rates and relative importance of the different transport processes, including leaching, runoff, and volatilization;
• Establish the distribution of the parent compound and the major transformation products in the soil profile;
• Characterize the persistence of the parent compound and major transformation products in soil, including retention and residue carryover in the soil to the following crop season; and
• Characterize the effect(s) of different typical pesticide formulation categories, where applicable.

EPA and PMRA have developed harmonized guidance for conducting terrestrial field dissipation studies so that one set of tests can be used for registration of a pesticide in Canada, the United States, and Mexico. In developing this guidance document, EPA and PMRA conducted an extensive outreach and review program, soliciting input from stakeholders and the technical community through several forums: Three symposia, one Scientific Advisory Panel (SAP) meeting, and one workshop. Working closely with its stakeholders, PMRA and EPA developed a conceptual model for designing terrestrial studies that will evaluate the overall dissipation of a pesticide in the field. The conceptual model, which is specific for each pesticide, is based on the chemical's physicochemical properties, laboratory environmental fate studies, formulation type and intended use pattern. On June 15, 2005, the Agency published the draft harmonized guidance and conceptual model in the **Federal Register** and asked for comments. After reviewing all the comments, PMRA and EPA developed the final guidance, which can be found at the following address: *http://www.epa.gov/oppefed1/ecorisk_ders/terrestrial_field_dissipation_guidance.pdf.*

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

This action is being taken under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

List of Subjects

Environmental protection, Terrestrial field dissipation, NAFTA harmonized guidance.

Dated: August 3, 2006.

Steven Bradbury,

Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

FR Doc. E6–13042 Filed 8–10–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8208–2]

Clean Water Act Section 303(d): Availability of Thirty Oklahoma Total Maximum Daily Loads (TMDLs) for Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of thirty Oklahoma TMDLs for public comment.

SUMMARY: This notice announces the availability for public comment of thirty TMDLs, and their administrative record files prepared by EPA Region 6 for certain waters listed in the Upper Canadian River and Turkey Creek Watersheds of Oklahoma, under section 303(d) of the Clean Water Act (CWA).

DATES: Comments must be submitted in writing to EPA on or before September 11, 2006.

ADDRESSES: Comments on the thirty TMDLs should be sent to Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733 or e-mail: *smith.diane@epa.gov*. For further information, contact Diane Smith at (214) 665–2145 or fax 214–665–7373. The administrative record files for the thirty TMDLs are available for public inspection at this address as well. Documents from the administrative record files may be viewed at *http://www.epa.gov/region6/6wq/npdes/tmdl/index.htm*, or obtained by calling or writing Ms. Smith at the above address. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

SUPPLEMENTARY INFORMATION: On March 10, 2006, EPA Region 6 made a commitment to the EPA Headquarters Office of Water under EPA's National Water Program Fiscal Year 2006 Guidance for the program activity measure (PAM) number WQ–12, to establish or approve a total of 188 TMDLs in fiscal year (FY) 2006. Under the PAM number WQ–12, EPA expected the Oklahoma Department of Environmental Quality (ODEQ) to develop a total of 87 TMDLs in fiscal year (FY) 2006 and submit them for EPA's approval. By the end of July 2006, ODEQ had submitted two final TMDLs for EPA's approval and 30 draft TMDLs for EPA's review and comments. EPA has approved the two final TMDLs submitted by ODEQ. However, a recent discussion between EPA Region 6 and ODEQ senior managers determined that although substantial progress has been made on the other TMDLs, the remainder of the TMDLs needed to meet the commitment could not be completed by the target date. Accordingly, EPA Region 6 has decided to conduct the public participation process for these thirty TMDLs and establish the final TMDLs on or before September 30, 2006, to meet the FY06 PAM commitment.

EPA Seeks Comment on Thirty TMDLs

By this notice EPA is seeking public comment on the following thirty TMDLs for certain waters located within Oklahoma's Upper Canadian River and Turkey Creek Watersheds:

Segment	Waterbody name	Pollutant
Upper Canadian River Watershed:		
OK520620010010_00	Canadian River	Fecal coliform
OK520620010120_00	Bear Creek	E. coli, Enterococci, and Fecal coliform
OK520620020010_00	Canadian River	Enterococci, and Fecal coliform
OK520620020090_00	Trail Creek	E. coli, Enterococci, and Fecal coliform
OK520620030020_00	Lone Creek	E. coli and Enterococci
OK520620030050_00	Red Trail Creek	E. coli, Enterococci, and Fecal coliform
OK520620030110_00	Red Creek	E. coli, Enterococci, and Fecal coliform
OK520620040050_00	Hackberry Creek	E. coli and Enterococci
OK520620050160_00	Commission Creek	E. coli and Enterococci
OK520620060010_00	Deer Creek	E. coli and Enterococci

Segment	Waterbody name	Pollutant
Turkey Creek Watershed:		
OK620910060010_00	Turkey Creek	Fecal Coliform and turbidity
OK620910060020_00	Little Turkey Creek	Fecal Coliform and turbidity
OK620910060030_00	Buffalo Creek	Fecal Coliform and turbidity
OK620910060110_00	Clear Creek	Fecal Coliform

EPA requests that the public provide to EPA any written comments on these thirty TMDLs and any additional water quality related data and information that may be relevant to their establishment. EPA will review all comments, data, and information submitted during the public comment period and will revise the TMDLs where appropriate. EPA will then establish the TMDLs and forward them to the ODEQ. The ODEQ will incorporate the TMDLs into its current water quality management plan.

Dated: August 4, 2006.

Miguel I. Flores,

Director, Water Quality Protection Division (6WQ).

[FR Doc. E6–13181 Filed 8–10–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collections to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection systems identified below:

1. Certification of Eligibility Under the Affordable Housing Program (3064–0116);

2. Notice Regarding Unauthorized Access to Customer Information (3064–0145);

3. Mutual-to-Stock Conversions of State Savings Banks (3064–0117);

4. Privacy of Consumer Financial Information (3064–0136); and

5. Applicant Background Questionnaire (3064–0138).

DATES: Comments must be submitted on or before September 11, 2006.

ADDRESSES: Interested parties are invited to submit written comments by any of the following methods. All comments should refer to the name and number of the collection:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *E-mail: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Steve Hanft (202–898–3907), Paperwork Control Officer, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the OMB Desk Officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Steve Hanft, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

1. *Title:* Certification of Eligibility Under the Affordable Housing Program.
OMB Number: 3064–0116.
Form Number: None.
Frequency of Response: On occasion.
Affected Public: Individuals wishing to purchase affordable housing properties from the FDIC.
Estimated Number of Respondents: 12.
Estimated Time per Response: 1 hour.
Total Annual Burden: 12 hours.
General Description of Collection: This collection of information certifies income eligibility under the affordable housing program. The certification assists the FDIC in determining an individual(s eligibility for purchasing affordable housing properties from the FDIC.

2. *Title:* Notice Regarding Unauthorized Access to Customer Information.
OMB Number: 3064–0145.
Form Number: None.
Frequency of Response: On occasion.
Affected Public: Insured state nonmember banks.
Number of Respondents: 5,200.
Estimated Time per Response:
Developing notices: 24 hrs. × 5,200 = 124,800 hours.
Notifying customers: 29 hrs. × 91 = 2,639 hours.
Total Estimated Annual Burden: 127,439 hours.
General Description of Collection: This collection reflects the FDIC's expectations regarding a response program that financial institutions should develop to address unauthorized access to or use of customer information that could result in substantial harm or inconvenience to a customer. The information collections require financial institutions to: (1) Develop notices to customers; and (2) in certain circumstances, determine which customers should receive the notices and send the notices to customers.

3. *Title:* Mutual-to-Stock Conversions of State Savings Banks.
OMB Number: 3064–0117.
Form Number: None.
Frequency of Response: On occasion.
Affected Public: Insured state chartered savings banks that are not members of the Federal Reserve System proposing to convert from mutual to stock form of ownership.
Estimated Number of Respondents: 10.
Estimated Time per Response: 50 hours.
Total Annual Burden: 500 hours.
General Description of Collection: 12 CFR 303.161 and 333.4 require state savings banks that are not members of the Federal Reserve System to file with the FDIC a notice of intent to convert to stock form and provide copies of documents filed with State and Federal banking and or securities regulators in connection with the proposed conversion.

4. *Title:* Privacy of Consumer Financial Information.
OMB Number: 3064–0136.
Form Number: None.
Frequency of Response: On occasion.
Affected Public: Insured state nonmember banks; consumers of financial services.
Estimated annual number of institution respondents: Initial notice, 208; annual notice and change in terms, 5,138; opt-out notice, 873.

Estimated average time per response per institution: Initial notice, 80 hours; annual notice and change in terms, 8 hours; opt-out notice, 8 hours.

Subtotal, annual burden hours for institutions: 64,728 hours.

Estimated annual number of consumer respondents: 223,475.

Estimated average time per consumer response: 30 minutes.

Subtotal, annual burden hours for consumers: 111,738.

Total annual burden: 176,466 hours.

General Description of Collection: The elements of this information collection are required under section 504 of the Gramm-Leach-Bliley Act, Public Law 106–102. The collection mandates notice requirements and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties. The collection also includes the filing of notices by consumers with their financial institutions.

5. *Title:* Applicant Background Questionnaire.

OMB Number: 3064–0138.

Form Number: FDIC 2100/14.

Frequency of Response: On occasion.

Affected Public: FDIC job applicants who are not current FDIC employees.

Estimated Number of Respondents: 10,000.

Estimated Time per Response: 3 minutes.

Total Annual Burden: 500 hours.

General Description of Collection: The FDIC Applicant Background Questionnaire is completed voluntarily by FDIC job applicants who are not current FDIC employees. Responses to questions on the survey provide information on gender, age, disability, race/national origin, and to the applicant's source of vacancy announcement information. The FDIC uses the data to evaluate the effectiveness of various recruitment methods, and to ensure that the agency meets workforce diversity objectives.

Request for Comment

Comments are invited on: (a) Whether these collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, 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 information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide the information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collections should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC, August 8, 2006.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E6–13150 Filed 8–10–06; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Renewal of an Information Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the proposed renewal of an information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Occasional Qualitative Surveys."

DATES: Comments must be submitted on or before October 10, 2006.

ADDRESSES: Interested parties are invited to submit written comments to Steve Hanft, Clearance Officer, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to "Occasional Qualitative Surveys." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. Comments may also be submitted to OMB: FDIC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Steve Hanft, (202) 898–3907, or at the address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Occasional Qualitative Surveys.

OMB Number: 3064–0127.

Frequency of Response: On occasion.

Affected Public: Financial institutions, their customers, and members of the public generally.

Estimated Number of Respondents: 8,500.

Estimated time per response: 1 hour.

Estimated Total Annual Burden: 8,500 hours.

General Description of Collection: This collection involves the occasional use of qualitative surveys to gather anecdotal information about regulatory burden, bank customer satisfaction, problems or successes in the bank supervisory process (both safety-and-soundness and consumer related), and similar concerns. In general, these surveys would not involve more than 850 respondents, would not require more than one hour per respondent, and would be completely voluntary. It is not contemplated that more than fifteen such surveys would be completed in any given year.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide the information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, DC, August 8, 2006.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E6–13151 Filed 8–10–06; 8:45 am]

BILLING CODE 6714–01–P

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 September 7, 2006.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. Webster Financial Corporation, Waterbury, Connecticut; to merge with NewMil Bancorp, Inc., and thereby indirectly acquire NewMil Bank, both of New Milford, Connecticut.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. The Industrial Bank of Taiwan Co., Ltd., Taipei, Taiwan, and IBT Holdings Corp., Cerritos, California; to become bank holding companies by acquiring 100 percent of the voting shares of EverTrust Bank, City of Industry, California.

Board of Governors of the Federal Reserve System, August 8, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–13137 Filed 8–10–06; 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 September 7, 2006.

A. Federal Reserve Bank of Cleveland (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. National City Corporation, Cleveland, Ohio; to acquire Fidelity Federal Bank & Trust, and Fidelity Bankshares, Inc., and thereby indirectly acquire Fidelity Realty & Appraisal Services, Inc., all of West Palm Beach, Florida, and engage in real estate appraisal services and operating a savings association, pursuant to sections 225.28(b)(2)(i) and (b)(4)(ii), of Regulation Y.

Board of Governors of the Federal Reserve System, August 8, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E6–13136 Filed 8–11–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Compassion Capital Fund Evaluation—Intermediary Survey.

OMB No.: New Collection.

Description: This proposed information collection activity is for a survey to be completed by Compassion Capital Fund intermediary grantees as a part of the outcome and impact study components of the Compassion Capital Fund Evaluation.

The Compassion Capital Fund Evaluation is a multi-component study designed to examine the effectiveness of the Compassion Capital Fund (CCF) in meeting its objective of improving the organizational capacity of faith-based and community organizations. The CCF program works through intermediary organizations to provide capacity building assistance to interested faith-based and community organizations. The purpose of this data collection activity is to obtain more detailed information about the management processes and service delivery and monitoring approaches used by CCF intermediaries in providing technical and financial assistance to increase the organizational capacity of faith-based and community organizations.

Respondents: CCF intermediary grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Intermediary survey	60	1	.5	30

Estimated Total Annual Burden Hours:

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447. Attn: ACF Reports Clearance Office. E-mail address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 4, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–6841 Filed 8–10–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Industry Exchange Workshop on Food and Drug Administration Clinical Trial Requirements; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) Detroit District, in cooperation with the Society of Clinical Research Associates (SoCRA), is announcing a workshop on FDA clinical trial statutory and regulatory requirements. This 2-day workshop for the clinical research community targets sponsors, monitors, clinical investigators, institutional review boards, and those who interact with them for the purpose of conducting FDA-regulated clinical research. The workshop will include both industry and FDA perspectives on proper conduct of clinical trials regulated by FDA.

Date and Time: The public workshop is scheduled for Wednesday, November 15, 2006, from 8:30 a.m. to 5 p.m. and Thursday, November 16, 2006, from 8:30 a.m. to 4:30 p.m.

Location: The public workshop will be held at the Sheraton Indianapolis Hotel & Suites, 8787 Keystone Crossing, Indianapolis, IN 46240, 317–846–2700, FAX: 317–574–6775.

Contact: Nancy Bellamy, Food and Drug Administration, 300 River Pl., suite 5900, Detroit, MI, 48207, 313–393–8143, FAX: 313–393–8139, e-mail: *nancy.bellamy@fda.hhs.gov*.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) and the registration fee of $575 (member), $650 (nonmember), or $525 (Government employee nonmember). (Registration fee for nonmembers includes a 1-year membership.) The registration fee for FDA employees is waived. Make the registration fee payable to SoCRA, 530 West Butler Ave., suite 109, Chalfont, PA, 18914. To register via the Internet go to*http://www.socra.org/html/FDA_Conference.htm* (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**).

The registrar will also accept payment by major credit cards. For more information on the meeting, or for questions on registration, contact 800–SoCRA92 (800–762–7292), or 215–822–8644, or via e-mail: *socramail@aol.com*. Attendees are responsible for their own accommodations. To make reservations at the Sheraton Indianapolis Hotel & Suites, at the reduced conference rate, contact the Sheraton Indianapolis Hotel & Suites (see *Location*) before October 22, 2006. The registration fee will be used to offset the expenses of hosting the conference, including meals, refreshments, meeting rooms, and materials.

Space is limited, therefore interested parties are encouraged to register early. Limited onsite registration may be available. Please arrive early to ensure prompt registration. If you need special accommodations due to a disability, please contact Nancy Bellamy (see *Contact*) at least 7 days in advance of the workshop.

SUPPLEMENTARY INFORMATION: The workshop on FDA clinical trials statutory and regulatory requirements helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health by educating researchers on proper conduct of clinical trials. Topics for discussion include the following: (1) FDA regulation of the conduct of clinical research; (2) medical device, drug, biological product and food aspects of clinical research; (3) investigator initiated research; (4) pre-investigational new drug application meetings and FDA meeting process; (5) informed consent requirements; (6) ethics in subject enrollment; (7) FDA regulation of institutional review boards; (8) electronic records requirements; (9) adverse event reporting; (10) how FDA conducts bioresearch inspections; and (11) what happens after the FDA inspection. FDA has made education of the research community a high priority to ensure the quality of clinical data and protect research subjects. The workshop helps to implement the objectives of section 406 of the FDA Modernization Act (21 U.S.C. 393) and the FDA Plan for Statutory Compliance, which includes working more closely with stakeholders and ensuring access to needed scientific and technical expertise. The workshop also furthers the goals of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121) by providing outreach activities by Government agencies directed to small businesses.

Dated: August 4, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–13114 Filed 8–10–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0107]

Food and Drug Administration-Regulated Products Containing Nanotechnology Materials; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) will hold a public meeting October 10, 2006, on FDA-regulated products containing nanotechnology materials, and has opened a docket on FDA-regulated products containing nanotechnology materials. The purpose of the meeting will be to help FDA further its understanding of developments in nanotechnology materials that pertain to FDA-regulated products. FDA is interested in learning about the kinds of new nanotechnology material products under development in the areas of foods (including dietary supplements), food and color additives, animal feeds, cosmetics, drugs and biologics, and medical devices, whether there are new or emerging scientific issues that should be brought to FDA's attention, and any other scientific issues about which the regulated industry, academia, and the interested public may wish to inform FDA concerning the use of nanotechnology materials in FDA-regulated products.

DATES AND TIMES: The public meeting will be held October 10, 2006, from 9 a.m. to 5 p.m.

REGISTRATION: You may register at *http://www.fda.gov/nanotechnology/*. We will also post the agenda at *http://www.fda.gov/nanotechnology/* prior to the meeting.

ADDRESSES: The public workshop will be held at the Natcher Auditorium, National Institutes of Health Campus, 9000 Rockville Pike, bldg. 45, Bethesda, MD. We will also post the address for the meeting at *http://www.fda.gov/nanotechnology/*.

Written or electronic comments may be submitted by November 10, 2006. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Poppy Kendall, Food and Drug Administration (HF–11), 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360, FAX: 301–594–6777, e-mail: *poppy.kendall@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Why Are We Holding a Public Meeting?

Nanotechnology is defined in a variety of ways. The National Nanotechnology Initiative (a U.S. Government research and development coordinating program) refers to nanotechnology as "the understanding and control of matter at dimensions of roughly 1 to 100 nanometers, where unique phenomena enable novel applications" (*http://www.nano.gov*). A nanometer is a billionth of a meter, and is approximately the width of 10 hydrogen atoms lined up side by side. (A human hair is about 80,000 nanometers in width. Deoxyribonucleic acid (DNA) is about 2.5 nanometers in width.)

Due to their small size and extremely high ratio of surface area to volume, nanotechnology materials often have chemical or physical properties that are different from those of their larger counterparts. Such differences include altered magnetic properties, altered electrical or optical activity, increased structural integrity, and increased chemical and biological activity. Because of these properties, nanotechnology materials have great potential for use in a vast array of products. Also because of some of their special properties, they may pose different safety issues than their larger counterparts. Of particular interest to FDA, nanotechnology materials may enable new developments in implants and prosthetics, drug delivery, and food processing, and may already be in use in some cosmetics and sunscreens. As part of its critical path initiative, FDA is interested in learning if there are opportunities for it to help overcome scientific hurdles that may be inhibiting the use of nanotechnology in medical product development.

We will be holding this meeting because we are interested in learning about the kinds of new nanotechnology material products under development in the areas of foods (including dietary supplements), food and color additives, animal feeds, cosmetics, drugs and biologics, and medical devices, whether there are new or emerging scientific issues that should be brought to FDA's attention, including issues related to the safety of nanotechnology materials, and any other issues about which the regulated industry, academia, and the interested public may wish to inform FDA concerning the use of nanotechnology materials in FDA-regulated products.

The public meeting will be chaired by the FDA Nanotechnology Task Force. Acting FDA Commissioner Andrew von Eschenbach created this internal task force to help the agency evaluate the increasing use of nanotechnology materials in FDA-regulated products.

For more information about FDA's role regarding nanotechnology products, see our Web page at *http://www.fda.gov/nanotechnology/*.

II. How Can You Participate?

You can participate through oral presentation at the meeting or through written or electronic material submitted to the docket. In response to the first notice of this meeting (71 FR 19523, April 14, 2006) we received a large number of responses indicating interest in attending and presenting, and the responses indicated interest in a variety of topics. Therefore, in order to provide the most value to those attending who may be interested in a particular topic, we are likely to divide the meeting into topic areas (for separate, concurrent sessions on those topics) and one general session. Participants would be asked to express a preference for either one of the concurrent sessions or the general session in which to make a presentation. Time allotted for each presentation will depend on the presentation requests received for that session. Furthermore, given the number of responses received, it is likely that it will be necessary to limit presentations to one per individual/organization.

In addition to a session that has a more general focus, we are considering the following three breakout sessions: (1) Topically-administered drugs, biologics, devices and cosmetics; (2) other drugs, biologics and devices; (3) foods (including dietary supplements) and food and color additives, and animal Feeds.

We ask that you register early (see **REGISTRATION**) if you intend to provide an oral presentation. The information provided during registration will help us determine further how to organize the day. The final agenda will depend

on the nature of the requests made for presentations.

III. Will Meeting Transcripts Be Available?

Following the meeting, transcripts will be available for review at the Division of Dockets Management (see **ADDRESSES**).

IV. How Should You Send Comments on the Issues?

Interested persons may submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**). Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 1, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 06–6867 Filed 8–8–06; 3:14 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0292]

Unique Device Identification; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is issuing this notice to request comments to help the agency understand how the use of a unique device identification (UDI) system may improve patient safety, e.g., by reducing medical errors, facilitating device recalls, and improving medical device adverse event reporting. We are also interested in understanding the issues associated with the use of various automatic identification technologies (e.g., bar code, radiofrequency identification). We invite comments about specific UDI issues for medical devices.

DATES: Submit written or electronic comments by November 9, 2006.

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

FOR FURTHER INFORMATION CONTACT: David Racine or Jay Crowley, Center for Devices and Radiological Health (HFZ–500), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 240–276–3400, e-mail: *CDRHUDI@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On February 26, 2004, we published a final rule (the "bar code rule") (69 FR 9120) requiring bar codes on certain human drug and biological products to help reduce medication errors in hospitals and other health care settings. The bar code is intended to enable health care professionals to use bar code scanning equipment in conjunction with computerized medication administration systems to verify that the right drug, in the right dose, is being given to the right patient at the right time. This rule (now codified at 21 CFR 201.25 and 610.67) requires that manufacturers encode the unique National Drug Code (NDC) number in a linear bar code on the product's label.

The bar code rule, however, does not apply to medical devices. In the bar code rule, we stated that, unlike drugs, medical devices do not have a standardized, unique identifying system comparable to the NDC number, and that the absence of such a system complicates efforts to put bar codes on medical devices for purposes of preventing medical errors (69 FR 9120 at 9132).

Since the issuance of the final bar code rule, various entities, including members of Congress and a consortium of hospital groups, have asked that we revisit the issue of bar coding medical devices to improve patient safety; improve quality of care; and encourage cost effectiveness, e.g., of health care by improving delivery and supply chain efficiency (Refs. 1 and 2).

A. Stakeholder Meetings

In response to the interest in revisiting the issue of bar coding medical devices, FDA met with various stakeholders, including device manufacturers and distributors, hospital associations, and other Federal agencies such as the Agency for Healthcare Research and Quality, Department of Defense, Department of Veterans Affairs, and Centers for Medicare and Medicaid Services to solicit information and comments about employing a uniform system for the unique identification of medical devices. (References 3 and 5 contain summaries of some of these meetings). We were interested in hearing views about the value of a uniform system of unique identifiers for medical devices, what efforts or initiatives are currently ongoing among stakeholders, and the use of various automatic identification technologies. We were also interested in FDA's role related to the establishment and use of a UDI system and whether FDA should consider a voluntary or a mandatory approach for such a system.

As a result of these meetings, FDA learned that the majority of stakeholders support the development of a uniform system of unique identifiers as a way to improve patient safety and recognized other ancillary benefits such as better management of the purchase, distribution, and use of medical devices. However, there were a variety of opinions and experiences about how best to implement such a system.

B. Report on Automatic and Unique Identification of Medical Devices

In addition to holding stakeholder meetings, we commissioned two reports from outside experts to provide: A general overview of some of the most prevalent technologies available to support automatic identification of medical devices, the current published positions and standards of various stakeholders, and highlights of some of the general applications reported in the literature involving the use of such systems for medical devices. (See Refs. 4 and 6 and *http://www.fda.gov/cdrh/ocd/udi/*). The reports identified several potential benefits to widespread use of UDI, such as reducing medical errors, facilitating recalls, improving medical device reporting, and identifying incompatibility with devices or potential allergic reactions. The reports further indicated that many issues have to be addressed prior to successful implementation of UDI for devices, including determining the technology needed to utilize UDI effectively, identifying the data needed for patient safety; development, maintenance, and validation of a central data repository; and harmonizing UDIs for the international marketplace.

II. UDI Development and Implementation

We are interested in receiving comment on the possible role that a unique device identification system could have on improving patient safety, for example, by reducing medical errors, facilitating device recalls, and improving medical device adverse event reporting. In addition, we are interested

in receiving comments on the feasibility, benefits, and costs involved in the development and implementation of such a system and views on FDA's role in such a process.

A. Development of a Unique Device Identification System

The agency believes that unique device identification would entail creating a uniform, standard system of device attributes—which, when combined, would uniquely identify a particular device at the unit of use. The definition of "unit of use" would likely vary for different device types—for example, unit of use could be a box of examination gloves or an infusion pump. The device attributes or elements of a unique identifier could include:

- Manufacturer, make, and model;
- Unique attributes (e.g., size, length, quantity, software version); and
- Serial number, identifying lot number, manufacturing, or expiration date (depending on the device type).

We envision that a change to any of the above criteria would likely necessitate a new UDI. For example, different size or length catheters of the same type would need different (unique) UDIs. Then, taken together, for example—if the Acme Company manufactured different types and styles of examination gloves in various sizes and quantities—the elements of the UDI might include:

[1 - manufacturer] Acme (manufacturer number 12345)
[2 - make and model] Great Latex Examination Gloves (product number 6789)

[3 - size] Adult large (size number 012)
[4 - how packaged] Box of 50 (quantity number 50)
[5 - lot number] Lot number: 6789 (lot number 6789)

When these elements or attributes are combined together—the result is a number which would uniquely identify all lots of those specific gloves. The UDI might then look like:

[1] 12345 [2] 6789 [3] 012 [4] 50 [5] 6789

This UDI is human readable and could be listed on device labeling. The UDI could also be encoded in any of a number of different automatic identification technologies (e.g., barcode, radiofrequency identification (RFID))[1]—depending on the stakeholders' needs and uses. Though the number does not necessarily have any inherent meaning, it could be used to reference more information about the device.

B. Implementing Unique Device Identification

We believe that the UDI could be used in two broad ways. First, the UDI itself would represent a way to uniquely identify a specific device (or, for example, a lot of the same device). The UDI could be used to specifically identify a particular device—for example, to facilitate reporting an adverse event or locating a recalled device.

Second, the UDI may be used to convey information to promote safe device use. The UDI could interface with a computer database that could access an additional reference data set with information related to safe use (such as indications for use and accessories needed to operate the device). For example, a UDI could be used to convey any or all of the following information as part of a minimum data set:

- Manufacturer, make, and model;
- Unique attributes (e.g., size, length, quantity, software version); and
- Serial number, identifying lot number, manufacturing, or expiration date (depending on the device type).
- Product type (and identifying code, such as FDA procode[2]);
- Indications for use, contraindications, warning, precautions;
- The accessories needed to operate the device; and
- If the device is an accessory to another device, the specific device with which it operates.

This information could reside in a publicly available database, such as the National Library of Medicine's DailyMed (*http://dailymed.nlm.nih.gov/*)—which currently provides information about marketed drugs, including FDA approved labels. The information from this website is available electronically and is both easier for people to read and "computer friendly." As such, it is intended to be the basis for populating computer systems and provide users up to date information. The agency requests comment on whether some or all of the information in the minimum data set, described previously, would improve patient safety, and if so, how. If not, why not?

C. The Use and Benefits of UDIs

We believe that the use of UDI could bring about a number of patient safety benefits, including reducing medical errors, facilitating device recalls, and improving medical device adverse event reporting.

D. Reducing Medical Error

Device-related medical errors are a common and serious problem. The November 1999 Institute of Medicine report, "To Err is Human—Building a Safer Health System," estimated that as many as 98,000 people die in any given year from medical errors that occur in hospitals. Incorrect medical device use represents a category of medical device related error. For example, while all implants are intended to be sterilized before use, some of these devices are shipped sterile and some are shipped nonsterile because the hospital plans to sterilize the implant itself prior to use. Shipping both sterile and nonsterile implants could lead to difficulties at the hospital due to errors in distinguishing between the sterile and nonsterile implants. UDI information and its associated labeling data could be automatically read and help users distinguish between sterile and nonsterile products. This could prevent the possibility that a patient would receive a nonsterile implant.

Another example is when devices, which are not designed or intended to be used together, are erroneously used together. The UDI system could be used to improve interoperability issues, such as identifying the specific accessories to be used with a medical device. A UDI could also identify compatibility issues—such as those devices which can be used safely with magnetic resonance imaging (MRI) systems.

E. Facilitating Device Recalls

An effective system of device identification could improve various postmarket efforts. Currently, locating all devices subject to a recall is a time and labor intensive process. Manufacturers, distributors and healthcare facilities often do not know exactly where all recalled devices are located. Consequently, the failure to identify recalled devices could result in the continued use of such devices on patients in a variety of settings (e.g. hospitals, long-term care facilities, homecare environments) and cause increased risk for patient harm. Moreover, it is usually not possible to associate the use of a device with a particular patient. The UDI could facilitate identifying patients who have

[1] RFID refers to a wireless communication technology that uses radio frequency signals to capture data from a tag that can identify and track objects.

[2] At the time that new medical devices are cleared or approved by FDA, the agency assigns them a product code (or "procode"), which is a general classification scheme and is used for FDA listings of types of devices. Manufacturers are required to use this system for identifying devices on all MDR reports they send to FDA (including reports they forward from user facilities).

been exposed to or received the recalled device.

F. Improving Adverse Event Reporting

Present adverse event reporting systems do not usually capture the specific device used, or overall device use (referred to as "denominator data"). UDI could facilitate identification of devices in adverse event reports, in the use of active surveillance systems, and provide better documentation of specific medical device use in electronic health records and health databases. This would allow us both to identify new problems and also establish a denominator of device use, so that the incidence of adverse events related to the overall device use can be better quantified.

G. Ancillary Benefits

In addition to improved patient safety from reducing medical errors, facilitating device recalls, and improving adverse event reporting, there may be secondary or ancillary benefits from the use of a UDI. These benefits include improved materials management and associated healthcare cost savings. UDIs could also facilitate the development of useful electronic health records by allowing providers to automatically capture important information about the device that has been used on a patient. UDIs could help identify similar devices or devices that are substantially equivalent if there were concerns that recalls or other problems with marketed devices might create a shortage. The use of UDIs could also reduce the potential for injury from counterfeit devices by offering a better way to track devices and detect counterfeit product.

III. Agency Request for Information

In light of the potential benefits highlighted previously, FDA is interested in gathering information about the feasibility, utility, benefits, and costs associated with the development and implementation of a UDI system for medical devices. We are also interested in understanding the issues associated with the use of various automatic identification technologies (e.g., bar code, RFID). Therefore, we invite comments and available data on the following questions:

Developing a System of Unique Device Identifiers

1. How should a unique device identification system be developed? What attributes or elements of a device should be used to create the UDI?

2. What should be the role, if any, of FDA in the development and implementation of a system for the use of UDIs for medical devices? Should a system be voluntary or mandatory?

3. What are the incentives for establishing a uniform, standardized system of unique device identifiers?

4. What are the barriers for establishing unique device identifiers? What suggestions would you have for overcoming these barriers?

5. Have you implemented some form of UDI in your product line? Please describe the extent of implementation, type of technology used, and the data currently provided.

6. Should unique device identifiers be considered for all devices? If yes, why? If not, what devices should be considered for labeling with a UDI and why?

7. At what level of packaging (that is, unit of use) should UDIs be considered? Should UDIs be considered for different levels of packaging? If yes, should the level of packaging be based on the type of device? Why or why not?

8. What solutions have you developed or could be developed for addressing the technological, equipment, and other problems that might arise in developing and implementing a UDI system (e.g., solutions for packaging issues)?

Implementing Unique Device Identifiers

9. What is the minimum data set that should be associated with a unique device identifier? Would this minimum data set differ for different devices? If so, how? How would the data in the minimum data set improve patient safety? What other data would improve patient safety?

10. How should the UDI and its associated minimum data set be obtained and maintained? How and by whom should the UDI with its associated minimum data set be made publicly available?

11. Should the UDI be both human readable and encoded in an automatic technology? Should the UDI be on the device itself (e.g., laser-etched) for certain devices?

12. Should a UDI be based on the use of a specific technology (e.g., linear bar code) or be nonspecific? Please explain your response. If a bar code is recommended, is a specific type of symbology preferred, and if so, what type and why? Should the bar code be "compatible" with those used for the drug bar code rule? If yes, why? If not, why not?

UDI Benefits and Costs

13. From your perspective, what public health and patient safety benefits could be gained from having a standardized unique device identifier system? How would such a system contribute to meeting device recall and adverse event reporting requirements, and to reducing medical error? Please submit detailed data to support benefits you identify.

14. From your perspective, what are the setup costs measured in time and other resources associated with the development, implementation, and use of a UDI system? Please submit detailed data to support these cost estimates.

15. If you have already implemented a form of unique identification on your medical device labeling, what investments in equipment, training, and other human and physical resources were necessary to implement the use of UDIs? What factors influenced your decision to implement such a system? What changes in patient safety or economic benefits and costs have you observed since the institution of UDIs?

16. From your perspective, what is the expected rate of technology acceptance in implementing or using a UDI system?

17. From your perspective, what are the obstacles to implementing or using a UDI system in your location?

18. For hospitals and other device user facilities considering technology investments, what would be the relative priority of developing UDI capabilities compared to other possible advancements, such as Electronic Health Records, bedside barcoding for pharmaceuticals dispensing, data sharing capabilities across hospitals and other device user facilities, and other possible advances?

19. What infrastructure or technological advancements are needed for hospitals and other device user facilities to be able to capture and use UDI for basic inventory control and recall completion purposes? How costly are these advancements?

20. Referring specifically to completing medical device recalls in your hospital or other device user facility, for what share of the most serious (Class I) or next most serious (Class II) recalls would having access to and an ability to capture UDI information help you to respond?

IV. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen between 9 a.m. and 4 p.m.., Monday through Friday. (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

1. Letter from Pete Sessions, Mike Doyle, Tim Murphy, Michael Conaway, Bill Jenkins, Bob Inglis, George Radarovich, Members of

Congress to Lester M. Crawford, Acting Commissioner, Food and Drug Administration, dated May 24, 2005.

2. Letter from Margaret Reagan (Premiere, Inc.), Rick Pollack (American Hospital Association), Larry Gage (National Association of Public Hospitals and Health Systems), Charles Kahn (Federation of American Hospitals), Edward Goodman (Veterans Health Administration), Michael Rodgers (Catholic Health Association of the United States), Robert Dickler (Association of American Medical Colleges) to Lester Crawford, Acting Commissioner, Food and Drug Administration, dated May 9, 2005.

3. The Food and Drug Law Institute/CDRH Report on Meeting to Discuss Unique Device Identification, (*http://www.fda.gov/cdrh/ocd/uidevices061405.html*), April 14 and 15, 2005.

4. ECRI/FDA White Paper: Automatic Identification of Medical Devices, (*http://www.fda.gov/cdrh/ocd/ecritask4.html*), August 17, 2005.

5. The Food and Drug Law Institute/CDRH, "Report on Meeting to Discuss Unique Device Identification," (*http://www.fda.gov/cdrh/ocd/uidevices011606.html*), October 27, 2005.

6. "ERG Final Report: Unique Identification for Medical Devices," (*http://www.fda.gov/cdrh/ocd/udi/erg-report.html*), March 22, 2006.

7. "Ensuring the Safety of Marketed Medical Devices: CDRH's Medical Device Safety Program," (*http://www.fda.gov/cdrh/postmarket/mdpi-report.pdf*), January 18, 2006.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic copies or two paper copies of any mailed comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 27, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 06–6870 Filed 8–9–06; 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: Assessment of the Engagement of Historically Black Colleges and Universities in Campus and Community-Based Activities to Eliminate Health Disparities (NEW)

The Health Resources and Services Administration (HRSA) plans to conduct a survey of 525 university administrators at Historically Black Colleges and Universities (HBCUs) to collect information not otherwise available about the extent to which HBCUs have engaged in health promoting activities on campus and in their surrounding communities that are designed to eliminate health disparities among African Americans. The results of this survey will be used by HRSA's Office of Minority Health and Health Disparities (OMHHD) to obtain information regarding the engagement of HBCUs in health disparities activities. The results of the survey will also permit OMHHD (1) to describe the origins, structure, content, and intensity of such activities, (2) to document the level of support for campus and community activities among administrative leaders at HBCUs, (3) to document the factors that facilitate or hinder the ability of HBCUs to engage in campus and community activities to eliminate health disparities, and (4) to determine whether there is a need among HBCUs for additional assistance that will allow them to expand their role and improve their effectiveness in addressing health disparities.

The survey process will include a web-based survey to be completed by targeted respondents. Follow-up telephone calls will be conducted with respondents who do not complete the online survey. Approximately 5 administrators will be surveyed at each of the 105 recognized HBCUs. The types of administrators to be surveyed include Presidents, Deans of Faculty, Deans of Students, and staff and/or faculty that are leaders for programs that are associated with eliminating health disparities.

The burden estimate for this project is as follows:

Form	No. of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Survey	525	1	525	.75	394

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: August 8, 2006.

Cheryl R. Dammons,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–13217 Filed 8–10–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Council on Graduate Medical Education; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Council on Graduate Medical Education (COGME).

Dates and Times: September 6, 2006, 8:30 a.m.–5 p.m.; and September 7, 2006, 8:30 a.m.–4 p.m.

Place: Hilton Washington DC North/Gaithersburg, 620 Perry Parkway, Gaithersburg, Maryland 20877.

Status: The meeting will be open to the public.

Agenda: The agenda for September 6 in the morning will include: Welcome and opening comments from the Acting Chair and Acting Executive Secretary of COGME and senior management staff of the Health Resources and Services Administration. Following will be an election of the Chair of COGME.

There will be an orientation for new council members. Later that morning there will be a presentation of resource papers on the issue of National Service for Physicians, followed by discussion. In the afternoon there will be a presentation of resource papers on the need for graduate medical education financing flexibility; a discussion of the papers will follow. There will be a discussion of next day's activities needed for the preparation of two COGME reports covering the two issues presented in the resource papers. Writing group members within COGME will be identified for each of the two reports.

In the morning of September 7, COGME members will receive ethics training as appropriate. There will be a presentation and discussion of a sixth resource paper on the need for GME flexibility. Following these discussions, the Council members will break out into two writing groups. After about four hours of writing group discussions, COGME members will reconvene in plenary session. A report will be given by the two writing group chairs of draft recommendations, proposed outline and list of members to draft each section of the two reports. There will be a discussion of the process and time-frame for producing the two report drafts.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Jerald M. Katzoff, Acting Executive Secretary, COGME, Division of Medicine and Dentistry, Bureau of Health Professions, Parklawn Building, Room 9A–27, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6785.

Dated: August 7, 2006.

Cheryl R. Dammons,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–13214 Filed 8–10–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; amended at 67 FR 46519, July 15, 2002; 68 FR 787–793, January 7, 2003, 68 FR 64357–64358, November 13, 2003; at 69 FR 56433–56434, September 21, 2004 and; last amended at 70 FR 61293–61294, October 21, 2005.)

This notice reflects changes to the organization and functions of the Office of the Administrator (AO) and the HIV/AIDS Bureau (RV).

Chapter RA—Office of the Administrator

Section RA–10, Organization

(1) Immediate Office of the Administrator (RA);
(2) Office of Equal Opportunity and Civil Rights (RA2);
(3) Office of Planning and Evaluation (RA5);
(4) Office of Communications (RA6);
(5) Office of Minority Health and Health Disparities (RA9);
(6) Office of Legislation (RAE);
(7) Office of Information Technology (RAG); and
(8) Office of International Health Affairs (RAH).

Section RA–20, Function

Delete the functional statement in its entirety and replace with the following:

Immediate Office of the Administrator (RA)

(1) Leads and directs programs and activities of the Agency and advises the Office of the Secretary of Health and Human Services on policy matters concerning them; (2) provides consultation and assistance to senior Agency officials and others on clinical and health professional issues; (3) serves as the Agency's focal point on efforts to strengthen the practice of public health as.it pertains to the HRSA mission; (4) establishes and maintains verbal and written communications with health organizations in the public and private sectors to support the mission of HRSA; (5) directs the Center for Quality; and (6) manages the legislative and communications programs for the agency.

Chapter RV—HIV/AIDS Bureau

Section RV–10, Organization

Section RV–20, Functions

Delete the functional statement for the Office of the Associate Administrator in its entirety and replace with the following:

Provides leadership and direction for the HIV/AIDS programs and activities of the Bureau and oversees its relationship with other national health programs. Specifically: (1) Coordinates the formulation of an overall strategy and policy for HRSA AIDS programs; (2) coordinates the internal functions of the Bureau and its relationships with other national health programs; (3) establishes AIDS program objectives, alternatives, and policy positions consistent with broad Administration guidelines; (4) provides direction and leadership for the Agency's AIDS grants and contracts programs; (5) reviews AIDS related program activities to determine their consistency with established policies; (6) represents the Agency and the Department at AIDS related meetings, conferences and task forces; (7) serves as principal contact and advisor to the Department and other parties concerned with matters relating to planning and development of health delivery systems related to HIV/AIDS; (8) develops and administers operating policies and procedures for the Bureau; (9) directs and coordinates Bureau Executive Secretariat activities; (10) serves in developing and coordinating Telehealth programs and in facilitating electronic dissemination of best practices in health care to health care professionals; (11) provides grantees/States with accurate and timely interpretations of the Bureau's program expectations, requirements, guidance, and Federal legislation; and (12) arranges and provides technical assistance to assure that the grantees meet program expectations.

Section RA–30, Delegation of Authority

All delegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further re-delegation. I hereby ratify and affirm all actions taken by any HRSA official which involves the exercise of these authorities prior to the effective date of this delegation.

This reorganization is effective upon the date of signature.

Dated: August 2, 2006.
Elizabeth M. Duke,
Administrator.
[FR Doc. E6–13216 Filed 8–10–06; 8:45 am]
BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Proposed Project: Drug and Alcohol Services Information System (DASIS)—(OMB No. 0930–0106)—Revision

The request for OMB approval is a supplement to the full DASIS request approved on November 8, 2005, and is being submitted in accordance with the Terms of Clearance in that 2005 OMB Notice of Action. The supplemental submission requests extension and revision of DASIS, including approval to revise and conduct the National Survey of Substance Abuse Treatment Services (N–SSATS) following the pretest of the questionnaire changes. The request revises only the N–SSATS-related portion of the DASIS data collection. There are no changes to the other DASIS components.

The DASIS consists of three related data systems: The Inventory of Substance Abuse Treatment Services (I–SATS); the National Survey of Substance Abuse Treatment Services (N–SSATS), and the Treatment Episode Data Set (TEDS). The I–SATS includes all substance abuse treatment facilities known to SAMHSA. The N–SSATS is an annual survey of all substance abuse treatment facilities listed in the I–SATS. The TEDS is a compilation of client-level admission data and discharge data submitted by States on clients treated in facilities that receive State funds. Together, the three DASIS components provide information on the location, scope and characteristics of all known drug and alcohol treatment facilities in the United States, the number of persons in treatment, and the characteristics of clients receiving services at publicly-funded facilities. This information is needed to assess the nature and extent of these resources, to identify gaps in services, to provide a database for treatment referrals, and to assess demographic and substance-related trends in treatment.

The request for OMB approval includes changes to the N–SSATS survey and the Mini-N–SSATS. The Mini-N–SSATS is a procedure for collecting services data from newly identified facilities between main cycles of the N–SSATS survey and will be used to improve the listing of treatment facilities in the on-line treatment facility Locator. The request includes the following changes to the 2007 N–SSATS questionnaire, as refined by the pretest findings: modification of the treatment categories to incorporate terminology currently used in the substance abuse treatment field; modification of the detoxification question, including the addition of a follow-up question on whether the facility uses drugs in detoxification and for which substances; the addition of questions on clinical/therapeutic approaches; the addition of a question on quality control procedures used by the facility; the addition of a question on how many annual admissions to treatment were funded by Access to Recovery (ATR) vouchers; and, the addition of a question on whether the facility has a National Provider Identifier (NPI.) The request will also include changes to the Mini-N–SSATS questionnaire to modify the treatment categories to incorporate terminology currently used in the substance abuse treatment field. The remaining sections of the N–SSATS questionnaires will remain unchanged except for minor modifications to wording. The request for OMB approval will include a change in burden hours to include the full three years of N–SSATS and mini-N–SSATS data collection, now that the N–SSATS pretest has been completed. Also, the burden hours for the pretest are being dropped.

No significant changes are expected in the other DASIS activities.

The estimated annual burden for the DASIS activities is as follows [note—only the estimates for N–SSATS-related activities are changing]:

Type of respondent and activity	No. of respondents	Responses per respondent	Hours per response	Total burden hours
STATES:				
TEDS Admission data	52	4	6	1,248
TEDS Discharge data	40	4	8	1,280
TEDS Discharge crosswalks	5	1	10	50
I–SATS Update	56	67	.08	300
State Subtotal [1]	56			2,878
FACILITIES:				
I–SATS update	100	1	.08	8
N–SSATS questionnaire	17,000	1	.67	11,390
Augmentation screener	1,000	1	.08	80
Mini-N–SSATS	700	1	.42	294
Facility Subtotal	19,000			11,772
Total	19,056			14,650

[1] The burden for the listed State activities is unchanged from the currently approved level. Only the burden for N–SSATS and Mini-N–SSATS is changing, and the burden for the N–SSATS pretest, which is now complete, has been removed.

Written comments and recommendations concerning the proposed information collection should be sent by September 11, 2006 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office

of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: August 7, 2006.

Anna Marsh,

Director, Office of Program Services.

[FR Doc. E6–13133 Filed 8–10–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5045–N–32]

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: August 11, 2006.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7252, 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 building 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: August 3, 2006.

Mark R. Johnston,

Acting Deputy Assistant, Secretary for Special Needs.

[FR Doc. 06–6770 Filed 8–10–06; 8:45 am]

BILLING CODE 4210–67–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–4310–33]

Steens Mountain Advisory Council—Notice of Renewal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of renewal of the Steens Mountain Advisory Council.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972, Public Law 92–463. Notice is hereby given that the Secretary of the Interior (Secretary) has renewed the Bureau of Land Management's Steens Mountain Advisory Council.

The purpose of the Council will be to advise the Secretary with respect to the preparation and implementation of the Steens Mountain Cooperative Management and Protection Area Management Plan.

FOR FURTHER INFORMATION CONTACT: Maggie Langlas, National Landscape Conservation System (171), Bureau of Land Management, 1620 L Street, NW., Room 301 LS, Washington DC 20236, telephone (202) 452–7787.

Certification Statement

I hereby certify that the renewal of the Steens Mountain Advisory Council is necessary and in the public interest in connection with the Secretary's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management.

Dated: August 4, 2006.

Dirk Kempthorne,

Secretary of the Interior.

[FR Doc. 06–6866 Filed 8–10–06; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Endangered Species Recovery Permit Application and Environmental Analysis on This Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt and intent: request for comments.

SUMMARY: The State of Oregon has applied for an enhancement of propagation or survival permit to conduct certain activities with gray wolves (*Canis lupus*) pursuant to section 10(a)(1)(A) of the Endangered Species Act (ESA). In addition, pursuant to the National Environmental Policy Act (NEPA), this notice advises the public that the U.S. Fish and Wildlife Service "we" or "Service") intends to conduct an environmental analysis (environmental assessment or environmental impact statement) for Oregon's permit application. We solicit comments from the public and from local, State, and Federal agencies on both the permit request and the environmental analysis.

DATES: We must receive your comments on this permit application and environmental analysis on or before September 11, 2006.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (fax: 503–231–6243). Please refer to the permit number or "Oregon Wolf Permit Analysis" when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with this application or associated with this analysis are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the address above (telephone: 503–231–2063). Please refer to the application's permit number or "Oregon Wolf Permit Analysis" when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–122636

Applicant: Oregon Department of Fish and Wildlife (ODFW)

The applicant has submitted an application for an ESA 10(a)(1)(A) recovery permit authorizing harassment, relocation, and lethal take of gray wolves in Oregon for the purpose of enhancing their recovery, pursuant to the State of Oregon Wolf Conservation and Management Plan (December 2005) developed in consultation with the Service. This plan provides guidelines for a coordinated and effective response to anticipated situations that may arise as gray wolves migrate into Oregon from adjacent States. ODFW proposes to implement proactive strategies and conduct non-lethal control actions to reduce and/or resolve wolf-livestock conflicts and human safety concerns. If non-lethal efforts are unsuccessful and

livestock depredations continue, ODFW requests authorization for employees to conduct lethal control of wolves. Under the ODFW proposal, young-of-the-year (juveniles) captured before October 1, and any lactating females, would be released or relocated rather than killed. No lethal take by private landowners would be authorized by this permit.

Currently, the ODFW is authorized through their section 6 Cooperative Agreement under the ESA to conduct non-lethal gray wolf management actions in Oregon for this species, which is Federally listed as endangered. These actions include trapping, collaring, taking blood and hair samples, harassing, and other forms of take that are not reasonably expected to result in the death or permanent disabling of a wolf.

A practical, responsive management program is essential to enhancing survival of the wolf in the wild (Service 1987; Service 1994; Service 1999). The program must respond to wolf-livestock conflicts, while promoting wolf recovery objectives. If issued, Oregon's permit would provide standards for: (a) Determining problem wolf status (including investigative procedures and criteria), (b) conducting wolf control actions, and (c) disposition of problem wolves.

In addition to evaluation under the ESA, we are analyzing issuance of this permit under NEPA (42 U.S.C. 4321 *et seq.*). Some environmental impacts of wolf management were analyzed in our 1988 Environmental Action Memorandum on the Interim Wolf Control Plan for the Northern Rocky Mountains and the 1999 Evaluation and Recommended Modifications to it. Our environmental analysis for ODFW's permit application will include changes in the gray wolf's population status since 1999 and other issues specific to Oregon.

Under NEPA, a reasonable range of alternatives to a proposed project must be developed and considered in our environmental review, along with a no-action alternative. Our NEPA evaluation will evaluate the potential impacts of alternatives for wolf conservation actions in Oregon. Management actions would be developed to conserve wolf populations and to protect livestock and pets. An alternative will be selected and a permit decision made after completion of all required analyses and consideration of all comments received in response to this Notice.

Any wolves existing in Oregon would likely be due to range expansion of the northern Rocky Mountains wolf population. However, the State of Oregon has established its own wolf population objectives. These population objectives are documented in the Oregon Wolf Conservation and Management Plan, which can be found at: *http://www.dfw.state.or.us/wolves/*. The ODFW permit application can be found at: *http://www.fws.gov/pacific/ecoservices/endangered/recovery/default.htm*.

Additional information about wolf recovery and conservation in the northwestern United States, including control of problem wolves, can be found in various reports at: *http://westerngraywolf.fws.gov/*.

Public Comments Solicited

We solicit public review and comment on this ESA recovery permit application and related NEPA environmental review. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, to the extent 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, but you should be aware that we may be required to disclose your name and address pursuant to the Freedom of Information Act. Moreover, 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. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 19, 2006.

David J. Wesley,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. E6–13132 Filed 8–10–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0094, 1029–0098 and 1029–0119

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval to continue the collections of information for 30 CFR part 700—general provisions, 30 CFR part 769—the petition process for the designation of Federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations, and 30 CFR 874.16—contractor eligibility requirements for general reclamation and its Abandoned Mine Land Contractor Information form. These information collection activities were previously approved by the Office of Management and Budget (OMB), and assigned clearance numbers 1029–0094, 1029–0098, and 1029–0119, respectively.

DATES: Comments on the proposed information collection must be received by October 10, 2006, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are contained in (1) 30 CFR 700, General (1029–0094); (2) 30 CFR part 769, Petition process for designation of Federal lands as

unsuitable for all or certain types of surface coal mining operations and for termination of previous designations; and (3) 30 CFR 874.16 and the Abandoned Mine Land Contractor Information form. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection requests to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: General, 30 CFR part 700.

OMB Control Number: 1029–0094.

Summary: This Part establishes procedures and requirements for terminating jurisdiction of surface coal mining and reclamation operations, petitions for rulemaking, and citizen suits filed under the Surface Mining Control and Reclamation Act of 1977.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State and tribal regulatory authorities, private citizens and citizen groups, and surface coal mining companies.

Total Annual Responses: 6.

Total Annual Burden Hours: 84.

Title: Petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations, 30 CFR part 769.

OMB Control Number: 1029–0098.

Summary: This part establishes the minimum procedures and standards for designating Federal lands unsuitable for certain types of surface mining operations and for terminating designations pursuant to a petition. The information requested will aid the regulatory authority in the decision making process to approve or disapprove a request.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: People who may be adversely affected by surface mining on Federal lands.

Total Annual Responses: 1.

Total Annual Burden Hours: 1,067.

Title: Contractor eligibility requirements for general reclamation, 30 CFR 874.16 and the AML Contractor Information Form.

OMB Control Number: 1029–0119.

Summary: 30 CFR 874.16 requires that every successful bidder for an AML contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Further, the regulation requires the eligibility to be confirmed by OSM's automated AVS and the contractor must be eligible under the regulations implementing Section 510(c) of the Surface Mining Act to receive permits to conduct mining operations. The AML Contractor Information form provides a tool for OSM and the States/Indian tribes to help them prevent persons with outstanding violations from conducting further mining of AML reclamation activities in the State.

Bureau Form Number: None.

Frequency of Collection: Once per contract.

Description of Respondents: AML contract applicants and State and tribal regulatory authorities.

Total Annual Responses: 420 bidders and 8 State responses.

Total Annual Burden Hours: 161.

Dated: August 7, 2006.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 06–6855 Filed 8–10–06; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1104 (Preliminary)]

Certain Polyester Staple Fiber From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of certain polyester staple fiber, provided for in subheading 5503.0020 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value.

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On June 23, 2006, a petition was filed with the Commission and Commerce by DAK Americas, LLC, Charlotte, NC; Nan Ya Plastics Corporation, America, Lacke City, SC; and Wellman, Inc., Shrewsbury, NJ; alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain PSF from China. Accordingly, effective June 23, 2006, the Commission instituted antidumping duty investigation No. 731–TA–1104 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 29, 2006 (71 FR 37097, June 29, 2006). The conference was held in Washington, DC, on July 14, 2006, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

the Secretary of Commerce on August 7, 2006. The views of the Commission are contained in USITC Publication 3878 (August, 2006), entitled *Certain Polyester Staple Fiber from China: Investigation No. 731–TA–1104 (Preliminary).*

Issued: August 7, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–13218 Filed 8–10–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number: 1121–NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day emergency notice of information collection under review: International Terrorism Victim Expense Reimbursement Program Application.

The Department of Justice, Office of Justice Programs, Office for Victims of Crime has submitted the following new information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by August 28, 2006. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–6466, Washington, DC 20503.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Barbara Walker, Office for Victims of Crime , 810 Seventh Street, NW., Washington, DC 20531; by telefacsmile on (202) 514–2940. or by e-mail, to *ITVERP@usdoj.gov.*

Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Overview of this information:

(1) *Type of information collection:* New.

(2) *The title of the form/collection:* International Terrorism Victim Expense Reimbursement Program (ITVERP) Application.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: none. Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual victims, surviving family members or personal representatives Other: Federal Government. This application will be used to apply for expense reimbursement by U.S. nationals and U.S. Government employees who are victims of acts of international terrorism that occur(red) outside of the United States. The application will be used to collect necessary information on the expenses incurred by the applicant, as associated with his or her victimization, as well as other pertinent information, and will be used by OVC to make an award determination.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 2,000 respondents will complete the certification in approximately 45 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this information collection is 1,500 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW, Washington, DC 20530.

Dated: August 8, 2006.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E6–13176 Filed 8–10–06; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

August 4, 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: Overpayment Recovery Questionnaire.

OMB Number: 1215–0144.
Form Number: OWCP–20.
Frequency: On occasion.
Type of Response: Reporting.
Affected Public: Individuals or households.
Number of Respondents: 4,020.
Annual Responses: 4,020.
Average Response Time: 45–75 minutes, average 1 hour.
Total Annual Burden Hours: 4,020.
Total Annualized capital/startup costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $1,768.
Description: The Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. 923(b) and 20 CFR 725.544(c), the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended, 42 U.S.C. 7385j–2 and 20 CFR 30.510 through 30.520, and the Federal Employees' Compensation Act, 5 U.S.C. 8129(b) and 20 CFR 10.430–10.441, provide for the recovery or waiver of overpayments of benefits to beneficiaries. The OWCP–20 is used by OWCP examiners to ascertain the financial condition of the beneficiary who has been overpaid to determine the present and potential income and assets available for collection proceedings. The questionnaire also provides a means for the beneficiary to explain why he/she is not at fault for the overpayment. If this information were not collected, Black Lung, EEOICPA and FECA would have little basis to decide on collection proceedings.

Ira L. Mills,
Departmental Clearance Officer.
[FR Doc. E6–13188 Filed 8–10–06; 8:45 am]
BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,787]

AGX Corporation, New York, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 25, 2006 in response to a petition filed on behalf of workers at AGX Corporation, New York, New York.

The petitioning group of workers is covered by an earlier petition (TA–W–59,744) filed on June 30, 2006 that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed in Washington, DC, this 27th day of July 2006.

Richard Church,
Certifying Officer, Division of Trade Adjustment Assistance.
[FR Doc. E6–13185 Filed 8–10–06; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,785]

Collins & Aikman, Nashville, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 25, 2006, in response to a petition filed by The United Steelworkers of America, District 9, Local 5887 on behalf of workers of Collins & Aikman, Nashville, Tennessee.

This petition is a duplicate of petition number TA–W–59,737, filed on July 18, 2006, that is the subject of an ongoing investigation. Consequently, this investigation is terminated.

Signed at Washington, DC, this 26th day of July, 2006.

Linda G. Poole,
Certifying Officer, Division of Trade Adjustment Assistance.
[FR Doc. E6–13183 Filed 8–10–06; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,426]

Continental Tire North America Tire Technology Charlotte, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 19, 2006 in response to a worker petition filed by a company official on behalf of workers of Continental Tire North America, Tire Technology, Charlotte, North Carolina.

The petitioning group of workers is covered by an active certification (TA–W–57,487), which expires on August 9, 2007. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 18th day of July 2006.

Linda G. Poole,
Certifying Officer, Division of Trade Adjustment Assistance.
[FR Doc. E6–13182 Filed 8–10–06; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,183]

Gehl Company, West Bend, WI; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter dated June 28, 2006, the United Steelworkers of America, requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance applicable to workers of the subject firm. The denial notice was signed on June 7, 2006, and published in the **Federal Register** on July 14, 2006 (71 FR 40160).

The initial investigation resulted in a negative determination based on the finding that the subject firm did not import agricultural implements or shift production abroad in 2004, 2005, or during the period of January through March 2006. Furthermore, the Department surveyed the subject firm's major declining customers resulting in the revelation of minimal imports of agricultural implements during the relevant period and increased reliance on purchases from other domestic sources.

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information regarding a shift in the firm's production of parts and components. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 2nd day of August 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–13186 Filed 8–10–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,717]

Kent Sporting Goods, Madison, GA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 13, 2006 in response to a petition filed on behalf of a worker at Kent Sporting Goods, Madison, Georgia.

The petitioning worker is covered by an active certification, (TA–W–55,434) which expires on September 8, 2006. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 27th day of July 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–13187 Filed 8–10–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,734]

Madison Industries Incorporated; Sumter, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 17, 2006 in response to a petition filed by a company official on behalf of workers of Madison Industries Incorporated, Sumter, South Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 18th day of July 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–13179 Filed 8–10–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,603]

Somitex Prints of California, Inc.; City of Industry, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 21, 2006 in response to a worker petition filed by the State One-Stop Operator on behalf of workers at Somitex Prints of California, Inc., City of Industry, California.

The petition indicates that domestic production of the firm ended in 2005, and operations have been transferred to Japan to serve customers overseas.

The Department has been unable to locate company officials of the subject firm, and has been unable to obtain the information necessary to reach a determination on worker group eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 18th day of July 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–13180 Filed 8–10–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,540]

Unifi, Inc., Polyester Division, Yadkinville, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 9, 2006 in response to a worker petition filed by a company official on behalf of workers of Unifi, Inc., Polyester Division, Yadkinville, North Carolina.

The petition has been deemed invalid because the petition is not dated. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 17th day of July 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–13184 Filed 8–10–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,707]

Welch Allyn, Inc., San Diego, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 13, 2006 in response to a worker petition filed by a company official on behalf of workers at Welch Allyn, Inc., San Diego, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 17th day of July 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–13178 Filed 8–10–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,386]

Woodmaster, Inc., St. Anthony, IN; Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance; Correction

This notice rescinds the notice of certification of eligibility to apply for Alternative Trade Adjustment Assistance applicable to TA–W–59,386, which was published in the **Federal Register** on June 9, 2006 (77 FR 33487–33489) in FR Document E6–9024, Billing Code 4510–30–P

This rescinds the certification of eligibility for workers of TA–W–59,386, to apply for Alternative Trade Adjustment Assistance and confirms eligibility to apply for Worker Adjustment Assistance as identified on page 33488 in the second column, the eighth TA–W–number listed.

The Department appropriately published in the **Federal Register** June 9, 2006, page 33489, under the notice of Negative Determinations for Alternative Trade Adjustment Assistance, the denial of eligibility applicable to workers of TA–W–59,386. The notice appears on page 33489 in the first column, the eleventh TA–W–number listed.

Signed in Washington, DC, this 7th day of August 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–13177 Filed 8–10–06; 8:45 am]

BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333]

Entergy Nuclear Operations, Inc.; Notice of Receipt and Availability of Application for Renewal of James A. FitzPatrick Nuclear Power Plant (Facility Operating License No. Dpr–59) for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or Commission) has received an application, dated July 31, 2006, from Entergy Nuclear Operations, Inc., filed pursuant to Section 104(b) (Operating License No. DPR–59) of the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* Part 54 (10 CFR Part 54), to renew the operating license for the James A. FitzPatrick Nuclear Power Plant. Renewal of the license would authorize the applicant to operate the facility for an additional 20-year period beyond the period specified in the current operating license. The current operating license for the James A. FitzPatrick Nuclear Power Plant (DPR–59) expires on October 17, 2014. The James A. FitzPatrick Nuclear Power Plant is a boiling-water reactor designed by General Electric. The unit is located near the town of Lycoming, New York. The acceptability of the tendered application for docketing, and other matters including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20582 or electronically from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room under Accession Number ML062160486. The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. In addition, the application is available on the NRC Web page at *http://www.nrc.gov/reactors/operating/licensing/renewal/application.html*. while the application is under review. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff at 1–800–397–4209, extension 301–415–4737, or by e-mail to *pdr@nrc.gov*.

A copy of the license renewal application for the James A. FitzPatrick Nuclear Power Plant, is also available to local residents near the James A. FitzPatrick Nuclear Power Plant at the Penfield Library (Selective Depository), Reference and Documents Department, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 7th day of August 2006.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Deputy Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E6–13124 Filed 8–10–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251; License Nos. Dpr–31 And Dpr–41]

In the Matter of Florida Power and Light Company; (Turkey Point Plant, Unit Nos. 3 And 4); Order Approving Application Regarding Corporate Merger

I

Florida Power and Light Company (FPL or the licensee) is the holder of the Facility Operating Licenses, Nos. DPR–31 and DPR–41, which authorize the possession, use, and operation of the Turkey Point Plant, Units 3 and 4 (the facility). FPL is licensed by the U.S. Nuclear Regulatory Commission (NRC or Commission) to operate the facility. The facility is located at the licensee's site in Miami-Dade County, Florida.

II

By application dated January 20, 2006 (the application), FPL requested that the NRC, pursuant to 10 CFR 50.80, consent to the proposed indirect transfer of control of the licenses for the facility.

According to the application filed by FPL, the facility is wholly owned by FPL.

As stated in the application, in connection with the proposed merger of FPL's parent company, FPL Group, Inc. (FPL Group), and Constellation Energy Group, Inc. (CEG, Inc.), FPL Group will become a wholly owned subsidiary of CEG, Inc. At the closing of the merger, the former shareholders of FPL Group will own approximately 60 percent of the outstanding stock of CEG, Inc., and the premerger shareholders of CEG, Inc., will own the remaining approximately 40 percent. In addition, the CEG, Inc., Board of Directors will be composed of fifteen members, nine of whom will be named by FPL Group, and six of whom will be named by the current CEG, Inc.

Approval of the indirect transfer of the facility operating licenses was requested by FPL pursuant to 10 CFR 50.80. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on February 22, 2006 (71 FR 9170). No comments or petitions to intervene were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by FPL and other information before the Commission, the NRC staff concludes that the proposed merger and resulting indirect transfer of control of the licenses will not affect the qualifications of FPL as a holder of the facility licenses, and that the indirect transfer of control of the license as held by FPL, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The findings set forth above are supported by a safety evaluation dated August 3, 2006.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended (the Act), 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It is hereby ordered* that the application regarding the proposed merger and indirect license transfer is approved, subject to the following conditions:

(1) FPL shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from FPL to its parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of FPL's net utility plant, as recorded on its books of accounts.

(2) Should the proposed merger not be completed within one year from the date of issuance, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may, in writing, be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated January 20, 2006, and the safety evaluation dated August 3, 2006, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

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

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–13125 Filed 8–10–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–335 and 50–389; License Nos. DPR–67 and NPF–16]

In the Matter of Florida Power And Light Company (St. Lucie Nuclear Plant, Unit Nos. 1 and 2); Order Approving Application Regarding Proposed Corporate Merger

I

Florida Power and Light Company (FPL or the licensee) exclusively holds Facility Operating License No. DPR–67 and co-holds Facility Operating License No. NPF–16, which authorize the possession, use, and operation of the St. Lucie Nuclear Plant, Units 1 and 2 (the facility). FPL is licensed by the U.S. Nuclear Regulatory Commission (NRC or Commission) to operate the facility. The facility is located at the licensee's site in St. Lucie County, Florida.

II

By application dated January 20, 2006 (the application), FPL requested that the NRC, pursuant to 10 CFR 50.80, consent to the proposed indirect transfer of control of the licenses to the extent currently held by FPL. The Orlando Utilities Commission of the City of Orlando, Florida, and the Florida Municipal Power Agency collectively hold a 14.9 percent ownership interest in St. Lucie Unit 2, but are not involved in this action.

According to the application filed by FPL, St. Lucie Unit 1 is wholly owned by FPL and St. Lucie Unit 2 is 85.1 percent owned by FPL.

As stated in the application, in connection with the proposed merger of FPL's parent company, FPL Group, Inc. (FPL Group), and Constellation Energy Group, Inc. (CEG, Inc.), FPL Group will become a wholly owned subsidiary of CEG, Inc. At the closing of the merger, the former shareholders of FPL Group will own approximately 60 percent of the outstanding stock of CEG, Inc., and the premerger shareholders of CEG, Inc., will own the remaining approximately 40 percent. In addition, the CEG, Inc., Board of Directors will be composed of fifteen members, nine of whom will be named by FPL Group, and six of whom will be named by the current CEG, Inc.

Approval of the indirect transfer of the facility operating licenses was requested by FPL pursuant to 10 CFR 50.80. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on February 22, 2006 (71 FR 9171). No comments or petitions to intervene were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by FPL and other information before the Commission, the NRC staff concludes that the proposed merger and resulting indirect transfer of control of the licenses will not affect the qualifications of FPL as holder of the facility licenses, and that the indirect transfer of control of the licenses as held by FPL, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The findings set forth above are supported by a safety evaluation dated August 3, 2006.

III

Accordingly, pursuant to sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended (the Act), 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, It is hereby ordered that the application regarding the proposed merger and indirect license transfers is approved, subject to the following conditions:

(1) FPL shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from FPL to its parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of FPL's net utility plant, as recorded on its books of accounts.

(2) Should the proposed merger not be completed within one year from the date of issuance, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may, in writing, be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated January 20, 2006, and the safety evaluation dated August 3, 2006, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

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

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–13126 Filed 8–10–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331; License No. DPR–49]

In the Matter of Fpl Energy Duane Arnold, Llc; (Duane Arnold Energy Center); Order Approving Application Regarding Proposed Corporate Merger

I

FPL Energy Duane Arnold, LLC (FPL Energy Duane Arnold or the licensee) is a holder of Facility Operating License No. DPR–49, which authorizes the possession, use, and operation of the Duane Arnold Energy Center (the facility). FPL Energy Duane Arnold is licensed by the U.S. Nuclear Regulatory

Commission (NRC or Commission) to operate the facility. The facility is located at the licensee's site 8 miles northwest of Cedar Rapids, Iowa.

II

By application dated January 20, 2006 (the application), FPL Energy Duane Arnold requested that the NRC, pursuant to 10 CFR 50.80, consent to the proposed indirect transfer of control of the license to the extent currently held by FPL Energy Duane Arnold. The other co-owners of the facility, Central Iowa Power Cooperative and Corn Belt Power Cooperative, are not involved in this action.

According to the application filed by FPL Energy Duane Arnold, FPL Energy Duane Arnold will continue to own a 70 percent ownership interest in the facility.

As stated in the application, in connection with the proposed merger of FPL Energy Duane Arnold's ultimate parent company, FPL Group, Inc. (FPL Group), and Constellation Energy Group, Inc. (CEG, Inc.), FPL Group will become a wholly owned subsidiary of CEG, Inc. At the closing of the merger, the former shareholders of FPL Group will own approximately 60 percent of the outstanding stock of CEG, Inc., and the premerger shareholders of CEG, Inc., will own the remaining approximately 40 percent. In addition, the CEG, Inc., Board of Directors will be composed of fifteen members, nine of whom will be named by FPL Group, and six of whom will be named by the current CEG, Inc.

Approval of the indirect transfer of the facility operating license was requested by FPL Energy Duane Arnold pursuant to 10 CFR 50.80. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on February 22, 2006 (71 FR 9172). No comments or petitions to intervene were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by FPL Energy Duane Arnold and other information before the Commission, the NRC staff concludes that the proposed merger and resulting indirect transfer of control of the license will not affect the qualifications of FPL Energy Duane Arnold as holder of the facility license, and that the indirect transfer of control of the license as held by FPL Energy Duane Arnold, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The findings set forth above are supported by a safety evaluation dated August 3, 2006.

III

Accordingly, pursuant to Sections 161b, 161i and 184 of the Atomic Energy Act of 1954, as amended (the Act), 42 U.S.C. 2201(b), 2201(i) and 2234; and 10 CFR 50.80, It Is Hereby Ordered that the application regarding the proposed merger and indirect license transfer is approved, subject to the following condition:

Should the proposed merger not be completed within one year from the date of issuance, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may in writing be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated January 20, 2006, and the safety evaluation dated August 3, 2006, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

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

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–13121 Filed 8–10–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443; License No. NPF–86]

In the Matter of FPL Energy Seabrook, LLC (Seabrook Station, Unit No. 1); Order Approving Application Regarding Proposed Corporate Merger

I

FPL Energy Seabrook, LLC (FPL Energy Seabrook or the licensee) is a holder of Facility Operating License No. NPF–86, which authorizes the possession, use, and operation of the Seabrook Station, Unit 1 (Seabrook or the facility). FPL Energy Seabrook is licensed by the U.S. Nuclear Regulatory Commission (NRC or Commission) to operate the facility. The facility is located at the licensee's site 13 miles south of Portsmouth, New Hampshire.

II

By application dated January 20, 2006 (the application), FPL Energy Seabrook requested that the NRC, pursuant to 10 CFR 50.80, consent to the proposed indirect transfer of control of the license to the extent currently held by FPL Energy Seabrook. The other co-owners of the facility, Hudson Light & Power Department, Massachusetts Municipal Wholesale Electric Company, and Taunton Municipal Light Plant, are not involved in this action.

According to the application filed by FPL Energy Seabrook, FPL Energy Seabrook will continue to own an 88.23 percent ownership interest in the facility.

As stated in the application, in connection with the proposed merger of FPL Energy Seabrook's ultimate parent company, FPL Group, Inc. (FPL Group), and Constellation Energy Group, Inc. (CEG, Inc.), FPL Group will become a wholly owned subsidiary of CEG, Inc. At the closing of the merger, the former shareholders of FPL Group will own approximately 60 percent of the outstanding stock of CEG, Inc., and the premerger shareholders of CEG, Inc., will own the remaining approximately 40 percent. In addition, the CEG, Inc., Board of Directors will be composed of fifteen members, nine of whom will be named by FPL Group, and six of whom will be named by the current CEG, Inc.

Approval of the indirect transfer of the facility operating license was requested by FPL Energy Seabrook pursuant to 10 CFR 50.80. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on February 22, 2006 (71 FR 9173). No comments or petitions to intervene were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by FPL Energy Seabrook and other information before the Commission, the NRC staff concludes that the proposed merger and resulting indirect transfer of control of the license will not affect the qualifications of FPL Energy Seabrook as a holder of the facility license, and

that the indirect transfer of control of the license as held by FPL Energy Seabrook, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The findings set forth above are supported by a safety evaluation dated August 3, 2006.

III

Accordingly, pursuant to Sections 161b, 161i and 184 of the Atomic Energy Act of 1954, as amended (the Act), 42 U.S.C. 2201(b), 2201(i) and 2234; and 10 CFR 50.80, it is hereby ordered that the application regarding the proposed merger and indirect license transfer is approved, subject to the following condition:

Should the proposed merger not be completed within one year from the date of issuance, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may in writing be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated January 20, 2006, and the safety evaluation dated August 3, 2006, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by E-mail to *pdr@nrc.gov*.

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

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–13131 Filed 8–10–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on September 7–9, 2006, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Tuesday, November 22, 2005 (70 FR 70638).

Thursday, September 7, 2006, Conference Room T–2b3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open): The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Final Review of the License Renewal Application for the Monticello Nuclear Generating Plant (Open): The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Nuclear Management Company, LLC regarding the license renewal application for the Monticello Nuclear Generating Plant and the associated NRC staff's final Safety Evaluation Report.

10:15 a.m.–11:45 a.m.: Lessons Learned from the Review of the Early Site Permit Applications (Open): The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the lessons learned from the review of the early site permit applications for the Grand Gulf, North Anna, and Clinton sites.

12:45 p.m.–2:45 p.m.: Draft Final Revision to 10 CFR 50.68, "Criticality Accident Requirements" (Open): The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft final revision to 10 CFR 50.68, "Criticality Accident Requirements".

3 p.m.–4 p.m.: State-of-the Art Consequence Analysis (Open): The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the staff's plans to perform a state-of-the art consequence analysis for each site and compare the results with those in NUREG/CR–2239, "Technical Guidance for Siting Criteria Development".

4 p.m.–4:30 p.m.: EDO Response to the ACRS Report on the Review of Ongoing Security-Related Activities (Closed): The Committee will hold discussions with representatives of the NRC staff regarding the June 29, 2006 response from the NRC Executive Director for Operations (EDO) to the comments and recommendations included in the April 24, 2006 ACRS report on Review of Ongoing Security-Related Activities.

Note: This session will be closed to protect information classified as National Security information as well as safeguards information pursuant to 5 U.S.C. 552b(c) (1) and (3)].

4:45 p.m.–7 p.m.: Preparation of ACRS Reports (Open/Closed): The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Friday, September 8, 2006, Conference Room T–2b3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open): The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:30 a.m.–10:30 a.m.: Risk-Informed Criteria for Societal Risk (Open): The Committee will hear a report by and hold discussions with the cognizant ACRS member regarding risk-informed criteria for societal risk.

10:45 a.m.–11:45 a.m.: Draft Report on the Quality Assessment of Selected NRC Research Projects (Open): The Committee will discuss a draft ACRS report on the quality assessment of the NRC research projects on Containment Capacity Study at Sandia National Laboratories and on Molten Core Coolant Interaction Study at the Argonne National Laboratory.

11:45 a.m.–12 Noon: Subcommittee Report (Open): Report by and discussions with the Chairman of the ACRS Subcommittee on Thermal-Hydraulic Phenomena regarding industry perspectives on PWR sump performance issues that were discussed at the August 23–24, 2006 Subcommittee meeting.

1 p.m.–2 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open): The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

2 p.m.–2:15 p.m.: Reconciliation of ACRS Comments and Recommendations (Open): The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

2:30 p.m.–4 p.m.: Preparation for Meeting With the NRC Commissioners

(Open): The Committee will discuss topics of mutual interest for ACRS meeting with the NRC Commissioners that is scheduled for Friday, October 20, 2006.

4:15 p.m.–7 p.m.: Preparation of ACRS Reports (Open/Closed): The Committee will discuss proposed ACRS reports.

Saturday, September 9, 2006, Conference Room T–2b3, Two White Flint North, Rockville, Maryland

8:30 a.m.–12:30 p.m.: Preparation of ACRS Reports (Open): The Committee will continue discussion of proposed ACRS reports.

12:30 p.m.–1 p.m.: Miscellaneous (Open): The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 29, 2005 (70 FR 56936). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

In accordance with subsection 10(d) Public Law 92–463, I have determined that it will be necessary to close a portion of this meeting noted above to discuss and protect information classified as National Security information as well as safeguards information pursuant to 5 U.S.C. 552b(c)(1) and (3).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Cognizant ACRS staff (301–415–7364), between 7:30 a.m. and 4:15 p.m., ET. ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: August 7, 2006.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E6–13123 Filed 8–10–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on September 6, 2006, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b (c) (2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, September 6, 2006, 11 a.m.–12 Noon

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Sam Duraiswamy (telephone: 301–415–7364) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: August 7, 2006.

Antonio F. Dias,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. E6–13129 Filed 8–10–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Early Site Permits; Notice of Meeting

The ACRS Subcommittee on Early Site Permits will hold a meeting on September 6, 2006, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, September 6, 2006—1 p.m. Until the Conclusion of Business

The Subcommittee will review and develop "Lessons-Learned" items as a result of the three (North Anna, Grand Gulf, and Clinton) early site permits reviews. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Dominion Nuclear North Anna, LLC (Dominion), System Energy Resources, Inc. (SERI), Exelon Generation Company, LLC (Exelon), Southern Nuclear Operating Company, Inc. (Southern), and other interested persons regarding this matter. The

Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. David C. Fischer (telephone 301/415–6889) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: August 7, 2006.

Antonio F. Dias,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. E6–13130 Filed 8–10–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Probable Effect of Modifications to the United States-Singapore Free Trade Agreement To Accelerate the Reduction of Tariffs on Certain Articles and Modify the Rule of Origin Rule for One Article

AGENCY: Office of the United States Trade Representative.

SUMMARY: The United States Trade Representative (USTR) is requesting public input as to the probable effect certain modifications to tariff treatment of imports under the United States-Singapore Free Trade Agreement on total U.S. trade, domestic producers, and workers in the affected industries. Specifically, USTR is evaluating proposals to accelerate the planned reduction in duties on nutritionals, peanuts, and polycarbonates of Singapore and to modify the rule of origin for photocopiers of Singapore. In addition, USTR is soliciting proposals regarding what sort of concessions Singapore, which does not impose duties on imports from the United States, could make to maintain the balance of concessions if these tariff acceleration requests are approved.

FOR FURTHER INFORMATION CONTACT: Information may be obtained from Jeri Jensen, Office of Southeast Asia and the Pacific and Pharmaceutical Policy (202–395–6851). The electronic mail address for any submissions is *fr0625@ustr.eop.gov*. General information about USTR may also be obtained by accessing its Internet server (*http://www.ustr.gov*).

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the United States-Singapore Free Trade Agreement (USSFTA), the United States and Singapore have agreed to enter into consultations to consider acceleration of the reduction or elimination of tariffs on certain items and a change to the rule of origin for an item. In accordance with Article 2.2.3 of the United State-Singapore Free Trade Agreement, the Parties are authorized to accelerate tariff reduction or elimination on a faster schedule than required in the Agreement. In accordance with Article 3.18.2 of the USSFTA, the United States and Singapore consult regularly to discuss necessary amendments to the USSFTA's rules of origin. Article 20.1.2(d) of the USSFTA authorizes the Joint Committee, which is composed of the designates of the U.S. Trade Representative and Singapore's Minister of Trade and Industry, to consider and adopt amendments to the agreement. Under Section 201(b) of United States-Singapore Free Trade Agreement Implementation Act (Act), 19 U.S.C. 3805, note, the President is authorized to proclaim modifications in duty treatment or continuation of any duty that the President considers to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions, subject to the Act's consultation and layover requirements. In accordance with the Act, USTR will request advice regarding the potential impact of the proposed actions from the U.S. International Trade Commission.

USTR is specifically interested in determining the probable economic effect of accelerating the reduction of U.S. duties on three products and of changing the USSFTA rules of origin for photocopiers (HS 9009.1200) on domestic industries producing like or directly competitive articles, workers in these industries, and on consumers of the affected goods. The three products potentially subject to accelerated tariff reduction are nutritionals "preparations for infant use, put up for retail sale" (HS 1901.10), peanuts in snack products (HS 2008.11), and polycarbonates (HS 3907.40.00). A list of the proposed modifications to the tariff reduction schedules is available from the Office of Southeast Asia and Pacific and Pharmaceutical Policy.

Written Submissions: No public hearing is being scheduled in connection with this request. However, interested parties are invited to submit written statements concerning any economic effects of the proposed modifications. In order to facilitate prompt consideration, USTR requests electronic mail (e-mail) submission of any statements submitted in response to this notice. E-mail submissions should be single copy transmissions, and use the following e-mail subject line: "Acceleration in Duty Reduction Under USSFTA." Documents should be submitted as WordPerfect (".WPD"), MS Word (".DOC"), or text (".TXT") files. Documents should not be submitted as electronic image files or contain imbedded images (for example, ".JPG", ".TIF", ".PDF", ".BMP", or ".GIF") as these files are often excessively large. Supporting documentation submitted in spreadsheets form is acceptable in Quattro Pro or Excel, pre-formatted for printing on 8½ × 11 inch paper. To the extent possible, any data attachments to the submission should be included in the same file as the submission itself, and not as separate files. E-mail submissions should not include separate cover letters or messages in the body of the e-mail. Information that might appear in any cover letter should be included directly in the attached file containing the submission itself, including the identity of the submitter and the submitter's e-mail address.

Commercial or financial information that a submitter desires USTR to hold in confidence must be submitted on separate sheets of paper, each clearly marked at the top and bottom as "Confidential Business Information". For any document containing business confidential information submitted as an electronic file attached to an e-mail transmission, in addition to the proper marking at the top and bottom of each page as previously specified, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the person or party submitting the document. All written submissions, except for confidential business information, will be made available for inspection by interested parties. To ensure consideration by USTR, all statements must be received no later than the close of business on September 15, 2006. All submissions should be submitted by electronic mail (e-mail) to: *FR0625@ustr.eop.gov*. Persons with mobility impairments who will need special assistance in gaining access to USTR or who are otherwise unable to submit comments by e-mail should

contact the USTR Office of Southeast Asia and the Pacific and Pharmaceutical Policy at 202–395–3644.

Barbara Weisel,

Assistant U.S. Trade Representative, Office of Southeast Asia and the Pacific and Pharmaceutical Policy.

[FR Doc. E6–13117 Filed 8–10–06; 8:45 am]

BILLING CODE 3190–W6–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Corpas Investments, Inc., Paving Stone Corp., and Wastech, Inc.; Order of Suspension of Trading

August 9, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Corpas Investments, Inc. (n/k/a Corpas Holdings, Inc.) because it has not filed any periodic reports since the period ended September 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Paving Stone Corp. (f/k/a Royal Acquisition Inc.) because it has not filed any periodic reports since the period ended September 30, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Wastech, Inc. because it has not filed any periodic reports since the period ended March 31, 2003.

Therefore, *it is ordered,* pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed companies is suspended for the period from 9:30 a.m. EST on August 9, 2006, through 11:59 p.m. EST on August 22, 2006.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. 06–6889 Filed 8–9–06; 11:49 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before September 11, 2006. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *David_Rostker@omb.eop.gov,* fax number 202–395–7285, Office of Information and Regulatory Affairs, Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, *jacqueline.white@sba.gov,* (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Request for Information Concerning.

Form No: 857.

Frequency: On occasion.

Description of Respondents: Small Businesses Investment Companies.

Annual Responses: 2,160.

Annual Burden: 2,160.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E6–13174 Filed 8–10–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before September 11, 2006. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *David_Rostker@omb.eop.gov,* fax number 202–395–7285 Office of Information and Regulatory Affairs, Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, *jacqueline.white@sba.gov* (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Financial Institution Confirmation Form.

Form No: 860.

Frequency: On occasion.

Description of Respondents: Small Businesses Investment Companies.

Annual Responses: 1,500.

Annual Burden: 750.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E6–13175 Filed 8–10–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region X Regulatory Fairness Board

The U.S. Small Business Administration (SBA) Region X Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Friday, August 18, 2006, at 9 a.m. The meeting will take place at the Z.J. Loussac Library, 3600 Denali Street, Anchorage, AK 99503. 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 Sam Dickey, in writing or by fax, in order to be put on the agenda. Sam Dickey, Deputy District Director, SBA, 510 L Street, Suite 310, Anchorage, AK, phone (907) 271–4844 and fax (907) 271–4545, E-mail: *Sam.dickey@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Thomas M. Dryer,

Acting Committee Management Officer.

[FR Doc. E6–13215 Filed 8–10–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5491]

United States–Egypt Science and Technology Joint Board; Public Announcement of a Science and Technology Program for Competitive Grants To Support International, Collaborative Projects in Science and Technology Between U.S. and Egyptian Cooperators

July 3, 2006.

AGENCY: Department of State.

ACTION: Notice.

DATES: *Effective Date:* July 3, 2006.

FOR FURTHER INFORMATION CONTACT: Joan Mahoney, Program Administrator, U.S.–Egypt Science and Technology Grants Program, U.S. Embassy, Cairo/ECPO, Unit 64900, Box 6, APO AE 09839–4900; phone: 011–(20–2) 797–2925; fax: 011–(20–2) 797–3150; e-mail: *mahoneyjm@state.gov.* The 2006 Program Announcement, including proposal guidelines, will be available starting July 3, 2006 on the Joint Board Web site: *http://egypt.usembassy.gov/usegypt.htm.*

SUPPLEMENTARY INFORMATION: *Authority:* This program is established under 22 U.S.C. 2656d and the Agreement for Scientific and Technological Cooperation between the Government of the United States of America and the Government of the Arab Republic of Egypt. A solicitation for this program will begin July 3, 2006. This program will provide modest grants for successfully competitive proposals for binational collaborative projects and other activities submitted by U.S. and Egyptian experts. Projects must help the United States and Egypt utilize science and apply technology by providing opportunities to exchange ideas, information, skills, and techniques, and to collaborate on scientific and technological endeavors of mutual interest and benefit. Proposals which fully meet the submission requirements as outlined in the Program Announcement will receive peer reviews. Proposals considered for funding in Fiscal Year 2007 must be postmarked by October 3, 2006. All proposals will be considered; however, special consideration will be given to proposals that address priority areas defined/approved by the Joint Board. These include priorities in the areas of information technology, environmental technologies, biotechnology, energy, standards and metrology, manufacturing technologies and other fields such as anthropology, nanotechnology, remote sensing. More information on these priorities and copies of the Program Announcement/Application may be obtained by request.

Jeffrey A. Miotke,

Deputy Assistant Secretary for Health and Science, Office of Science and Technology Cooperation, Bureau of Oceans and International Environmental and Scientific Affairs.

[FR Doc. E6–13198 Filed 8–10–06; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 5492]

United States–Egypt Science and Technology Joint Board; Public Announcement of a Science and Technology Program for Competitive Grants To Support Junior Scientist Development Visits by U.S. and Egyptian Scientists

July 10, 2006.

AGENCY: U.S. Department of State.

ACTION: Notice.

DATES: *Effective Date:* July 10, 2006.

FOR FURTHER INFORMATION CONTACT: Joan Mahoney, Program Administrator, U.S.–Egypt Science and Technology Grants Program, U.S. Embassy, Cairo/ECPO, Unit 64900, Box 6, APO AE 09839–4900; phone: 011–(20–2) 797–2925; fax: 011–(20–2) 797–3150; e-mail: *mahoneyjm@state.gov.* The 2006 Program guidelines for Junior Scientist Development visits will be available starting July 10, 2006 on the Joint Board Web site: *http://egypt.usembassy.gov/usegypt.htm.*

SUPPLEMENTARY INFORMATION: *Authority:* This program is established under 22 U.S.C. 2656d and the Agreement for Scientific and Technological Cooperation between the Government of the United States of America and the Government of the Arab Republic of Egypt.

A solicitation for this program will begin July 10, 2006. This program will provide modest grants for successfully competitive proposals for development visits by U.S. Junior Scientists to Egypt and Junior Egyptian Scientists to the United States. Applicants must be scientists who have received their PhD within the past ten years; in addition, U.S. applicants only may have a Master's degree or be currently enrolled in a PhD program.

Applications considered for funding must be postmarked by October 10, 2006. All proposals which fully meet the submission requirements will be considered; however, special consideration will be given to proposals in the areas of Biotechnology, Standards and Metrology, Environmental Technologies, Energy, Manufacturing Technologies and Information Technology. More information on these priorities and copies of the Program Announcement/Application may be obtained upon request.

Jeffrey A. Miotke,

Deputy Assistant Secretary for Health and Science, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State.

[FR Doc. E6–13197 Filed 8–10–06; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Pilot Training and Experience With Transport Category Rudder Control Systems

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. The FAA has undertaken an effort to improve aviation safety by collecting data on pilots training and experience with transport category rudder control systems.

DATES: Please submit comments by October 10, 2006.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Pilot Training and Experience with Transport Category Rudder Control Systems.

Type of Request: Revision of an approved collection.

OMB Control Number: 2120–0712.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: A total of 1,000 Respondents.

Frequency: The information is collected one time per respondent.

Estimated Average Burden Per Response: Approximately 30 minutes per response.

Estimated annual Burden Hours: An estimated 500 hours annually.

Abstract: The FAA has undertaken an effort to improve aviation safety by collecting data on pilots training and experience with transport category rudder control systems.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 1033, Federal Aviation Administration, Information Systems and Technology Services Staff, ABA–20, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: Issued in Washington, DC, on August 3, 2006.

Carla Mauney,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 06–6859 Filed 8–10–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Safe Disposition of Life-Limited Aircraft Parts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. This action responds to the Wendell H. Ford Investment and Reform Act for the 21st Century by requiring that all persons who remove any life-limited aircraft part have a method to prevent the installation of that part after it has reached its life limit.

DATES: Please submit comments by October 10, 2006.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Safe Disposition of Life-Limited Aircraft Parts.

Type of Request: Revision of an approved collection.

OMB Control Number: 2120–0665.

Form(s): There are no FAA forms associated with this collection.

Affected Public: A total of 8,000 Respondents.

Frequency: The information is collected as needed.

Estimated Average Burden Per Response: Approximately 1.04 hours per response.

Estimated Annual Burden Hours: An estimated 104,000 hours annually.

Abstract: This action responds to the Wendell H. Ford Investment and Reform Act for the 21st Century by requiring that all persons who remove any life-limited aircraft part have a method to prevent the installation of that part after it has reached its life limit. This action reduces the risk of life limited parts being used beyond their life limits. This action would also require that manufacturers of life parts provide marking instructions, when requested.

ADDRESS: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 1033, Federal Aviation Administration, Information Systems and Technology Services Staff, ABA–20, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 3, 2006.

Carla Mauney,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 06–6860 Filed 8–10–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2006–25]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 31, 2006.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FAA–2006–25487 or FAA–2006–25539 by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *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.

Docket: For access to the 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: Susan Lender (202) 267–8029 or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on August 3, 2006.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2006–25487.
Petitioner: Columbia Helicopters, Inc.
Section of 14 CFR Affected: 14 CFR part 43.9(d) and Appendix B(a)(3).
Description of Relief Sought: This exemption, if granted, would allow Columbia Helicopters, Inc. up to 408 hours to deliver the Form 337 to its Flight Standards District Office following approval of return to service when work is performed in remote areas inside and outside the United States.

Petitions for Exemption

Docket No.: FAA–2006–25539.
Petitioner: REACH Air Medical Services.
Section of 14 CFR Affected: 14 CFR part 43.3(h).
Description of Relief Sought: This exemption, if granted. would allow REACH pilots, who are properly trained and authorized, to perform specific preventive maintenance in areas that may not be considered remote, but under conditions that would cause a delay or out of service time exceeding 15 minutes, or otherwise encumber a possible time critical mission for more than 15 minutes, due to the unavailability of a certificated mechanic.

[FR Doc. 06–6865 Filed 8–10–06; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In July 2006, there were four applications approved. This notice also includes information on two applications, both approved in June 2006, inadvertently left off the June 2006 notice. Additionally, 20 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph (d) of § 158.29.

PFC Applications Approved

Public Agency: Burbank-Glendale-Pasadena Airport Authority, Burbank, California.
Application Number: 06–07–C–00–BUR.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $19,543,195.
Earliest Charge Effective Date: February 1, 2011.
Estimated Charge Expiration Date: September 1, 2012.
Class of Air Carriers Not Required To Collect PFCs: Non-scheduled, on-demand air carriers filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Bob Hope Airport.
Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:
Passenger terminal improvements II.
Airport security.
Airport public safety.
Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:
Landside access improvements.
Passenger terminal improvements I.
Airport facility building improvements I.
Airport facility building improvements II.
Part 150 update.
Electrification system for ground service equipment.
Airfield infrastructure improvements I.
Brief Description of Projects Approved for Collection for Future Use at a $4.50 PFC Level:
Taxiway D extension.
Terminal ramp renovations.
Decision Date: June 26, 2006.
For Further Information Contact: Ruben Cabalbag, Los Angeles Airports District Office, (310) 725–3630.

Public Agency: Bradford Regional Airport Authority, Lewis Run, Pennsylvania.
Application Number: 06–06–C–00–BFD.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in this Decision: $127,979.
Earliest Charge Effective Date: December 1, 2015.
Estimated Charge Expiration Date: November 1, 2017.
Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enhancements at Bradford Regional Airport.
Brief Description of Projects Approved for Collection and Use:
Security enhancements.
Obstruction removal (design and acquire easements).
Construct runway safety area, runway 32, phase I (design).
Rehabilitate terminal apron (design and construction).
Rehabilitate runway 14/32 high intensity runway lights.
Acquire land (mineral rights—approach).
PFC application and administration.
Decision Date: June 29, 2006.
For Further Information Contact: Lori Ledebohm, Harrisburg Airports District Office, (717) 730–2835.

Public Agency: Port of Bellingham, Bellingham, Washington.
Application Number: 06–07–C–00–BLI.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in this Decision: $1,058,649.
Earliest Charge Effective Date: October 1, 2006.
Estimated Charge Expiration Date: September 1, 2010.
Class of Air Carriers Not Required to Collect PFC's: None.
Brief Description of Projects Approved for Collection and Use:
Design and construct runway safety area.
Purchase and install access control and digital video system.
Design and construction tie-down and taxiway B relocation.
Taxiways E, F, and A design and construction management.
Reconstruct taxiways E, F, and A.

Phase II terminal remodel.
Secure area model.
Decision Date: July 3, 2006.
For Further Information Contact: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: Monroe County, Rochester, New York.
Application Number: 06–04–C–00–ROC.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in this Decision: $36,932,278.
Earliest Charge Effective Date: September 1, 2013.
Estimated Charge Expiration Date: June 1, 2021.
Class of Air Carriers Not Required to Collect PFC's: None.
Brief Description of Projects Approved for Collection and Use:
Terminal renovations.
Taxiway A construction.
Brief Description of Withdrawn Project: Concourse B expansion.
Determination: This project was withdrawn by the public agency by letter dated June 9, 2006.
Decision Date: July 11, 2006.
For Further Information Contact: John Moretto, New York Airports District Office, (516) 227–3806

Public Agency: Indian Wells Valley Airport District, Inyokern, California.
Application Number: 06–05–C–00–IYK.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $89,999.
Earliest Charge Effective Date: September 1, 2006.
Estimated Charge Expiration Date: February 1, 2009.
Class of Air Carriers Not Required To Collect PFC's: None.
Brief Description of Projects Approved For Collection and Use:
Rehabilitate runways, taxiways, and aprons, phase I.
Master plan update.
Rehabilitate runways, taxiways, and aprons, phase II.
Replace runway/taxiway regulators.
Aircraft rescue and firefighting proximity safety suits.
Airport entrance sign.
Brief Description of Disapproved Project: Fuel Farm.
Determination: The installation of fuel farms at primary airports is not eligible under the Airport Improvement Program (AIP), paragraphs 301a and 301b and Appendix 1 of FAA Order 5100.38C, AIP Handbook (June 28, 2005). Therefore this project does not meet the requirements of § 158.15(b).
Decision Date: July 20, 2006.
For Further Information Contact: David Delshad, Los Angeles Airports District Office, (310) 725–3627.

Public Agency: Peninsula Airport Commission, Newport News, Virginia.
Application Number: 03–01–C–00–PHF.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $552,500.
Earliest Charge Effective Date: October 1, 2006.
Estimated Charge Expiration Date: July 1, 2007.
Class of Air Carriers Not Required To Collect PFC's: Non-scheduled/on demand air carriers filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Newport News/Williamsburg International Airport.
Brief Description of Projections Approved for Collection and Use:
Relocation of taxiway C, lighting and marking (design).
Design airfield signage system.
Install airfield signage system.
Airport master plan update.
Construct corporate apron (design only).
Runway 2/20 high intensity runway lights, taxiways A and C medium intensity taxiway lights.
Conduct environmental assessment and wildlife study.
Runway 25 runway protection zone land acquisition.
Acquire aircraft rescue and firefighting vehicle.
Safety area improvements and pavement rehabilitation, runway 2/20.
Install perimeter fencing.
Construct south corporate apron (phase I).
Rehabilitate and strengthen taxiway D and construct taxiway fillets leading from the runway system to the south corporate apron.
Rehabilitate airfield lighting on runway 7/25.
South corporate taxiway and apron construction.
Decision Date: July 28, 2006.
For Further Information Contact: Luis Loarte, Washington Airports District Office, (703) 661–1365.

Amendments to PFC Approvals

Amendment No., city, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
02–04–C–01–ASE, Aspen, Co	03/13/06	$986,381	$713,146	08/01/04	08/01/04
93–01–C–02–PVD, PROVIDENCE, RI	05/10/06	104,297,014	100,036,720	11/01/07	03/01/08
97–02–C–01–PVD, PROVIDENCE, RI	05/10/06	3,892,980	3,892,980	04/01/08	09/01/08
01–08–C–01–BNA, Nashville, TN	05/31/06	3,727,000	4,514,173	10/01/02	10/01/02
03–08–C–01–JAX, Jacksonville, FL	06/16/06	68,357,263	73,281,526	11/01/08	01/01/08
00–03–C–04–MSO, Missoula, MT	06/26/06	2,500,000	765,376	12/01/04	03/01/03
04–03–C–01–MFE, McAllen, TX	06/27/06	2,075,050	2,422,937	01/01/07	04/01/07
94–02–C–04–MSP, Minneapolis, MN	06/28/06	140,778,569	140,717,131	03/01/99	03/01/99
01–04–C–01–SLC, Salt Lake City, UT	06/29/06	28,887,570	29,112,809	02/01/03	05/01/03
03–06–C–01–SLC, Salt Lake City, UT	06/29/06	39,756,400	62,532,179	06/01/04	02/01/05
03–08–C–01–SLC, Salt Lake City, UT	06/29/06	7,520,800	9,035,419	11/01/06	07/01/07
95–03–C–03–CLE, Cleveland, OH	06/30/06	20,700,642	19,946,762	02/01/97	11/01/96
00–02–C–02–MFE, McAllen, TX	06/30/06	2,032,942	2,212,942	10/01/04	10/01/04
**92–01–C–06–LAS, Las Vegas, NV	07/05/06	1,052,934,909	849,713,056	07/01/11	07/01/11
93–02–C–04–LAS, Las Vegas, NV	07/05/06	21,496,000	25,205,502	11/01/01	11/01/11
94–03–U–03–LAS, Las Vegas, NV	07/05/06	NA	NA	11/01/11	11/01/11
94–04–C–03–LAS, Las Vegas, NV	07/05/06	510,808,093	511,150,507	01/01/17	01/01/17
03–02–C–02–LGB, Long Beach, CA	07/07/06	30,306,984	62,344,903	10/01/09	05/01/17
02–02–C–01–BZN, Bozeman, MT	07/14/06	1,790,000	1,751,216	01/01/06	11/01/05
98–03–C–07–CVG, Covington, KY	07/24/06	24,833,000	24,852,000	08/01/99	08/01/99

Issued in Washington, DC, on August 8, 2006.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 06–6863 Filed 8–10–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2006–25551 (Notice No. 06–4)]

Notice of Information Collection Approval

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of information collection approval.

SUMMARY: This notice announces Office of Management and Budget (OMB) approval and extension until May 31, 2009 for the following information collection requests (ICRs): OMB Control No. 2137–0510, "Radioactive (RAM) Transportation Requirements"; and OMB Control No. 2137–0612, "Hazardous Materials Security Plans."

In addition, this notice announces OMB approval and extension until July 31, 2009 for the following ICRs: OMB Control No. 2137–0051, "Rulemaking, Special Permits, and Preemption Requirements"; and OMB Control No. 2137–0613, "Subsidiary Hazard Class and Number/Type of Packagings."

DATES: The expiration dates for these ICRs are either May 31, 2009 or July 31, 2009, as indicated under the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: Requests for a copy of an information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, Room 8430, 400 Seventh Street, SW., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, Room 8430, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Office of Management and Budget (OMB) regulations (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (P.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(s)) and specify that no person is required to respond to an information collection unless it displays a valid OMB control number. In accordance with the Paperwork Reduction Act of 1995, PHMSA has received OMB approval for renewal of the following ICRs:

OMB Control Number: 2137–0510.
Title: "Radioactive (RAM) Transportation Requirements."
Expiration Date: May 31, 2009.

OMB Control Number: 2137–0612.
Title: "Hazardous Materials Security Plans."
Expiration Date: May 31, 2009.

OMB Control Number: 2137–0051.
Title: "Rulemaking, Special Permits, and Preemption Requirements."
Expiration Date: July 31, 2009.

OMB Control Number: 2137–0613.
Title: "Subsidiary Hazard Class and Number/Type of Packagings."
Expiration Date: July 31, 2009.

Issued in Washington, DC on August 7, 2006.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. E6–13203 Filed 8–10–06; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 7, 2006.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 11, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1835.
Type of Review: Extension.
Title: Form 637 Questionnaires.
Form: 637.
Description: Form 637 Questionnaires are used to collect information about persons who are registered with the Internal Revenue Service (IRS) in accordance with Internal Revenue Code (IRC) Sec. 4104 or 4222. The information will be used to make an informed decision on whether the applicant/registrant qualifies for registration.
Respondents: Business and other for-profit institutions.
Estimated Total Burden Hours: 3,479 hours.

OMB Number: 1545–2010.
Type of Review: Extension.
Title: Employer's Annual Federal Tax Return (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands).
Form: 944–SS and 944–PR.
Description: Form 944–SS and Form 944–PR are designed so the smallest employers (those whose annual liability for social security and Medicare taxes is $1,000 or less) will have to file and pay these taxes only once a year instead of every quarter.
Respondents: Business and other for-profit institutions.
Estimated Total Burden Hours: 191,200 hours.
Clearance Officer: Glenn P. Kirkland (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6–13152 Filed 8–10–06; 8:45 am]

BILLING CODE 4830–01–P

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Notice of Availability of the Final Environmental Assessment and Finding of No Significant Impact for Rotenone Treatments in the Willow Creek Drainage in Grand and Uintah Counties, UT

AGENCY: Utah Reclamation Mitigation and Conservation Commission.

ACTION: Notice of availability.

SUMMARY: The Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission) and the Utah Division of Wildlife Resources (Division) jointly prepared an Environmental Assessment (EA) to

determine the effects of rotenone treatments in the Willow Creek drainage to remove nonnative trout species and reestablish Colorado River cutthroat trout populations. Removal of non-native trout species is required in order to re-introduce cutthroat trout to their native habitats and to meet conservation objectives for cutthroat trout.

The proposed action selected in the final EA will be implemented by the Commission in cooperation with the Division. The action consists of removing Brook trout, non-native cutthroat trout, and cutthroat/rainbow hybrid trout from the Willow Creek drainage by treatment with rotenone. Existing native fish (speckled dace and mountain sucker) will be collected prior to the treatment by electro-fishing, and restocked to the stream after treatment to facilitate their population maintenance. Colorado River cutthroat trout will be stocked when the drainage is deemed clear of non-native fishes. It is expected that two or three rotenone treatments (over consecutive years) may be needed to effectively remove unwanted trout species.

A Finding of No Significant Impact (FONSI) was made through the EA, thus the proposed action does not require preparation of an Environmental Impact Statement (EIS): It will not have a significant effect on the human environment; negative environmental impacts that could occur are negligible and can be generally eliminated with mitigation; there are no unmitigated adverse impacts on public health or safety, threatened or endangered species, sites or districts listed in or eligible for listing in the National Register of Historic Places, or other unique characteristics of the region; no highly uncertain or controversial impacts, unique or unknown risks, cumulative effects, or elements of precedence were identified that have not been mitigated; and, implementation of the action will not violate any Federal, state, or local environmental protection law.

ADDRESSES: Copies of the Final Environmental Assessment and Finding of No Significant Impact can be obtained at the Utah Reclamation Mitigation and Conservation Commission, 102 W 500 S, Suite 315, Salt Lake City, Utah, 84101. They may also be viewed on the internet via the following Web address: *www.mitigationcommission.gov/news.html.*

FOR FURTHER INFORMATION CONTACT: Maureen Wilson, Project Coordinator, (801) 524–3146.

Dated: August 1, 2006.

Michael C. Weland,

Executive Director.

[FR Doc. E6–13122 Filed 8–10–06; 8:45 am]

BILLING CODE 4310–05–P

Corrections

Federal Register
Vol. 71, No. 155
Friday, August 11, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AU61

2006–2007 Refuge-Specific Hunting and Sport Fishing Regulations

Correction

In proposed rule document 06–6318 beginning on page 41864 in the issue of Monday, July 24, 2006, make the following correction:

On page 41866, in the first column, under the heading **Request for Comments**, in paragraph 1., in the second and third lines "*refuge system policy comments@fws.gov*" should read "*refugesystempolicycomments@fws.gov*".

[FR Doc. C6–6318 Filed 8–10–06; 8:45 am]

BILLING CODE 1505–01–D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Office of the Federal Register

Rules and Regulations; Correction

Correction

The correction that appeared on page 44353, Friday, August 4, 2006 is corrected to read as follows:

In the Rules and Regulations section of the Tuesday, August 1, 2006 edition of the **Federal Register**, make the following corrections to these page numbers:

1. Page 83346 should read page 43346.

2. Page 83356 should read page 43356.

3. Page 83358 should read page 43358.

[FR Doc. C6–99998 Filed 8–10–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
August 11, 2006

Part II

Department of Defense

Department of the Army

32 CFR Part 536
Claims Against the United States; Proposed Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 536

RIN 0702–AA54

[Docket No. USA–2006–0022]

Claims Against the United States

AGENCY: Department of the Army, DOD.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of the Army proposes to amend its regulations to reflect a substantial revision of AR 27–20, an Army publication which governs the processing of claims worldwide. The purpose of this revision is to make AR 27–20 clearer and easier to use, after years of piecemeal amendments. This rewrite also ensures that AR 27–20 is in keeping with current statutes, legal opinions and Department of Justice guidance pertaining to claims processing. This updated rule will expedite payment of meritorious claims throughout the world.

DATES: Comments submitted on or before October 10, 2006 will be considered.

ADDRESSES: You may submit comments, identified by "32 CFR part 536, Docket No. USA–2006–0022 and or RIN 0702–AA54" in the subject line, by any of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: George Westerbeke (301) 677–7009, x220.

SUPPLEMENTARY INFORMATION:

A. Background

This rule was previously published. The Administrative Procedure Act, as amended by the Freedom of Information Act requires that certain policies and procedures and other information concerning the Department of the Army be published in the **Federal Register**. The policies and procedures covered by this regulation fall into that category.

AR 27–20 and its companion DA Pam 27–162 will be available on the Web site of the U.S. Army Publications Directorate, *http://www.apd.army.mil,* within a few months of the date of this **Federal Register** publication of 32 CFR part 536. Users are encouraged to consult the online versions, whose structure and paragraph numbering are comparable.

B. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the proposed rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

C. Unfunded Mandates Reform Act

The Department of the Army has determined that the Unfunded Mandates Reform Act does not apply because the proposed rule does not include a mandate that may result in estimated costs to State, local or tribal governments in the aggregate, or the private sector, of $100 million or more.

D. National Environmental Policy Act

The Department of the Army has determined that the National Environmental Policy Act does not apply because the proposed rule does not have an adverse impact on the environment.

E. Paperwork Reduction Act

The Department of the Army has determined that the Paperwork Reduction Act does not apply because the proposed rule does not involve collection of information from the public.

F. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Department of the Army has determined that Executive Order 12630 does not apply because the proposed rule does not impair private property rights.

G. Executive Order 12866 (Regulatory Planning and Review)

The Department of the Army has determined that according to the criteria defined in Executive Order 12866 this proposed rule is not a significant regulatory action. As such, the proposed rule is not subject to Office of Management and Budget review under section 6(a)(3) of the Executive Order.

H. Executive Order 13045 (Protection of Children From Environmental Health Risk and Safety Risks)

The Department of the Army has determined that according to the criteria defined in Executive Order 13045 this proposed rule does not apply.

I. Executive Order 13132 (Federalism)

The Department of the Army has determined that according to the criteria defined in Executive Order 13132 this proposed rule does not apply because it will not have a substantial 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.

Col. Dale Woodling,

Commander, United States Army Claims Service.

List of Subjects in 32 CFR Part 536

Claims, Government employees, Military personnel.

For reasons stated in the preamble the Department of the Army proposes to revise 32 CFR part 536 to read as follows:

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Authority: 10 U.S.C. 2733; 10 U.S.C. 1089; 10 U.S.C. 1054; 28 U.S.C. 1291, 2401–2402, 2411–2412, 2671–2680; 10 U.S.C. 2737; 32 U.S.C. 715; 10 U.S.C. 2734a, 2734b; 10 U.S.C. 2734;10 U.S.C. 4801, 4802, 4806; 46 U.S.C. app. 740; 39 U.S.C. 411; 10 U.S.C. 939; 10 U.S.C. 2736; 10 U.S.C. 2735; 10 U.S.C. 2731.

PART 536—CLAIMS AGAINST THE UNITED STATES

Subpart A—The Army Claims System

§ 536.1 Purpose of the Army Claims System.

This part sets forth policies and procedures that govern the investigating, processing, and settling of claims against, and in favor of, the United States under the authority conferred by statutes, regulations, international and interagency agreements, and Department of Defense Directives (DODDs). It is intended to ensure that claims are investigated properly and adjudicated according to applicable law, and valid recoveries and affirmative claims are pursued against carriers, third-party insurers, and tortfeasors.

§ 536.2 Claims authorities.

(a) *General.* Claims cognizable under the following list of statutes and authorities are processed and settled under DA Pam 27–162 and this part. All of these materials may be viewed on the USARCS Web site, *https://www.jagcnet.army.mil/85256F33005C2B92/(JAGCNETDocID)/HOME?OPENDOCUMENT.* Select the link "Claims Resources."

(1) *Tort Claims.* (i) The Military Claims Act (MCA), 10 United States Code (U.S.C.) 2733 (see Subpart C of this part). The "incident-to-service" provision, applicable to both military and civilian personnel of the Department of Defense, is contained in the MCA.

(ii) The Gonzales Act, 10 U.S.C. 1089. This act permits individual suits against health care providers for certain torts (see § 536.80).

(iii) Certain suits arising out of legal malpractice, 10 U.S.C. 1054, discussed at § 536.81 and at DA Pam 27–162, paragraph 2–62f.

(iv) The Federal Tort Claims Act (FTCA), 28 U.S.C. 1291, 1402, 2401–2402, 2411–2412, and 2671–2680 (see Subpart D of this part). The Westfall Act, 28 U.S.C. 2679, an integral part of the FTCA, provides absolute immunity from individual suit for common law torts for employees of the United States acting within the scope of their employment.

(A) The legislative history of the FTCA.

(B) Regulations of the Attorney General implementing the Federal Tort Claims Act, 28 CFR part 14.

(C) An Appendix to 28 CFR part 14 sets forth certain delegations of settlement authority to the Secretary of Veterans Affairs, the Postmaster General, the Secretary of Defense, the Secretary of Transportation, and the Secretary of Health and Human Services.

(v) The Non-Scope Claims Act (NSCA), 10 U.S.C. 2737 (see Subpart E of this part).

(vi) The National Guard Claims Act (NGCA), 32 U.S.C. 715 (see Subpart F of this part).

(vii) Claims under International Agreements or the Foreign Claims Act.

(A) International Agreements Claims Act (IACA), 10 U.S.C. 2734a and 2734b.

(B) Foreign Claims Act (FCA), 10 U.S.C. 2734 (see Subpart J of this part).

(viii) The Army Maritime Claims Settlement Act (AMCSA), 10 U.S.C. 4801, 4802 and 4806. Affirmative claims under the AMCSA are processed under 10 U.S.C. 4803 and 4804 (see § 537.16 of this chapter).

(ix) Admiralty Extension Act (AEA), 46 U.S.C. app. 740 (see Subpart H of this part).

(x) Claims against nonappropriated fund (NAF) activities and the risk management program (RIMP) (see Subpart K of this part), processed under Army Regulation (AR) 215–1 and AR 608–10.

(xi) Claims by the U.S. Postal Service for losses or shortages in postal accounts caused by unbonded Army personnel (39 U.S.C. 411 and Department of Defense (DOD) Manual 4525.6-M).

(2) *Personnel Claims (subpart I of this part and AR 27–20, chapter 11).*

(i) The Personnel Claims Act (PCA), 31 U.S.C. 3721 (see AR 27–20, chapter 11).

(ii) Redress of injuries to personal property, Uniform Code of Military Justice (UCMJ), Article 139, 10 U.S.C. 939 (see Subpart I of this part).

(3) *Affirmative Claims* (32 CFR part 537).

(i) The Federal Claims Collection Act (FCCA), 31 U.S.C. 3711–3720E.

(ii) The Federal Medical Care Recovery Act (FMCRA), 42 U.S.C. 2651–2653.

(iii) Collection from third-party payers of reasonable costs of healthcare services, 10 U.S.C. 1095 .

(b) *Fund source authority for claims under Title 10 statutes.* 10 U.S.C. 2736, advance payments for certain property claims (see § 536.71).

(c) *Fund source authority for tort claims paid by Financial Management Service (FMS).* 31 U.S.C. 1304, provides authority for judgments, awards and compromise settlements.

(d) *Additional authorities under Title 10.*

(1) 10 U.S.C. 2735, establishes that settlements (or "actions") under the Title 10 claims processing statutes are final and conclusive.

(2) 10 U.S.C. 2731, provides a definition of the word "settle."

(e) *Related remedies statutes.* The Army frequently receives claims or inquiries that are not cognizable under the statutory and other authorities administered by the U.S. Army under this publication and DA Pam 27–162. Every effort should be made to refer the claim or inquiry to the proper authority following the guidance in § 536.34 or § 536.36. (See also the corresponding paragraphs 2–15 and 2–17, respectively, in DA Pam 27–162). Some authorities for related remedies are used more frequently than others. Where an authority for a related remedy is frequently used, it is listed below and is

posted on the USARCS Web site (for the address see § 536.2(a)).

(1) Tucker Act, 28 U.S.C. 1346, provides exclusive jurisdiction in the Court of Federal Claims over causes of actions alleging property loss caused by a Fifth Amendment "taking."

(2) Maritime authority statutes, Public Vessels Act (PVA), 46 U.S.C. app. 781–790, Suits in Admiralty Act (SIAA), 46 U.S.C. app. 741–752, and the Rivers and Harbors Act, 33 U.S.C. 408 and 412.

(3) Federal Employees Compensation Act (FECA), two excerpts: 5 U.S.C. 8116 and 8140, providing guidance on personal injury and death claims by civilian employees arising within the scope of their employment (see DA Pam 27–162, paragraph 2–15b) and information on certain claims by Reserve Officers Training Corps (ROTC) cadets, respectively, (see DA Pam 27–162, paragraph 2–17d(2)).

(4) Longshore and Harbor Workers Compensation Act (LHWCA), 33 U.S.C. 901–950.

(5) Claims for consequential property damage by civilian employees may only be considered in the Court of Federal Claims pursuant to 28 U.S.C. 1491.

(f) *Additional materials.* There are some additional authoritative materials for the processing of claims, mostly of an administrative nature. For a complete listing of all of the supplementary materials relevant to claims processing under this publication and DA Pam 27–162 see Appendix B of DA Pam 27–162.

(g) *Conflict of authorities.* Where a conflict exists between a general provision of this publication and a specific provision found in one of this publication's subparts implementing a specific statute, the specific provision, as set forth in the statute, will control.

§ 536.3 Command and organizational relationships.

(a) *The Secretary of the Army.* The Secretary of the Army (SA) heads the Army Claims System and acts on certain claims appeals directly or through a designee.

(b) *The Judge Advocate General.* The SA has delegated authority to The Judge Advocate General (TJAG) to assign areas of responsibility and designate functional responsibility for claims purposes. TJAG has delegated authority to the Commander USARCS to carry out the responsibilities assigned in § 536.7 and as otherwise lawfully delegable.

(c) *U.S. Army Claims Service.* USARCS, a command and component of the Office of TJAG, is the agency through which the SA and TJAG discharge their responsibilities for the administrative settlement of claims worldwide (see AR 10–72). USARCS' mailing address is: U.S. Army Claims Service, 4411 Llewellyn Ave., Fort George G. Meade, MD 20755–5360, Commercial: (301) 677–7009.

(d) *Command claims services.* (1) Command claims services exercise general supervisory authority over claims matters arising within their assigned areas of operation. Command claims services will:

(i) Effectively control and supervise the investigation of potentially compensable events (PCEs) occurring within the command's geographic area of responsibility, in other areas for which the command is assigned claims responsibility, and during the course of the command's operations.

(ii) Provide services for the processing and settlement of claims for and against the United States.

(2) The Commander USARCS may delegate authority to establish a command claims service to the commander of a major overseas command or other commands that include areas outside the United States, its territories and possessions.

(i) When a large deployment occurs, the Commander USARCS may designate a command claims service for a limited time or purpose, such as for the duration of an operation and for the time necessary to accomplish the mission. The appropriate major Army command (MACOM) will assist the Commander USARCS in obtaining resources and personnel for the mission.

(ii) In coordination with the Commander USARCS, the MACOM will designate the area of responsibility for each new command claims service.

(3) A command claims service may be a separate organization with a designated commander or chief. If it is part of the command's Office of the Staff Judge Advocate (SJA), the SJA will also be the chief of the command claims service, however, the SJA may designate a field grade officer as chief of the service.

(e) *Area claims offices.* The following may be designated as area claims offices (ACOs):

(1) An office under the supervision of the senior judge advocate (JA) of each command or organization so designated by the Commander USARCS. The senior JA is the head of the ACO.

(2) An office under supervision of the senior JA of each command in the area of responsibility of a command claims service so designated by the chief of that service after coordination with the Commander USARCS. The senior JA is the head of the ACO.

(3) The office of counsel of each U.S. Army Corps of Engineers (COE) district within the United States and such other COE commands or agencies as designated by the Commander USARCS, with concurrence of the Chief Counsel, Office of the Chief of Engineers, for all claims generated within such districts, commands or agencies. The district counsel or the attorney in charge of the command's or agency's legal office is the head of the ACO.

(f) *Claims processing offices.* Claims processing offices (CPOs) are normally small legal offices or ACO subordinate elements, designated by the Commander USARCS, a command claims service or an ACO. These offices are established for the investigation of all actual and potential claims arising within their jurisdiction, on either an area, command or agency basis. There are four types of claims processing offices (see § 536.10):

(1) Claims processing offices without approval authority.

(2) Claims processing offices with approval authority.

(3) Medical claims processing offices.

(4) Special claims processing offices.

(g) *Limitations on delegation of authority under any subpart.* (1) The Commander USARCS, commanders or chiefs of command claims services, or the heads of ACOs or CPOs with approval authority may delegate, in writing, all or any portion of their monetary approval authority to subordinate JAs or claims attorneys in their services or offices.

(2) The authority to act upon appeals or requests for reconsideration, to deny claims (including disapprovals based on substantial fraud), to grant waivers of maximum amounts allowable, or to make final offers will not be delegated except that the Commander USARCS may delegate this authority to USARCS Division Chiefs.

(3) CPOs will provide copies of all delegations affecting them to the ACO and, if so directed, to command claims services.

§ 536.4 Designation of claims attorneys.

(a) *Who may designate.* The Commander USARCS, the senior JA of a command having a command claims service, the chief of a command claims service, the head of an ACO, or the Chief Counsel of a COE District, may designate a qualified attorney other than a JA as a claims attorney. The head of an ACO may designate a claims attorney to act as a CPO with approval authority.

(b) *Eligibility.* To qualify as a claims attorney, an individual must be a civilian employee of the Department of the Army (DA) or DOD, a member of the bar of a state, the District of Columbia, or a jurisdiction where U.S. federal law applies, serving in the grade of GS–11

or above, and performing primary duties as a legal adviser.

§ 536.5 The Judge Advocate General.

TJAG has worldwide Army Staff responsibility for administrative settlement of claims by and against the U.S. government, generated by employees of the U.S. Army and DOD components other than the Departments of the Navy and Air Force. Where the Army has single-service responsibility, TJAG has responsibility for the Army. See DODD 5515.9. Certain claims responsibilities of TJAG are exercised by The Assistant Judge Advocate General (TAJAG) as set forth in this part and directed by TJAG.

§ 536.6 The Army claims mission.

(a) Promptly investigate potential claims incidents with a view to determining the degree of the Army's exposure to liability, the damage potential, and when the third party is at fault, whether the Army should take action to collect for medical expenses, lost wages and property damage.

(b) Efficiently and expeditiously dispose of claims against the U.S. by fairly settling meritorious claims at the lowest level within the claims system commensurate with monetary jurisdiction delegated, or by denying non-meritorious claims.

(c) Develop a system that has a high level of proficiency, so that litigation and appeals can be avoided or kept to a minimum.

§ 536.7 Responsibilities of the Commander USARCS.

The Commander USARCS shall:

(a) Supervise and inspect claims activities worldwide.

(b) Formulate and implement claims policies and uniform standards for claims office operations.

(c) Investigate, process and settle claims beyond field office monetary authority and consider appeals and requests for reconsideration on claims denied by the field offices.

(d) Supervise the investigation, processing, and settlement of claims against, and in favor of, the United States under the statutes and regulations listed in § 536.2 and pursuant to other appropriate statutes, regulations, and authorizations.

(e) Designate ACOs, CPOs, and claims attorneys within DA and DOD components other than the Departments of the Navy and Air Force, subject to concurrence of the commander concerned.

(f) Designate continental United States (CONUS) geographic areas of claims responsibility.

(g) Recommend action to be taken by the SA, TJAG or the U.S. Attorney General, as appropriate, on claims in excess of $25,000 or the threshold amount then current under the FTCA, on claims in excess of $100,000 or the threshold amount then current under the FCA, the MCA, the NGCA, AMCSA, FCCA and FMRCA and on other claims that have been appealed. Direct communication with Department of Justice (DOJ) and the SA's designee is authorized.

(h) Operate the "receiving State office" for claims arising in the United States, its territories, commonwealths and possessions cognizable under Article VIII of the North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA), Partnership for Peace (PFP) SOFA, Article XVI of the Singapore SOFA, and other SOFAs which have reciprocal claims provisions as delegated by TJAG, as implemented by 10 U.S.C. 2734a and 2734b (Subpart G of this part).

(i) Settle claims of the U.S. Postal Service for reimbursement under 39 U.S.C. 411 (see DOD Manual 4525.6–M).

(j) Settle claims against carriers, warehouse firms, insurers, and other third parties for loss of, or damage to, personal property of DA or DOD soldiers or civilians incurred while the goods are in storage or in transit at government expense (AR 27–20, chapter 11).

(k) Formulate and recommend legislation for Congressional enactment of new statutes and the amendment of existing statutes considered essential for the orderly and expeditious administrative settlement of noncontractual claims.

(l) Perform post-settlement review of claims.

(m) Prepare, justify, and defend estimates of budgetary requirements and administer the Army claims budget.

(n) Maintain permanent records of claims for which TJAG is responsible.

(o) Assist in developing disaster and maneuver claims plans designed to implement the responsibilities set forth in § 536.9(a)(12).

(p) Develop and maintain plans for a disaster or civil disturbance in those geographic areas that are not under the jurisdiction of an area claims authority and in which the Army has single-service responsibility or in which the Army is likely to be the predominant Armed Force.

(q) Take initial action, as appropriate, on claims arising in emergency situations.

(r) Provide assistance as available or take appropriate action to ensure that command claims services and ACOs are carrying out their responsibilities as set forth in §§ 536.8 and 536.9, including claims assistance visits.

(s) Serve as proponent for the database management systems for torts, personnel and affirmative claims and provide standard automated claims data management programs for worldwide use.

(t) Ensure proper training of claims personnel.

(u) Coordinate claims activities with the Air Force, Navy, Marine Corps, and other DOD agencies to ensure a consistent and efficient joint service claims program.

(v) Investigate, process and settle, and supervise the field office investigation and processing of, medical malpractice claims arising in Army medical centers within the United States; provide medical claims judge advocates (MCJAs), medical claims attorneys, and medical claims investigators assigned to such medical centers with technical guidance and direction on such claims.

(w) Coordinate support with the U.S. Army Medical Command (MEDCOM) on matters relating to medical malpractice claims.

(x) Issue an accounting classification to all properly designated claims settlement and approval authorities.

(y) Perform the investigation, processing, and settlement of claims arising in areas outside command claims service areas of operation.

(z) Maintain continuous worldwide deployment and operational capability to furnish claims advice to any legal office or command throughout the world. When authorized by the chain of command or competent authority, issue such claims advice or services, including establishing a claims system within a foreign country, interpreting claims aspects of international agreements, and processing claims arising from Army involvement in civil disturbances, chemical accidents under the Chemical Energy Stockpile Program, other man-made or natural disasters, and other claims designated by competent authority.

(aa) Upon receiving both the appropriate authority's directive or order and full fiscal authorization, disburse the funds necessary to administer civilian evacuation, relocation, and similar initial response efforts in response to a chemical disaster arising at an Army facility.

(bb) Respond to all inquiries from the President, members of Congress, military officials, and the general public on claims within USARCS' responsibility.

(cc) Serve as the proponent for this publication and DA Pam 27–162, both

of which set forth guidance on personnel, tort, disaster and affirmative claims, as well as claims management and administration.

(dd) Provide supervision for the Army's affirmative claims and carrier recovery programs, as well as other methods for recovering legal debts.

(ee) Provide support for the overseas environmental claims program as designated by the DA.

(ff) Execute other claims missions as designated by DOD, DA, TJAG and other competent authority.

(gg) Appoint Foreign Claims Commissions outside Command Claims Services' geographic areas of responsibility.

(hh) Budget for and fund claims investigations and activities; such as per diem and transportation of claims personnel, claimants and witnesses; independent medical examinations; appraisals; independent expert opinions; long distance telephone calls; recording and photographic equipment; use of express mail or couriers; and other necessary expenses.

§ 536.8 Responsibilities and operations of command claims services.

(a) *Chiefs of command claims services.* Chiefs of command claims services shall:

(1) Exercise claims settlement authority as specified in this part, including appellate authority where so delegated.

(2) Supervise the investigation, processing, and settlement of claims against, and in favor of the United States under the statutes and regulations listed in § 536.2, and pursuant to other appropriate statutes, regulations, and authorizations.

(3) Designate and grant claims settlement authority to ACOs. A grant of such authority will not be effective until coordinated with the Commander USARCS, and assigned an office code. However, the chief of a command claims service may redesignate a CPO that already has an assigned office code as an ACO without coordination with the Commander USARCS. The Commander USARCS, will be informed of such a designation.

(4) Designate and grant claims approval authority to CPOs. Only CPOs staffed with a claims judge advocate (CJA) or claims attorney may be granted approval authority. A grant of such authority will not be effective until coordinated with the Commander USARCS, and assigned an office code.

(5) Train claims personnel and monitor their operations and ongoing claims administration. Conduct a training course annually.

(6) Implement pertinent claims policies.

(7) Prepare and publish command claims directives.

(8) Administer the command claims expenditure allowance, providing necessary data, estimates, and reports to USARCS on a regular basis.

(9) Perform the responsibilities of an ACO (see § 536.9), as applicable, ensure that SOFA claims are investigated properly and timely filed with the receiving State and adequately funded.

(10) Serve as the United States "sending State office," if so designated, when operating in an area covered by a SOFA.

(11) Supervise and provide technical assistance to subordinate ACOs within the command claims service's geographic area of responsibility.

(12) Appoint FCCs.

(b) *Operations of Command Claims Services.* The SJA of the command shall supervise the command claims service. The command SJA may designate a field grade JA as the chief of the service. An adequate number of qualified claims personnel shall be assigned to ensure that claims are promptly investigated and acted upon. With the concurrence of the Commander USARCS, a command claims service may designate ACOs within its area of operations to carry out claims responsibilities within specified geographic areas subject to agreement by the commander concerned.

§ 536.9 Responsibilities and operations of area claims offices.

(a) *Heads of ACOs.* Heads of ACOs, including COE offices (see § 536.3(e)(3)) shall:

(1) Ensure that claims and potential claims incidents in their area of responsibility are promptly investigated in accordance with this part.

(2) Ensure that each organization or activity (for example, U.S. Army Reserve (USAR) or Army National Guard of the United States (ARNGUS) unit, ROTC detachment, recruiting company or station, or DOD agency) within the area appoints a claims officer to investigate claims incidents not requiring investigation by a JA (see § 536.23) and ensure that this officer is adequately trained.

(3) Supervise the investigation, processing, and settlement of claims against, and in favor of, the United States under the statutes and regulations listed in § 536.2 and pursuant to other appropriate statutes, regulations, and authorizations.

(4) Act as a claims settlement authority on claims that fall within the appropriate monetary jurisdictions set forth in this part and forward claims exceeding such jurisdictions to the Commander USARCS, or to the chief of a command claims service, as appropriate, for action.

(5) Designate CPOs and request that the Commander USARCS, or the chief of a command claims service, as appropriate, grant claims approval authority to a CPO for claims that fall within the jurisdiction of that office.

(6) Supervise the operations of CPOs within their area.

(7) Implement claims policies and guidance furnished by the Commander USARCS.

(8) Ensure that there are adequate numbers of qualified and adequately trained CJAs or claims attorneys, RCJAs or attorneys, recovery claims clerks, claims examiners, claims adjudicators and claims clerks in all claims offices within their areas to act promptly on claims.

(9) Budget for and fund claims investigations and activities, such as: Per diem and transportation of claims personnel, claimants and witnesses; independent medical examinations; appraisals and independent expert opinions; long distance telephone calls; recording and photographic equipment; use of express mail or couriers; and other necessary expenses.

(10) Within the United States and its territories, commonwealths and possessions, procure and disseminate, within their areas of jurisdiction, appropriate legal publications on state or territorial law and precedent relating to tort claims.

(11) Notify the Commander USARCS, of all claims and potentially compensable events (PCEs) as required by § 536.22(c); notify the chief of a command claims service of all claims and PCEs.

(12) Develop and maintain written plans for a disaster or civil disturbance. These plans may be internal SJA office plans or an annex to an installation or an agency disaster response plan.

(13) Implement the Army's Article 139 claims program. (See Subpart I of this part).

(14) Notify USARCS of possible deployments and ensure adequate FCCs are appointed by USARCS and are trained.

(b) *Operations of Area Claims Offices.* (1) The ACO is the principal office for the investigation and adjudication or settlement of claims, and shall be staffed with qualified legal personnel under the supervision of the SJA, command JA, or COE district or command legal counsel.

(2) In addition to the utilization of unit claims officers required by § 536.10(a), if indicated, the full-time

responsibility for investigating and processing claims arising within or related to the activities of a unit or organization located within a section of the designated area may be delegated to another command, unit, or activity by establishing a CPO at the command, unit, or activity (see § 536.10(b)(4)). Normally, all CPOs will operate under the supervision of the ACO in whose area the CPO is located. Where a proposed CPO is not under the command of the ACO parent organization, this designation may be achieved by a support agreement or memorandum of understanding between the affected commands.

(3) Normally, claims that cannot be settled by a COE ACO will be forwarded directly to the Commander USARCS, with notice of referral to the Chief Counsel, COE. However, as part of his or her responsibility for litigating suits that involve civil works and military construction activities, the Chief Counsel, COE, may require that a COE ACO forward claims through COE channels, provided that such requirement does not preclude the Commander USARCS from taking final action within the time limitations set forth in subparts D and H of this part.

§ 536.10 Responsibilities and operations of claims processing offices.

(a) *Heads of CPOs.* Heads of CPOs will:

(1) Investigate all potential and actual claims arising within their assigned jurisdiction, on either an area, command, or agency basis. Only a CPO that has approval authority may adjudicate and pay presented claims within its monetary jurisdiction.

(2) Ensure that units and organizations within their jurisdiction have appointed claims officers for the investigation of claims not requiring a JA's investigation. (See § 536.22).

(3) Budget for and fund claims investigations and activities; including, per diem and transportation of claims personnel, claimants and witnesses; independent medical examinations; appraisals; independent expert opinions; long distance telephone calls; recording and photographic equipment; use of express mail or couriers; and other necessary expenses.

(4) Within CONUS, procure and maintain legal publications on local law relating to tort claims pertaining to their jurisdiction.

(5) Notify the Commander USARCS of all claims and claims incidents, as required by § 536.22 and AR 27–20, paragraph 2–12.

(6) Implement the Army's Article 139 claims program (see Subpart I of this part).

(b) *Operations of claims processing offices.* (1) *Claims processing office with approval authority.* A CPO that has been granted approval authority must provide for the investigation of all potential and actual claims arising within its assigned jurisdiction, on an area, command, or agency basis, and for the adjudication and payment of all claims presented within its monetary jurisdiction. If the estimated value of a claim, after investigation, exceeds the CPO's payment authority, or if disapproval is the appropriate action, the claim file will be forwarded to the ACO unless otherwise specified in this part, or forwarded to USARCS or the command claims service, if directed by such service.

(2) *Claims processing offices without approval authority.* A CPO that has not been granted claims approval authority will provide for the investigation of all potential and actual claims arising within its assigned jurisdiction on an area, command, or agency basis. Once the investigation has been completed, the claim file will be forwarded to the appropriate ACO for action. Alternatively, an ACO may direct the transfer of a claim investigation from a CPO without approval authority to another CPO with approval authority, located within the ACO's jurisdiction.

(3) *Medical claims processing offices.* The MCJAs or medical claims attorneys at Army medical centers, other than Walter Reed Army Medical Center, may be designated by the SJA or head of the ACO for the installation on which the center is located as CPOs with approval authority for medical malpractice claims only. Claims for amounts exceeding a medical CPO's approval authority will be investigated and forwarded to the Commander USARCS.

(4) *Special claims processing offices.* (i) *Designation and authority.* The Commander USARCS, the chief of a command claims service, or the head of an ACO may designate special CPOs within his or her command for specific, short-term purposes (for example, maneuvers, civil disturbances and emergencies). These special CPOs may be delegated the approval authority necessary to effect the purpose of their creation, but in no case will this delegation exceed the maximum monetary approval authority set forth in other subparts of this part for regular CPOs. All claims will be processed under the claims expenditure allowance and claims command and office code of the authority that established the office or under a code assigned by USARCS. The existence of any special CPO must be reported to the Commander USARCS, and the chief of a command claims service, as appropriate.

(ii) *Maneuver damage and claims office jurisdiction.* A special CPO is the proper organization to process and approve maneuver damage claims, except when a foreign government is responsible for adjudication pursuant to an international agreement (see Subpart G of this part). Personnel from the maneuvering command should be used to investigate claims and, at the ACO's discretion, may be assigned to the special CPO. The ACO will process claims filed after the maneuver terminates. The special CPO will investigate claims arising while units are traveling to or from the maneuver within the jurisdiction of other ACOs, and forward such claims for action to the ACO in whose area the claims arose. Claims for damage to real or personal property arising on private land that the Army has used under a permit may be paid from funds specifically budgeted by the maneuver for such purposes in accordance with AR 405–15.

(iii) *Disaster claims and civil disturbance.* A special CPO provided for a disaster or civil disturbance should include a claims approving authority with adequate investigatory, administrative, and logistical support, including damage assessment and finance and accounting support. It will not be dispatched prior to notification of the Commander USARCS, whose concurrence must be obtained before the first claim is paid.

(5) *Supervisory requirements.* The CPOs discussed in paragraphs (b)(2) through (b)(4) of this section must be supervised by an assigned CJA or claims attorney in order to exercise delegated approval authority.

§ 536.11 Chief of Engineers.

The Chief of Engineers, through the Chief Counsel, shall:

(a) Provide general supervision of the claims activities of COE ACOs.

(b) Ensure that each COE ACO has a claims attorney designated in accordance with § 536.4.

(c) Ensure that claims personnel are adequately trained, and monitor their ongoing claims administration.

(d) Implement pertinent claims policies.

(e) Provide for sufficient funding in accordance with existing Army regulations and command directives for temporary duty (TDY), long distance telephone calls, recording equipment, cameras, and other expenses for investigating and processing claims.

(f) Procure and maintain adequate legal publications on local law relating to claims arising within the United States, its territories, commonwealths and possessions.

(g) Assist USARCS in evaluation of claims by furnishing qualified expert and technical advice from COE resources, on a non-reimbursable basis except for temporary duty (TDY) and specialized lab services expenses.

§ 536.12 Commanding General, U.S. Army Medical Command.

(a) After consulting with the Commander USARCS on the selection of medical claims attorneys, the Commander of the U.S. Army MEDCOM, the European Medical Command, or other regional medical command, through his or her SJA/Center Judge Advocate, shall ensure that an adequate number of qualified MCJAs or medical claims attorneys and medical claims investigators are assigned to investigate and process medical malpractice claims arising at Army medical centers under the Commander's control. In accordance with an agreement between TJAG and The Surgeon General, such personnel shall be used primarily to investigate and process medical malpractice claims and affirmative claims and will be provided with the necessary funding and research materials to carry out this function.

(b) Upon request of a claims judge advocate or claims officer, shall provide a qualified health care provider at a medical treatment facility (MTF) to examine a claimant for his injuries even if the claimant is not otherwise entitled to care at an MTF (See AR 40–400, Patient Administration, paragraph 3–47).

§ 536.13 Chief, National Guard Bureau.

The Chief, National Guard Bureau (NGB), shall:

(a) Ensure the designation of a point of contact for claims matters in each State Adjutant General's office.

(b) Provide the name, address, and telephone number of these points of contact to the Commander USARCS.

(c) Designate claims officers to investigate claims generated by ARNG personnel and forward investigations to the Active Army ACO that has jurisdiction over the area in which the claims incident occurred.

§ 536.14 Commanders of major Army commands.

Commanders of MACOMs, through their SJAs, shall:

(a) Assist USARCS in monitoring ACOs and CPOs under their respective commands for compliance with the responsibilities assigned in §§ 536.9 and 536.10.

(b) Assist claims personnel in obtaining qualified expert and technical advice from command units and organizations on a nonreimbursable basis (although the requesting office may be required to provide TDY funding).

(c) Assist TJAG, through the Commander USARCS, in implementing the functions set forth in § 536.7.

(d) Coordinate with the ACO within whose jurisdiction a maneuver is scheduled, to ensure the prompt investigation and settlement of any claims arising from it.

§ 536.15 Claims policies.

(a) *General.* The following policies will be adhered to in processing and adjudicating claims falling within this regulation. The Commander USARCS is authorized to publish new policies or rescind existing policies from time to time as the need arises.

(1) *Notification.* The Commander USARCS must be notified as soon as possible of both potential and actual claims which are serious incidents that cannot be settled within the monetary jurisdiction of a Command Claims Service or an ACO, including those which occur in the area of responsibility of a CPO. On such claims, the USARCS Area Action Officer (AAO) must coordinate with the field office as to all aspects of the investigation, evaluation and determination of liability. An offer of settlement or the assertion of an affirmative claim must be the result of a discussion between the AAO and the field office. Payment of a subrogated claim may commit the United States to liability as to larger claims. On the other hand, where all claims out of an incident can be paid within field authority they should be paid promptly with maximum use of small claims procedures.

(2) *Consideration under all subparts.* Prior to denial, a claim will be considered under all subparts of this part, regardless of the form on which the claim is presented. A claim presented as a personnel claim will be considered as a tort prior to denial. A claim presented as a tort will first be considered as a personnel claim, and if not payable, then considered as a tort. If deniable, the claim will be denied both as a personnel claim and as a tort.

(3) *Compromise.* DA policy seeks to compromise claims in a manner that represents a fair and equitable result to both the claimant and the United States. This policy does not extend to frivolous claims or claims lacking factual or legal merit. A claim should not be settled solely to avoid further processing time and expense. All claims, regardless of amount, should be evaluated. Congress imposed no minimum limit on payable claims nor did it intend that small non-meritous claims be paid. Practically any claim, regardless of amount, may be subject to compromise through direct negotiation. A CJA or claims attorney should develop expertise in assessing liability and damages, including small property damage claims. For example, a property damage claim may be compromised by deducting the cost of collection, i.e., attorney fees and costs, even where liability is certain.

(4) *Expeditious processing at the lowest level.* Claims investigation and adjudication should be accomplished at the lowest possible level, such as the CPO or ACO that has monetary authority over the estimated total value of all claims arising from the incident. The expeditious investigation and settlement of claims is essential to successfully fulfilling the Army's responsibilities under the claims statutes implemented by this part.

(5) *Notice to claimants of technical errors in claim.* When technical errors are found in a claim's filing or contents, claimants should be advised of such errors and the need to correct the claim. If the errors concern a jurisdictional matter, a record should be maintained and the claimant should be immediately warned that the error must be corrected before the statute of limitations (SOL) expires.

(b) *Cooperative investigative environment.* Any person who indicates a desire to file a claim against the United States cognizable under one of the subparts of this part will be instructed concerning the procedure to follow. The claimant will be furnished claim forms and, when necessary, assisted in completing claim forms, and may be assisted in assembling evidence. Claims personnel may not assist any claimant in determining what amount to claim. During claims investigation, every effort should be made to create a cooperative environment that engenders the free exchange of information and evidence. The goal of obtaining sufficient information to make an objective and fair analysis should be paramount. Personal contact with claimants or their representatives is essential both during investigation and before adjudication. When settlement is not feasible, issues in dispute should be clearly identified to facilitate resolution of any reconsideration, appeal or litigation.

(c) *Claims directives and plans.* (1) *Directives.* Two copies of command claims directives will be furnished to

the Commander USARCS. ACO directives will be distributed to all DA and DOD commands, installations and activities within the ACO's area of responsibility, with an information copy to the Commander USARCS.

(2) *Disaster and civil preparedness plan.* One copy of all ACOs' disaster or civil disturbance plans or annexes will be furnished to the Commander USARCS.

(d) *Interpretations.* The Commander USARCS will publish written interpretations of this part. Interpretations will have the same force and effect as this part.

(e) *Authority to grant exceptions to and deviations from this part.* If, in particular instances, it is considered to be in the best interests of the government, the Commander USARCS may authorize deviations from this part's specific requirements, except as to matters based on statutes, treaties and international agreements, executive orders, controlling directives of the Attorney General or Comptroller General, or other publications that have the force and effect of law.

(f) *Guidance.* The Commander USARCS, may publish bulletins, manuals, handbooks and notes, and a DA Pamphlet that provides guidance to claims authorities on administrative and procedural rules implementing this part. These will be binding on all Army claims personnel.

(g) *Communication.* All claims personnel are authorized to communicate directly with USARCS personnel for guidance on matters of policy or on matters relating to the implementation of this part.

(h) *Private relief bills.* The issue of a private relief bill is one between a claimant and his or her Congressional representative. There is no established procedure under which the DA sponsors private relief legislation. Claims personnel shall remain neutral in all private relief matters and shall not make any statement that purports to reflect the DA's position on a private relief bill.

§ 536.16 Release of information policies.

(a) *Conflict of interest.* Except as part of their official duties, government personnel are forbidden from advising or representing claimants or from receiving any payment or gratuity for services rendered. They may not accept any share or interest in a claim or assist in its presentation, under penalty of federal criminal law (18 U.S.C. 203 and 205).

(b) *Release of information.* (1) Relevant statutes pertinent to the release of information include the Privacy Act of 1974, 5 U.S.C. 552a and 552b, the Freedom of Information Act (FOIA), 5 U.S.C. 552 and the Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. 1320d through 1320d–8.

(2) It is the policy of USARCS that unclassified attorney work product may be released with or without a request from the claimant or attorney, whenever such release may help settle the claim or avoid unnecessary litigation.

(3) A statutory exemption or privilege may not be waived. Similarly, documents subject to such statutorily required nondisclosure, exemption, or privilege may not be released. Regarding other exemptions and privileges, authorities may waive such exemptions or privileges and direct release of the protected documents, upon balancing all pertinent factors, including finding that release of protected records will not harm the government's interest, will promote settlement of a claim and will avoid unnecessary litigation, or for other good cause.

(4) All requests for records and information made pursuant to the FOIA, 5 U.S.C. 552, the Privacy Act of 1974, 5 U.S.C. 552a, or HIPAA, 42 U.S.C. 1320d, will be processed in accordance with the procedures set forth in AR 25–55 and AR 340–21, respectively as well as 45 CFR parts 160 and 164, DODD 6025.18–R, this part, and DA Pam 27–162.

(i) Any request for DOD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of AR 25–55. Requests for DOD records submitted by a claimant or claimant's attorney will be processed under both the FOIA and under the Privacy Act when the request is made by the subject of the records requested and those records are maintained in a system of records. Such requests will be processed under the FOIA time limits and the Privacy Act fee provisions. Withheld information must be exempt from disclosure under both Acts.

(ii) Requests that cite both Acts or neither Act are processed under both Acts, using the FOIA time limits and the Privacy Act fee provisions. For further guidance, see AR 25–55, paragraphs 1–301 and 1–503.

(5) The following records may not be disclosed:

(i) Medical quality assurance records exempt from disclosure pursuant to 10 U.S.C. 1102(a).

(ii) Records exempt from disclosure pursuant to appropriate balancing tests under FOIA exemption (6) (clearly unwarranted invasion of personal privacy), exemption (7)(c) (reasonably constitutes unwarranted invasion of privacy), and law enforcement records (5 U.S.C. 552 (b)) unless requested by the subject of the record.

(iii) Records protected by the Privacy Act.

(iv) Records exempt from disclosure pursuant to FOIA exemption (1) (National security) (5 U.S.C. 552(b)), unless such records have been properly declassified.

(v) Records exempt from disclosure pursuant to the attorney-client privilege under FOIA exemption (5) (5 U.S.C. 552(b)), unless the client consents to the disclosure.

(6) Records within a category for which withholding of the record is discretionary (AR 25–55, paragraph 3–101), such as exemptions under the deliberative process or attorney work product privileges (exemption (5) (5 U.S.C. 552(b)) may be released when there is no foreseeable harm to government interests in the judgment of the releasing authority.

(7) When it is determined that exempt information should not be released, or a question as to its releaseability exists, forward the request and two copies of the responsive documents to the Commander USARCS. The Commander USARCS, acting on behalf of TJAG (the initial denial authority), may deny release of records processed under the FOIA only. The Commander USARCS, will forward to TJAG all such requests processed under both the FOIA and PA. TJAG is the denial authority for Privacy Act requests (AR 340–21, paragraph 1–7i).

(c) *Claims assistance.* In the vicinity of a field exercise, maneuver or disaster, claims personnel may disseminate information on the right to present claims, procedures to be followed, and the names and location of claims officers and the COE repair teams. When the government of a foreign country in which U.S. Armed Forces are stationed has assumed responsibility for the settlement of certain claims against the United States, officials of that country will be furnished as much pertinent information and evidence as security considerations permit.

§ 536.17 Single-service claims responsibility (DODD 5515.8 and DODD 5515.9).

(a) *Assignment for DOD claims.* The Army is responsible for processing DOD claims pursuant to DODD 5515.9 (posted on the USARCS Web site; for the address see § 536.2(a)).

(b) *Statutes and agreements.* DOD has assigned single-service responsibility for the settlement of certain claims in certain countries, pursuant to DODD 5515.8 (posted on the USARCS Web

site; for the address see § 536.2(a)) under the following statutes and agreements:

(1) FCA (10 U.S.C. 2734);

(2) MCA (10 U.S.C. 2733);

(3) Status of Forces Agreements (10 U.S.C. 2734a and 2734b);

(4) NATO SOFA (4 U.S.T. 1792, Treaties and International Acts Series (T.I.A.S.) 2846) and other similar agreements;

(5) FCCA (31 U.S.C. 3711–3720E) and FMCRCA (42 U.S.C. 2651–2653);

(6) Claims not cognizable under any other provision of law, 10 U.S.C. 2737; and

(7) Advance payments, 10 U.S.C. 2736.

(c) *Specified foreign countries.* Responsibility for the settlement of claims cognizable under the laws listed above has been assigned to military departments pursuant to DODD 5515.8, as supplemented by executive agreement and other competent directives.

(d) *When claims responsibility has not been assigned.* When necessary to implement contingency plans, the unified or specified commander with authority over the geographic area in question may, on an interim basis before receiving confirmation and approval from the General Counsel, DOD, assign single-service responsibility for processing claims in countries where such assignment has not already been made.

Note to § 536.17: See also § 536.32 for information on transferring claims among armed services branches.

§ 536.18 Cross-servicing of claims.

(a) *Where claims responsibility has not been assigned.* Claims cognizable under the FCA or the MCA that are generated by another military department within a foreign country for which single-service claims responsibility has not been assigned, may be settled by the Army upon request of the military department concerned. Conversely, Army claims may in appropriate cases be referred to another military department for settlement, DODD 5515.8, E1.2 (posted on the USARCS Web site; for the address see § 536.2(a)). Tables listing claims offices worldwide are posted to the USARCS Web site at that address. U.S. Air Force claims offices may be identified by visiting the Web site at *http://afmove.hq.af.mil/page_afclaims.asp.*

(b) *Claims generated by the Coast Guard.* Claims resulting from the activities of, or generated by, Coast Guardsmen or civilian employees of the Coast Guard while it is operating as a service of the U.S. Department of Homeland Security may upon request be settled under this part by a foreign claims commission appointed as authorized herein, but they will be paid from Coast Guard appropriations, 10 U.S.C. 2734.

(c) *SOFA claims within the United States.* Claims cognizable under the NATO PFP or Singaporean SOFAs arising out of the activities of aircraft within the United States may be investigated and adjudicated by the U.S. Air Force under a delegation from the Commander USARCS. Claims exceeding the delegated amount will be adjudicated by the USARCS.

(d) *Claims generated by the American Battle Monuments Commission.* Claims arising out of the activities of or in cemeteries outside the United States managed by the American Battle Monuments Commission (36 U.S.C. 2110) will be investigated and adjudicated by the U.S. Army.

Note to § 536.18: See also § 536.32 for information on transferring claims among armed services branches.

§ 536.19 Disaster claims planning.

All ACOs will prepare a disaster claims plan and furnish a copy to USARCS. See DA Pam 27–162, paragraph 1–21 for specific requirements related to disaster claims planning.

§ 536.20 Claims assistance visits.

Members of USARCS and command claims services will make claims assistance visits to field offices on a periodic basis. See DA Pam 27–162, paragraph 1–22 for specific requirements related to claims assistance visits.

§ 536.21 Annual claims award.

The Commander USARCS will make an annual claims award to outstanding field offices. See DA Pam 27–162, para 1–23 for more information on annual claims awards.

Subpart B—Investigation and Processing of Claims

§ 536.22 Claims investigative responsibility—general.

(a) *Scope.* This subpart addresses the investigation, processing, evaluation, and settlement of tort and tort-related claims for and against the United States. The provisions of this subpart do not apply to personnel claims (AR 27–20, chapter 11), or to claims under subpart G of this part, §§ 536.113 through 536.116.

(b) *Cooperation.* Claims investigation requires team effort between the U.S. Army Claims Service (USARCS), command claims services, and area claims offices (ACOs) including U.S. Army Corps of Engineers (COE) District Offices, claims processing offices (CPOs), and unit claims officers. Essential to this effort is the immediate investigation of claims incidents. Prompt investigation depends on the timely reporting of claims incidents as well as continuous communication between all commands or echelons bearing claims responsibility.

(c) *Notification to USARCS.* A CPO or an ACO receiving notice of a potentially compensable event (PCE) that requires investigation will immediately refer it to the appropriate claims office. The Commander USARCS will be notified of all major incidents involving serious injury or death or those in which property damage exceeds $50,000. A command claims service may delegate to an ACO the responsibility for advising USARCS of serious incidents and complying with mirror file requirements. A copy of the written delegation and any changes made thereafter will be forwarded to the Commander USARCS.

(d) *Geographic concept of responsibility.* A command claims service or an ACO in whose geographic area a claims incident occurs is primarily responsible for initiating investigation and processing of any claim filed in the absence of a formal transfer of responsibility (see §§ 536.30 through 536.36). DOD and Army organizations whose personnel are involved in the incident will cooperate with and assist the ACO, regardless of where the former may be located.

Note to § 536.22: See the parallel discussion at DA Pam 27–162, paragraph 2–1.

§ 536.23 Identifying claims incidents both for and against the government.

(a) Investigation is required when:

(1) There is property loss or damage.

(i) Property other than that belonging to the government is damaged, lost, or destroyed by an act or omission of a government employee or a member of North Atlantic Treaty Association (NATO), Australian or Singaporean forces stationed or on temporary duty within the United States.

(ii) Property belonging to the government is damaged or lost by a tortious act or omission not covered by the report of survey system or by a carrier's bill of lading.

(2) There is personal injury or death.

(i) A civilian other than an employee of the U.S. government is injured or killed by an act or omission of a

government employee or by a member of a NATO, Australian or Singaporean force stationed or on temporary duty within the United States. (This category includes patients injured during treatment by a health care provider).

(ii) Service members, active or retired, family members of either, or U.S. employees, are injured or killed by a third party and receive medical care at government expense.

(3) A claim is filed.

(4) A competent authority or another armed service or federal agency requires investigation.

(b) Determining who is a government employee is a matter of federal, not local, law. Categories of government employees usually accepted as tortfeasors under federal law are:

(1) Military personnel (soldiers of the Army, or members of other services where the Army exercises single-service jurisdiction on foreign soil; and soldiers or employees within the United States who are members of NATO or of other foreign military forces with whom the United States has a reciprocal claims agreement and whose sending States have certified that they were acting within the scope of their duty) who are serving on full-time active duty in a pay status, including soldiers:

(i) Assigned to units performing active or inactive duty.

(ii) Serving on active duty as Reserve Officer Training Corps (ROTC) instructors.

(iii) Serving as Army National Guard (ARNG) instructors or advisors.

(iv) On duty or training with other federal agencies, for example: The National Aeronautics and Space Administration, the Department of State, the Navy, the Air Force, or DOD (federal agencies other than the armed service to which the Soldier is attached may also provide a remedy).

(v) Assigned as students or ordered into training at a non-federal civilian educational institution, hospital, factory, or other facility (excluding soldiers on excess leave or those for whom the training institution or organization has assumed liability by written agreement).

(vi) Serving on full-time duty at nonappropriated fund (NAF) activities.

(vii) Of the United States Army Reserve (USAR) and ARNG on active duty under Title 10, U.S.C.

(2) Military personnel who are United States Army Reserve soldiers including ROTC cadets who are Army Reserve soldiers while at annual training, during periods of active duty and inactive duty training.

(3) Military personnel who are soldiers of the ARNG while engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, 505, or engaged in properly authorized community action projects under the Federal Tort Claims Act (FTCA), the Non-Scope Claims Act (NSCA), or the National Guard Claims Act (NGCA), unless performing duties in furtherance of a mission for a state, commonwealth, territory or possession.

(4) Civilian officials and employees of both the DOD and DA (there is no practical significance to the distinction between the terms "official" and "employee"), including but not limited to the following:

(i) Civil service and other full-time employees of both the DOD and DA who are paid from appropriated funds.

(ii) Persons providing direct health care services pursuant to personal service contracts under 10 U.S.C. 1089 or 1091 or where another person exercised control over the health care provider's day-to-day practice. When the conduct of a health care provider performing services under a personal service contract is implicated in a claim, the CJA, Medical Claims Judge Advocate (MCJA), or claims attorney should consult with USARCS to determine if that health care provider can be considered an employee for purposes of coverage.

(iii) Employees of a NAF instrumentality (NAFI) if it is an instrumentality of the United States and thus a federal agency. To determine whether a NAFI is a "federal agency," consider both whether it is an integral part of the Army charged with an essential DA operational function and also what degree of control and supervision DA personnel exercise over it. Members or users, unlike employees of NAFIs, are not considered government employees; the same is true of family child care providers. However, claims arising out of the use of some NAFI property or from the acts or omissions of family child care providers may be payable from such funds under subpart K of this part as a matter of policy, even when the user is not acting within the scope of employment and the claim is not otherwise cognizable under any of the other authorities described in this part.

(5) Prisoners of war and interned enemy aliens.

(6) Civilian employees of the District of Columbia ARNG, including those paid under "service contracts" from District of Columbia funds.

(7) Civilians serving as ROTC instructors paid from Federal funds.

(8) ARNG technicians employed under 32 U.S.C. 709(a) for claims accruing on or after January 1, 1969 (Pub. L. 90–486, August 13, 1968 (82 Stat. 755)), unless performing duties solely in pursuit of a mission for a state, commonwealth, territory or possession.

(9) Persons acting in an official capacity for the DOD or DA either temporarily or permanently with or without compensation, including but not limited to the following:

(i) Dollar-a-year personnel.

(ii) Members of advisory committees, commissions, or boards.

(iii) Volunteers serving in an official capacity in furtherance of the business of the United States, limited to those categories set forth in DA Pam 27–162, paragraph 2–45.

Note to § 536.23: See the parallel discussion at DA Pam 27–162, paragraph 2–2.

§ 536.24 Delegation of investigative responsibility.

(a) *Area Claims Office.* An ACO is authorized to carry out its investigative responsibility as follows:

(1) At the request of the area claims authority, commanders and heads of Army and DOD units, activities, or components will appoint a commissioned, warrant, or noncommissioned officer or a qualified civilian employee to investigate a claims incident in the manner set forth in DA Pam 27–162 and this part. An ACO will direct such investigation to the extent deemed necessary.

(2) CPOs are responsible for investigating claims incidents arising out of the activities and operations of their command or agency. An ACO may assign area jurisdiction to a CPO after coordination with the appropriate commander to investigate claims incidents arising in the ACO's designated geographic area. (See § 536.3(f)).

(3) Claims incidents involving patients arising from treatment by a health care provider in an Army medical treatment facility (MTF), including providers defined in 536.23(b)(4)(ii), will be investigated by a claims judge advocate (CJA), medical claims judge advocate (MCJA), or claims attorney rather than by a unit claims officer.

(4) An ACO will publish and distribute a claims directive to all DOD and Army installations and activities including active, Army Reserve, and ARNG units as well as units located on the post at which the ACO is located. The directive will outline each installation's and activity's claims responsibilities. It will institute a serious claims incident reporting system.

(b) *Command claims service responsibility.* A command claims

service is responsible for the investigation and processing of claims incidents arising in its geographic area of responsibility or for any incidents within the authority of any foreign claims commission (FCC) it appoints. This responsibility will be carried out by an ACO or a CPO to the extent possible. A command claims service will publish a claims directive outlining the geographic areas of claims investigative responsibilities of each of its installations and activities, requiring each ACO or CPO to report all serious claims incidents directly to the Commander USARCS.

(c) *USARCS responsibility.* USARCS exercises technical supervision over all claims offices, providing guidance on specific cases throughout the claims process, including the method of investigation. Where indicated, USARCS may investigate a claims incident that normally falls within a command claims service's, an ACO's, or a CPO's jurisdiction. USARCS typically acts through an area action officer (AAO) who is assigned as the primary point of contact with command claims services, ACOs or CPOs within a given geographic area. In areas outside the United States and its commonwealths, territories and possessions, where there is no command claims service or ACO, USARCS is responsible for investigation and for appointment of FCCs.

Note to § 536.24: See the parallel discussion at DA Pam 27–162, paragraph 2–3.

§ 536.25 Procedures for accepting claims.

All ACOs and CPOs will institute procedures to ensure that potential claimants or attorneys speak to a CJA, claims attorney, investigator, or examiner. On initial contact, claims personnel will render assistance, discuss all aspects of the potential claim, and determine what statutes or procedures apply. Assistance will be furnished to the extent set forth in DA Pam 27–162, paragraph 2–4. To advise claimants on the correct remedy, claims personnel will familiarize themselves with the remedies listed in DA Pam 27–162, paragraphs 2–15 and 2–17.

§ 536.26 Identification of a proper claim.

(a) A claim is a writing that contains a sum certain for each claimant and that is signed by each claimant, or by an authorized representative, who must furnish written authority to sign on a claimant's behalf. The writing must contain enough information to permit investigation. The writing must be received not later than two years from the date the claim accrues. A claim under the Foreign Claims Act (FCA) may be presented orally to either the United States or the government of the foreign country in which the incident occurred, within two years, provided that it is reduced to writing not later than three years from the date of accrual. A claim may be transmitted by facsimile or telegram. However, a copy of an original claim must be submitted as soon as possible.

(b) Where a claim is only for property damage and it is filed under circumstances where there might be injuries, the CJA should inquire if the claimant desires to split the claim as discussed in § 536.60.

(c) Normally, a claim will be presented on a Standard Form (SF) 95 (Claim for Damage, Injury, or Death). When the claim is not presented on an SF 95, the claimant will be requested to complete an SF 95 to ease investigation and processing.

(d) If a claim names two claimants and states only one sum certain, the claimants will be requested to furnish a sum certain for each. A separate sum certain must be obtained prior to payment under the Federal Tort Claims Act (FTCA), Military Claims Act (MCA), National Guard Claims Act (NGCA) or the FCA. The Financial Management Service will only pay an amount above the threshold amount of $2,500 for the FTCA, or $100,000 for the other statutes.

(e) A properly filed claim meeting the definition of "claim" in paragraph (a) of this section tolls the two-year statute of limitations (SOL) even though the documents required to substantiate the claim are not present, such as those listed on the back of an SF 95 or in the Attorney General's regulations implementing the FTCA, 28 CFR 14.1–14.11. However, refusal to provide such documents may lead to dismissal of a subsequent suit under the FTCA or denial of a claim under other subparts of this part.

(f) Receipt of a claim by another federal agency does not toll the SOL. Receipt of a U.S. Army claim by DOD, Navy, or Air Force does toll the SOL.

(g) The guidelines set forth in federal FTCA case law will apply to other subparts of this part in determining whether a proper claim was filed.

Note to § 536.26: See the parallel discussion at DA Pam 27–162, paragraph 2–5.

§ 536.27 Identification of a proper claimant.

The following are proper claimants:

(a) *Claims for property loss or damage.* A claim may be presented by the owner of the property or by a duly authorized agent or legal representative in the owner's name. As used in this part, the term "owner" includes the following:

(1) *For real property.* The mortgagor, mortgagee, executor, administrator, or personal representative, if he or she may maintain a cause of action in the local courts involving a tort to the specific property; is a proper claimant. When notice of divided interests in real property is received, the claim should if feasible be treated as a single claim and a release from all interests must be obtained. This includes both the owner and tenant where both claim.

(2) *For personal property.* A claim may be presented by a bailee, lessee, mortgagee, conditional vendor, or others holding title for purposes of security only, unless specifically prohibited by the applicable subpart. When notice of divided interests in personal property is received, the claim should if feasible be treated as a single claim; a release from all interests must be obtained. Property loss is defined as loss of actual tangible property, not consequential damage resulting from such loss.

(b) *Claims for personal injury or wrongful death.* (1) *For personal injury.* A claim may be presented by the injured person or by a duly authorized agent or legal representative or, where the claimant is a minor, by a parent or a person in loco parentis. However, determine whether the claimant is a proper claimant under applicable state law or, if considered under the MCA, under § 536.77. If not, the claimant should be so informed in the acknowledgment letter and requested to withdraw the claim. If not withdrawn, deny the claim without delay. An example is a claim filed on behalf of a minor for loss of consortium for injury to a parent where not permitted by state law. Personal injury claims deriving from the principal injury may be presented by other parties. A claim may not be presented by a "volunteer," meaning one who has no legal or contractual obligation, yet voluntarily pays damages on behalf of an injured party and then seeks reimbursement for their economic damages by filing a claim. See paragraph (f)(3) of this section.

(2) *For wrongful death.* A claim may be presented by the executor or administrator of the deceased's estate, or by any person determined to be legally or beneficially entitled under applicable local law. The amount allowed will be apportioned, to the extent practicable, among the beneficiaries in accordance with the law applicable to the incident. Under the MCA (subpart C of this part), only one wrongful death claim is authorized (see § 536.77(c)(1)(i)). Under

subparts D and H of this part, a claim by the insured for property damage may be considered as a claim by the insurer as the real party in interest provided the insured has been reimbursed by the insurer and the insurance information is listed on the SF 95. The insurer should be required to file a separate SF 95 for payment purposes even though the SOL has expired. Where the insurance information is not listed on the SF 95 and the insured is paid by the United States, the payment of the insurer is the responsibility of the insured even though the insurer subsequently files a timely claim. To avoid this situation, always inquire as to the status of any insurance prior to payment of a property damage claim.

(c) *By an agent or legal representative.* A claimant's agent or legal representative who presents a claim will do so in the claimant's name and sign the form in such a way that indicates the agent's or legal representative's title or capacity. When a claim is presented by an agent or legal representative:

(1) It must contain written evidence of the agent's or legal representative's authority to sign, such as a power of attorney, or

(2) It must refer to or cite the statute granting authority.

(d) *Subrogation.* A claim may be presented by the subrogee in his or her own name if authorized by the law of the place where the incident giving rise to the claim occurred, under subpart D or H of this part only. A lienholder is not a proper claimant and should be distinguished from a subrogee to avoid violation of the Antiassignment Act. See paragraph (f) of this section. However, liens arising under Medicare will be processed directly with the Center for Medicare and Medicaid Systems. See DA Pam 27–162, paragraphs 2–57g and h and 2–58.

(e) *Contribution or indemnity.* A claim may be filed for contribution or indemnification by the party who was held liable as a joint tortfeasor where authorized by state law. Such a claim is not perfected until payment has been made by the claimant/joint tortfeasor. A claim filed for contribution prior to payment being made should be considered as an opportunity to share a settlement where the United States is liable.

(f) *Transfer or assignment.* (1) Under the Antiassignment Act (31 U.S.C. 3727) and Defense Finance and Accounting Service—Indianapolis (DFAS–IN) regulation 37–1, a transfer or assignment is null and void except where it occurs by operation of law or after a voucher for the payment has been issued. The following are null and void:

(i) Every purported transfer or assignment of a claim against the United States, or any interest, in whole or in part, on a claim, whether absolute or conditional; and

(ii) Every power of attorney or other purported authority to receive payment for all or part of any such claim.

(2) The Antiassignment Act was enacted to eliminate multiple payment of claims, to cause the United States to deal only with original parties and to prevent persons of influence from purchasing claims against the United States.

(3) In general, this statute prohibits voluntary assignments of claims, with the exception of transfers or assignments made by operation of law. The operation of law exception has been held to apply to claims passing to assignees because of bankruptcy proceedings, assignments for the benefit of creditors, corporate liquidations, consolidations, or reorganizations, and where title passes by operation of law to heirs or legatees. Subrogated claims that arise under a statute are not barred by the Antiassignment Act. For example, subrogated workers' compensation claims are cognizable when presented by the insurer under subpart D or H of this part, but not other subparts.

(4) Subrogated claims that arise pursuant to contractual provisions may be paid to the subrogee, if the legal basis for the subrogated claim is recognized by state statute or case law, only under subpart D or H of this part. For example, an insurer that issues an insurance policy becomes subrogated to the rights of a claimant who receives payment of a property damage claim. Generally, such subrogated claims are authorized by state law and are therefore not barred by the Antiassignment Act.

(5) Before claims are paid, it is necessary to determine whether there may be a valid subrogated claim under a federal or state statute or a subrogation contract held valid by state law.

(g) *Interdepartmental waiver rule.* Neither the U.S. government nor any of its instrumentalities are proper claimants due to the interdepartmental waiver rule. This rule bars claims by any organization or activity of the Army, whether or not the organization or activity is funded with appropriated or nonappropriated funds. Certain federal agencies are authorized by statute to file claims, for example, Medicare and the Railroad Retirement Commission. See DA Pam 27–162, paragraph 2–17f.

(h) *States are excluded.* If a state, U.S. commonwealth, territory, or the District of Columbia maintains a unit to which ARNG personnel causing the injury or damage are assigned, such governmental entity is not a proper claimant for loss or damage to its property. A unit of local government other than a state, commonwealth, or territory is a proper claimant.

Note to § 536.27: See the parallel discussion at DA Pam 27–162, paragraph 2–6.

§ 536.28 Claims acknowledgment.

Claims personnel will acknowledge all claims immediately upon receipt, in writing, by telephone, or in person. A defective claim will be acknowledged in writing, pointing out its defects. Where the defects render the submission jurisdictionally deficient based on the requirements discussed in DA Pam 27–162, paragraphs 2–5 and 2–6, the claimant or attorney will be informed in writing of the need to present a proper claim no later than two years from the date of accrual. Suit must be filed in maritime claims not later than two years from the date of accrual. See § 536.122. In any claim for personal injury or wrongful death, an authorization signed by the patient, natural or legal guardian or estate representative will be obtained authorizing the use of medical information, including medical records, in order to use sources other than claims personnel to evaluate the claim as required by the Health Care Portability and Accountability Act (HIPAA), 42 U.S.C. 1320d–1320d–8. See the parallel discussion at DA Pam 27–162, paragraph 2–7.

§ 536.29 Revision of filed claims.

(a) *General.* A revision or change of a previously filed claim may constitute an amendment or a new claim. Upon receipt, the CJA must determine whether a new claim has been filed. If so, the claim must be logged with a new number and acknowledged in accordance with § 536.27.

(b) *New claim.* A new claim is filed whenever the writing alleges a new theory of liability, a new tortfeasor, a new party claimant, a different date or location for the claims incident, or other basic element that constitutes an allegation of a different tort not originally alleged. If the allegation is made verbally or by e-mail, the claimant will be informed in writing that a new SF 95 must be filed. A new claim must be filed not later than two years from the accrual date under the FTCA. Filing a new claim creates an additional six month period during which suit may not be filed. .

(c) *Amendment.* An increase or decrease in the amount claimed constitutes an amendment, not a new claim. Similarly, the addition of

required information not on the original claim constitutes an amendment. Examples are date of birth, marital status, military status, names of witnesses, claimant's address, description, or location of property or insurance information. An amendment may be filed before or after the two year SOL has run unless final action has been taken. A new number will not be assigned to an amended claim; however, a change in the amount will be annotated in the database.

Note to § 536.29: See the parallel discussion at DA Pam 27–162, paragraph 2–8.

§ 536.30 Action upon receipt of claim.

(a) A properly filed claim stops the running of the SOL when it is received by any organization or activity of the DOD or the U.S. Armed Services. Placing a claim in the mail does not constitute filing. The first Army claims office that receives the claim will date, time stamp, and initial the claim as of the date the claim was initially received "on post," not by the claims office. If initially received close to the SOL's expiration date by an organization or activity that does not have a claims office, claims personnel will discover and record in the file the date of original receipt.

(b) The ACO or CPO that first receives the claim will enter the claim into the Tort and Special Claims Application (TSCA) database and let the system assign a number to the claim. The claim, whether on an SF 95 or in any other format, shall be scanned into a computer and uploaded onto the TSCA database so that it will become a permanent part of the electronic record. A joint claim will be given a number for each claimant, for example, husband and wife, injured parent and children. If only one sum is filed for all claimants, the same sum will be assigned for each claimant. However, request the claimant to name a sum for each claimant. The claim will bear this number throughout the claims process. Upon transfer, a new number will not be assigned by the receiving office. If a claim does not meet the definition of a proper claim under §§ 536.26 and 536.27, it will be date stamped and logged as a Potentially Compensable Event (PCE).

(c) The claim will be transferred if the claim incident arose in another ACO's geographic area; the receiving ACO will use the claims number originally assigned.

(d) Non-Appropriated Fund Instrumentality (NAFI) claims that relate to claims determined cognizable under subpart K of this part will be marked with the symbol "NAFI" immediately following the claimant's name, to preclude erroneous payment from appropriated funds (APF). This symbol will also be included in the subject line of all correspondence.

(e) Upon receipt, copies of the claims will be furnished as follows (when a current e-mail address is available and it is agreeable with the receiving party, providing copies by e-mail is acceptable):

(1) To USARCS, if the amount claimed exceeds $25,000, or $50,000 per incident. However, if the claim arises under the FTCA or AMCSA, only furnish copies if the amount claimed exceeds $50,000, or $100,000 per incident.

(2) For medical malpractice claims, to the appropriate MTF Commander/s through MEDCOM Headquarters, and to the Armed Forces Institute of Pathology at the addresses listed below.

MEDCOM, ATTN: MCHO–CL–Q, 2050 Worth Road, Suite 26, Fort Sam Houston, Texas 78234–5026.

Department of Legal Medicine, Armed Forces Institute of Pathology, 1335 E. West Highway, #6–100, Silver Spring, MD 20910–6254, Commercial: 301–295–8115, E-Mail: *casha@afip.osd.mil.*

(3) If the claim is against AAFES forward a copy to: HQ Army and Air Force Exchange Service (AAFES), ATTN: Office of the General Counsel (GC–Z), P.O. Box 650062, Dallas, TX 75265–0062, E-Mail: *blanchp@aafes.com.*

(4) If the claim involves a NAFI, including a recreational user or family child care provider forward a copy to: Army Central Insurance Fund, ATTN: CFSC–FM–I, 4700 King Street, Alexandria, VA 22302–4406, E-Mail: *riskmanagement@cfsc.army.mil.*

(f) ACOs or CPOs will furnish a copy of any medical or dental malpractice claim to the MTF or dental treatment facility commander and advise the commander of all subsequent actions. The commander will be assisted in his or her responsibility to complete DD Form 2526 (Case Abstract for Malpractice Claims).

Note to § 536.30: See the parallel discussion at DA Pam 27–162, paragraph 2–9.

§ 536.31 Opening claim files.

A claim file will be opened when:

(a) Information that requires investigation under § 536.23 is received.

(b) Records or other documents are requested by a potential claimant or legal representative.

(c) A claim is filed.

Note to § 536.31: See the parallel discussion at DA Pam 27–162, paragraph 2–10.

§ 536.32 Transfer of claims among armed services branches.

(a) Claims filed with the wrong federal agency, or claims that should be adjudicated by receiving State offices under NATO or other SOFA, will be immediately transferred to the proper agency together with notice of same to the claimant or legal representative. Where multiple federal agencies are involved, other agencies will be contacted and a lead agency established to take all actions on the claim. Where the DA is the lead agency, any final action will include other agencies. Similarly, where another agency is the lead agency, that agency will be requested to include DA in any final action. Such inclusion will prevent multiple dates for filing suit or appeal.

(b) If another agency has taken denial action on a claim that involves the DA, without informing the DA, and in which the DA desires to make a payment, the denial action may be reconsidered by the DA not later than six months from the date of mailing and payment made thereafter.

Note to § 536.32: See also §§ 536.17 and 536.18; AR 27–20, paragraph 13–2; and the parallel and related discussion of this topic at DA Pam 27–162, paragraphs 1–19, 1–20, 2–13 and 13–2.

§ 536.33 Use of small claims procedures.

Small claims procedures are authorized for use whenever a claim may be settled for $5,000 or less. These procedures are designed to save processing time and eliminate the need for most of the documentation otherwise required. These procedures are described in DA Pam 27–162, paragraphs 2–14 and 2–26.

§ 536.34 Determination of correct statute.

(a) *Consideration under more than one statute.* When Congress enacted the various claims statutes, it intended to allow federal agencies to settle meritorious claims. A claim must be considered under other statutes in this part unless one particular statute precludes the use of other statutes, whether the claim is filed on DD Form 1842 (Claim for Loss of or Damage to Personal Property Incident to Service) or SF 95. Prior to denial of an AR 27–20, chapter 11 claim, consider whether it may fall within the scope of subparts C, D, or F of this part, and where indicated, question the claimant to determine whether the claim sounds in tort.

(b) *Exclusiveness of certain remedies.* Certain remedies exclude all others. For

example, the Court of Federal Claims has exclusive jurisdiction over U.S. Constitution Fifth Amendment takings, express or implied-in-fact, as well as governmental contract losses, or intangible property losses. Claims of this nature for $10,000 or less may be filed in a U.S. District Court. There is no administrative remedy. While the FTCA is the preemptive tort remedy in the United States, its commonwealths, territories and possessions, nevertheless, other remedies must be exhausted prior to favorable consideration under the FTCA. The FTCA does not preclude use of the MCA or the NGCA for claims arising out of noncombat activities or brought by soldiers for incident-to-service property losses sustained within the United States. See DA Pam 27–162, paragraphs 2–15a and b for a more detailed discussion of determining the correct statute for property claims versus personal injury and death claims. In addition, it is important to consider the nature of the claim, e.g., whether the claim may be medical malpractice in nature, related to postal matter, or an automobile accident. Discussions of these and many other different types of claims are also provided herein as well as in the corresponding paragraph 2–15 of DA Pam 27–162. It is also very important to consider when a claim may fall outside the jurisdiction of the Army claims system. Some of these instances are alluded to immediately above, but for a detailed discussion of related remedies see § 536.36 of this part and paragraph 2–17 of DA Pam 27–162.

(c) *Status of Forces Agreement Claims.* (1) Claims arising out of the performance of official duties in a foreign country where the United States is the sending State must be filed and processed under a SOFA, provided that the claimant is a proper party claimant under the SOFA. DA Pam 27–162, paragraph 2–15c sets forth the rules applicable in particular countries. A SOFA provides an exclusive remedy subject to waiver as set forth in § 536.76(h) of this part.

(2) Single-service jurisdiction is established for all foreign countries in which a SOFA is in effect and for certain other countries. A list of these countries is posted on the USARCS Web site; for the address see § 536.2(a). Claims will be processed by the service exercising single-service responsibility. In the United States, USARCS is the receiving State office and all SOFA claims should be forwarded immediately to USARCS for action. Appropriate investigation under subpart B of this part procedures is required of an ACO or a CPO under USARCS' direction.

(d) *Foreign Claims Act claims.* (1) Claims by foreign inhabitants, arising in a foreign country, which are not cognizable under a SOFA, fall exclusively under the FCA. The determination as to whether a claimant is a foreign inhabitant is governed by the rules set out in subpart C and subpart J of this part. In case of doubt, this determination must be based on information obtained from the claimant and others, particularly where the claimant is a former U.S. service member or a U.S. citizen residing in a foreign country.

(2) Tort claims will be processed by the armed service that exercises single-service responsibility. When requested, the Commander USARCS may furnish a Judge Advocate or civilian attorney to serve as a Foreign Claims Commission (FCC) for another service. With the concurrence of the Commander USARCS, Army JAs may be appointed as members of another department's foreign claims commissions. See Subpart J of this part. The FCA permits compensation for damages caused by "out-of-scope" tortious conduct of Soldier and civilian employees. Many of these claims are also compensable under Article 139, Uniform Code of Military Justice. See DA Pam 27–162, chap. 9. To avoid the double payment of claims, ACOs and CPOs must promptly notify the Command Claims Service of each approved Article 139 claim involving a claimant who could also file under an applicable SOFA.

(e) *National Guard Claims Act claims.* (1) Claims attributed to the acts or omissions of ARNG personnel in the course of employment fall into the categories set forth in subpart F of this part.

(2) An ACO will establish with a state claims office routine procedures for the disposition of claims, designed to ensure that the United States and state authorities do not issue conflicting instructions for processing claims. The procedures will require personnel to advise the claimant of any remedy against the state or its insurer.

(i) Where the claim arises out of the act or omission of a member of the ARNG or a person employed under 32 U.S.C. 709, it must be determined whether the employee is acting on behalf of the state or the United States. For example, an ARNG pilot employed under section 709 may be flying on a state mission, federal mission, or both, on the same trip. This determination will control the disposition of the claim. If agreement with the concerned state cannot be reached and the claim is otherwise payable, efforts may be made to enter into a sharing agreement with the state concerned. The following procedures are required in the event there is a remedy against the state and the state refuses to pay or the state maintains insurance coverage and the claimant has filed an administrative claim against the United States. First, forward the file and the tort claim memorandum, including information on the status of any judicial or administrative action the claimant has taken against the state or its insurer to the Commander USARCS. Upon receipt, the Commander USARCS will determine whether to require the claimant to exhaust his or her remedy against the state or its insurer or whether the claim against the United States can be settled without requiring such exhaustion. If the Commander USARCS decides to follow the latter course of action, he or she will also determine whether to obtain an assignment of the claim against the state or its insurer and whether to initiate recovery action to obtain contribution or indemnification. The state or its insurer will be given appropriate notification in accordance with state law.

(ii) If an administrative claim remedy exists under state law or the state maintains liability insurance, the Commander USARCS or an ACO acting upon the Commander USARCS' approval may enter into a sharing agreement covering payment of future claims. The purpose of such an agreement is to determine in advance whether the state or the DA is responsible for processing a claim (did the claim arise from a federal or state mission?), to expedite payment in meritorious claims, and to preclude double recovery by a claimant.

(f) *Third-party claims involving an independent contractor.*

(1) *Generally.* (i) Upon receipt, all claims will be examined to determine whether a contractor of the United States is the tortfeasor. If so, the claimant or legal representative will be notified of the name and address of the contractor and further advised that the United States is not responsible for the acts or omissions of an independent contractor. This will be done prior to any determination as to the contractor's degree of culpability as compared to that of the United States.

(ii) If, upon investigation, the damage is considered to be primarily due to the contractor's fault or negligence, the claim will be referred to the contractor or the contractor's insurance carrier for settlement and the claimant will be so advised.

(iii) Health care providers hired under personal services contracts under the provisions of 10 U.S.C. 1089 are not considered to be independent contractors but employees of the United States for tort claims purposes.

(2) *Claims for injury or death of contractor employees.* Upon receipt of a claim for injury or death of a contractor employee, a copy of the portions of the contract applicable to claims and workers' compensation will be obtained, either through the contracting office or from the contractor. Claims personnel must find out the status of any claim for workers' compensation benefits as well as whether the United States paid the premiums. The goal is to involve the contractor in any settlement, where indicated, in the manner set forth in DA Pam 27–162, paragraphs 2–15f and 2–61. In claims arising in foreign countries consider whether the claim is covered by the Defense Bases Act, 42 U.S.C. 1651–1654.

(g) *Claims by contractors for damage to or loss of their property during the performance of their contracts.* Claims by contractors for property damage or loss should be referred to the contracting officer for determination as to whether the claim is payable under the contract. Such a claim is not payable under the FTCA where the damage results from an in-scope act or omission. Contract appeal procedures must be exhausted prior to consideration as a bailment under the MCA or FCA.

(h) *Maritime claims.* Maritime torts are excluded from consideration under the FTCA. The various maritime statutes are exclusive remedies within the United States and its territorial waters. Maritime statutes include the Army Maritime Claims Settlement Act (AMCSA), 10 U.S.C. 4801, 4802 and 4806, the Suits in Admiralty Act (SIAA), 46 U.S.C. app. 781–790, the Public Vessels Act (PVA), 46 U.S.C. app. 781–790, and the Admiralty Extension Act (AEA), 46 U.S.C. app. 740. Within the U.S. and its territorial waters, maritime suits may be filed under the SIAA or the PVA without first filing an administrative claim, except where administrative filing is required by the AEA. Administrative claims may also be filed under the AMSCA. In any administrative claim brought under the AMCSA, all action must be completed not later than two years from its accrual date or the SOL will expire. Outside the United States, a maritime tort may be brought under the MCA or FCA as well as the AMCSA. The body of water on which it occurs must be navigable and a maritime nexus must exist. Once a maritime claim is identified, give the claimant written notice of the two-year filing requirement. In case of doubt, the ACO or CPO should discuss the matter with the appropriate AAO. Even when the claimant does not believe that a maritime claim is involved, provide the claimant with precautionary notice. See DA Pam 27–162, paragraphs 2–7e and 8–6.

(i) *Postal claims.* See also DA Pam 27–162, paragraphs 2–15i, 2–30 and 2–56g discussing postal claims.

(1) Claims by the U.S. Postal Service for funds and stock are adjudicated by USARCS with assistance from the Military Postal Service Agency and the ACO or CPO having jurisdiction over the particular Army post office, when directed by USARCS to assist in the investigation of the claim.

(2) Claims for loss of registered and insured mail are processed under subpart C of this part by the ACO or CPO having jurisdiction over the particular Army post office.

(3) Claims for loss of, or damage to, parcels delivered by United Parcel Service (UPS) are the responsibility of UPS.

(j) *Blast damage claims.* After completing an investigation and prior to final action, all blast damage claims resulting from Army firing and demolition activities must be forwarded to the Commander USARCS for technical review. The sole exception to this rule is when a similar claim is filed citing the same time, place and type of damage as one which has already received technical review. See also DA Pam 27–162, paragraph 2–28.

(k) *Motor vehicle damage claims arising from the use of non-governmental vehicles.* See also § 536.60 (splitting property damage and personal injury claims) and DA Pam 27–162, paragraphs 2–15k (determining the correct statute), 2–61 (joint tortfeasors), and 2–62e (indemnity or contribution).

(1) *Government tortfeasors.* A Soldier or U.S. government civilian employee who negligently damages his or her personal property while acting within the scope of employment is not a proper claimant for damage to that property.

(2) *Claims by lessors for damage to rental vehicles.* Third-party claims arising from the use of rental vehicles will be processed in the same manner as NAFI commercially insured activities after exhaustion of any other remedy under the Government Travel Card Program or the Surface Deployment and Distribution Command Car Rental Agreement.

(3) *Third-party damages arising from the use of privately owned vehicles.* Third-party tort claims arising within the United States from a Soldier's use of a privately owned vehicle (POV) while allegedly within the scope of employment must be forwarded to the Commander USARCS for review and consultation before final action. The claim will be investigated and any authorization for use ascertained including payment for mileage. A copy of the Soldier's POV insurance policy will be obtained prior to forwarding. If the DA is an additional insurer under applicable state law, the claim will be forwarded to the Soldier's liability carrier for payment. When the tort claim arises in a foreign country, follow the provisions of Subpart J of this part.

(l) *Claims arising from gratuitous use of DOD or Army vehicles, equipment or facilities.* (1) Before the commencement of any event that involves the use of DOD or Army land, vehicles, equipment or Army personnel for community activities, the Command involved should be advised to first determine and weigh the risk to potential third-party claimants against the benefits to the DOD or the Army. Where such risk is excessive, try to obtain an agreement from the sponsoring civilian organization holding the Army harmless. When feasible, third-party liability insurance may be required from the sponsor and the United States added to the policy as a third-party insured.

(2) When Army equipment and personnel are used for debris removal relief pursuant to the Federal Disaster Relief Act, 42 U.S.C. 5173, the state is required to assume responsibility for third-party claims. The senior judge advocate for a task force engaged in such relief should obtain an agreement requiring the state to hold the Army harmless and establish a procedure for payment by the state. Claims will be received, entered into the TSCA database, investigated and forwarded to state authorities for action.

(m) *Real estate claims.* Claims for rent, damage, or other payments involving the acquisition, use, possession or disposition of real property or interests therein, are generally payable under AR 405–15. These claims are handled by the Real Estate Claims Office in the appropriate COE District or a special office created for a deployment. Directorate of Real Estate, Office of the Chief of Engineers, has supervisory authority. Claims for damage to real property and incidental personal property, but not for rent (for example, claims arising during a maneuver or deployment) may be payable under subparts C or J of this part. However, priority should be given to the use of AR 405–15 as it is more flexible and expeditious. In contingency operations and deployments, there is a large potential for overlap between

contractual property damage claims and noncombat activity/maneuver claims. Investigate carefully to ensure the claim is in the proper channel (claims or real estate), that it is fairly settled, and that the claimant does not receive a double payment. For additional guidance, see subpart J of this part and United States Army Claims Service Europe (USACSEUR) Real Estate/Office of the Judge Advocate Standard Operating Procedures for Processing Claims Involving Real Estate During Contingency Operations (August 20, 2002).

(n) *Claims generated by civil works projects.* Civil works projects claims arising from tortious activities are defined by whether the negligent or wrongful act or omission arising from a project or activity is funded by a civil works appropriation. Civil works claims are those noncontractual claims which arise from a negligent or wrongful act or omission during the performance of a project or activity funded by civil works appropriations as distinguished from a project or activity funded by Army operation and maintenance funds. Civil works claims are paid out of civil works appropriations to the extent set forth in § 536.71(f). A civil works claim can also arise out of a noncombat activity, for example, an inverse condemnation claim in which flooding exceeds the high water mark. Maritime claims under subpart H of this part are civil works claims when they arise out of the operation of a dam, locks or navigational aid.

Note to § 536.34: See parallel discussion at DA Pam 27–162, paragraph 2–1.

§ 536.35 Unique issues related to environmental claims.

Claims for property damage, personal injury, or death arising in the United States based on contamination by toxic substances found in the air or the ground must be reported by USARCS to the Environmental Law Division of the Army Litigation Center and the Environmental Torts Branch of DOJ. Such claims arising overseas must be reported to the Command Claims Service with geographical jurisdiction over the claim and USARCS. Claims for personal injury from contamination frequently arise at an area that is the subject of claims for cleanup of the contamination site. The cleanup claims involve other Army agencies, use of separate funds, and prolonged investigation. Administrative settlement is not usually feasible because settlement of property damage claims must cover all damages, including personal injury. Payment by Defense Environmental Rehabilitation Funds should be considered initially and any such payment should be deducted from any settlement under AR 27–20.

§ 536.36 Related remedies.

An ACO or a CPO routinely receives claims or inquiries about claims that clearly are not cognizable under this part. It is the DA's policy that every effort be made to discover another remedy and inform the inquirer as to its nature. Claims personnel will familiarize themselves with the remedies set forth in DA Pam 27–162, paragraph 2–17, to carry out this policy. If no appropriate remedy can be discovered, forward the file to the Commander USARCS, with recommendations.

§ 536.37 Importance of the claims investigation.

Prompt and thorough investigation will be conducted on all potential and actual claims for and against the government. Evidence developed during an investigation provides the basis for every subsequent step in the administrative settlement of a claim or in the pursuit of a lawsuit. Claims personnel must gather and record adverse as well as favorable information. The CJA, claims attorney or unit claims officer must preserve their legal and factual findings.

§ 536.38 Elements of the investigation.

(a) The investigation is conducted to ascertain the facts of an incident. Which facts are relevant often depends on the law and regulations applicable to the conduct of the parties involved but generally the investigation should develop definitive answers to such questions as "When?" "Where?" "Who?" "What?" and "How?". Typically, the time, place, persons, and circumstances involved in an incident may be established by a simple report, but its cause and the resulting damage may require extensive effort to obtain all the pertinent facts.

(b) The object of the investigation is to gather, with the least possible delay, the best available evidence without accumulating excessive evidence concerning any particular fact. The claimant is often an excellent source of such information and should be contacted early in the investigation, particularly when there is a question as to whether the claim was timely filed.

§ 536.39 Use of experts, consultants and appraisers.

(a) ACOs or CPOs will budget operation and maintenance (O&M) funds for the costs of hiring property appraisers, accident reconstructionists, expert consultants to furnish opinions, and medical specialists to conduct independent medical examinations (IMEs). Other expenses to be provided for from O&M funds include the purchase of documents, such as medical records, and the hiring of mediators. See § 536.53(b). Where the cost exceeds $750 or local funds are exhausted, a request for funding should be directed to the Commander USARCS, with appropriate justification. The USARCS AAO must be notified as soon as possible when an accident reconstruction is indicated.

(b) Where the claim arises from treatment at an Army MTF, the MEDDAC commander should be requested to fund the cost of an independent consultant's opinion or an IME.

(c) The use of outside consultants and appraisers should be limited to claims in which liability or damages cannot be determined otherwise and in which the use of such sources is economically feasible, for instance, where property damage is high in amount and not determinable by a government appraiser or where the extent of personal injury is serious and a government IME is neither available nor acceptable to a claimant. Prior to such an examination at an MTF, ensure that the necessary specialists are available and a prompt written report may be obtained.

(d) Either an IME or an expert opinion is procured by means of a personal services contract under the Federal Acquisition Regulation (FAR), part 37, 48 CFR 37.000 through 37.604, through the local contracting office. The contract must be in effect prior to commencement of the records review. Payment is authorized only upon receipt of a written report responsive to the questions asked by the CJA or claims attorney.

(e) Whenever a source other than claims personnel is used to assist in the evaluation of a claim in which medical information protected by HIPAA is involved, the source must sign an agreement designed to protect the patient's privacy rights.

§ 536.40 Conducting the investigation.

(a) The methods and techniques for investigating specific categories of claims are set forth in DA Pam 27–162, paragraphs 2–25 through 2–34. The investigation of medical malpractice claims should be conducted by a CJA or claims attorney, using a medical claims investigator.

(b) A properly filed claim must contain enough information to permit investigation. For example, if the claim does not specify the date, location or

details of every incident complained of, the claimant or legal representative should be required to furnish the information.

(c) Request the claimant or legal representative to specify a theory of liability. However, the investigation should not be limited to the theories specified, particularly where the claimant is unrepresented. All logical theories should be investigated.

§ 536.41 Determination of liability—generally.

(a) Under the FTCA, the United States is liable in the same manner and to the same extent as a private individual under like circumstances in accordance with the law of the place where the act or omission giving rise to the tort occurred (28 U.S.C. 2673 and 2674). This means that liability must rest on the existence of a tort cognizable under state law, hereinafter referred to as a state tort. A finding of state tort liability requires the litigating attorney to prove the elements of duty, breach of duty, causation, and damages as interpreted by federal case law.

(b) The foregoing principles and requirements will be followed in regard to tort claims against the United States under other subparts, with certain exceptions noted within the individual subparts or particular tort statutes.

(c) Interpretation will be made in accordance with FTCA case law and also maritime case law where applicable. Additionally, a noncombat activity can furnish the basis for a claim under subparts C, F, and J of this part. Noncombat activities include claims arising out of civil works, such as inverse condemnation.

(d) Federal, not state or local, law applies to a determination as to who is a federal employee or a member of the armed forces. Under all subparts, the designation "federal employee" excludes a contractor of the United States. See 28 U.S.C. 2671. See however, § 536.23(b) (4)(ii) concerning personal services contractors. For employment identification purposes apply FTCA case law in making a determination.

(e) Federal, not state or local, law applies to an interpretation of the SOL under all subparts. Minority or incompetence does not toll the SOL. Case law developed under the FTCA will be used in other subparts in interpreting SOL questions.

(f) Under the FTCA state or local law is used to determine scope of employment and under other subparts for guidance.

§ 536.42 Constitutional torts.

A claim for violation of the U.S. Constitution does not constitute a state tort and is not cognizable under any subpart. A constitutional claim will be scrutinized in order to determine whether it is totally or partially payable as a state tort. For example, a Fifth Amendment taking may be payable in an altered form as a real estate claim. For further discussion see DA Pam 27–162, paragraph 2–36.

§ 536.43 Incident to service.

(a) A member of the armed forces' claim for personal injury or wrongful death arising incident to service is not payable under any subpart except to the extent permitted by the receiving State under §§ 536.107 through 536.113 (Claims arising overseas); however, a claim by a member of the United States Armed Forces for property loss or damage may be payable under AR 27–20, chapter 11 or, if not, under subparts C, E, F, or G of this part. Derivative claims and claims for indemnity are also excluded.

(b) Claims for personal injury or wrongful death by members of a foreign military force participating in a joint military exercise or operation arising incident to service are not payable under any subpart. Claims for property loss or damage, but not subrogated claims, may be payable under subpart C of this part. Derivative claims and claims for indemnity or contribution are not payable under any subpart.

Note to § 536.43: For further discussion see DA Pam 27–162, paragraph 2–37.

§ 536.44 FECA and LSHWCA claims exclusions.

A federal or NAFI employee's personal injury or wrongful death claim payable under the Federal Employees Compensation Act (FECA) or the Longshore and Harbor Workers Compensation Act (LSHWCA) is not payable under any subpart. Derivative claims are also excluded but a claim for indemnity may be payable under certain circumstances. A federal or NAFI employee's claim for an incident-to-service property loss or damage may be payable under AR 27–20, chapter 11 or, if not, under subparts C, D, F, G, H or J of this part. For further discussion see DA Pam 27–162, paragraph 2–38.

§ 536.45 Statutory exceptions.

This topic is more fully discussed in DA Pam 27–162, paragraph 2–39. The exclusions listed below are found at 28 U.S.C. 2680 and apply to subparts C, D, F, and H and §§ 536.107 through 536.113 (Claims arising in the United States) of subpart G, except as noted therein, and not to subparts E, J or §§ 536.107–536.113 (Claims arising overseas) of subpart G of this part. A claim is not payable if it:

(a) Is based upon an act or omission of an employee of the U.S. government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid. This exclusion does not apply to a noncombat activity claim.

(b) Is based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the government, whether or not the discretion is abused. This exclusion does not apply to a noncombat activity claim.

(c) Arises out of the loss, miscarriage, or negligent transmission of letters or postal matters. This exclusion is not applicable to registered or certified mail claims under subpart C of this part. See § 536.34(i).

(d) Arises in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any customs or other law enforcement officer. See 28 U.S.C. 2680(c).

(e) Is cognizable under the SIAA (46 U.S.C. app. 741–752), the PVA (46 U.S.C. app. 781–790), or the AEA (46 U.S.C. app. 740). This exclusion does not apply to subparts C, F, H or J of this part.

(f) Arises out of an act or omission of any federal employee in administering the provisions of the Trading with the Enemy Act, 50 U.S.C. app. 1–44.

(g) Is for damage caused by the imposition or establishment of a quarantine by the United States.

(h) Arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights, except for acts or omissions of investigation of law enforcement officers of the U.S. government with regard to assault, battery, false imprisonment, false arrest, abuse of process or malicious prosecution. This exclusion also does not apply to a health care provider as defined in 10 U.S.C. 1089 and § 536.80 of this part, under the conditions listed therein.

(i) Arises from the fiscal operations of the U.S. Department of the Treasury or from the regulation of the monetary system.

(j) Arises out of the combatant activities of U.S. military or naval forces, or the Coast Guard during time of war.

(k) Arises in a foreign country. This exclusion does not apply to subparts C, E, F, H, J or §§ 536.114 through 536.116 (Claims arising overseas) of subpart G of this part.

(l) Arises from the activities of the Tennessee Valley Authority, 28 U.S.C. 2680(l).

(m) Arises from the activities of the Panama Canal Commission, 28 U.S.C. 2680(m).

(n) Arises from the activities of a federal land bank, a federal intermediate credit bank, or a bank for cooperatives, 28 U.S.C. 2680(n).

Note to § 536.45: This topic is more fully discussed in DA Pam 27–162, paragraph 2–39.

§ 536.46 Other exclusions.

(a) *Statutory employer.* A claim is not payable under any subpart if it is for personal injury or death of any contract employee for whom benefits are provided under any workers' compensation law, if the provisions of the workers' compensation insurance are retrospective and charge an allowable expense to a cost-type contract, or if precluded by state law. See Federal Tort Claims Handbook (FTCH), section II, D7 (posted on the Web at *https://www.jagcnet.army.mil/laawsxxi/cds.nsf.* Select the link "Claims" under "JAG Publications.") The statutory employer exclusion also applies to claims that may be covered by the Defense Bases Act, 42 U.S.C. 1651–1654.

(b) *Flood exclusion.* Within the United States a claim is not payable if it arises from damage caused by flood or flood waters associated with the construction or operation of a COE flood control project, 33 U.S.C. 702(c). See DA Pam 27–162, paragraph 2–40.

(c) *ARNG property.* A claim is not payable under any subpart if it is for damage to, or loss of, property of a state, commonwealth, territory, or the District of Columbia caused by ARNG personnel, engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, or 505, who are assigned to a unit maintained by that state, commonwealth, territory, or the District of Columbia. See DA Pam 27–162, paragraph 2–41.

(d) *Federal Disaster Relief Act.* Within the United States a claim is not payable if it is for damage to, or loss of, property or for personal injury or death arising out of debris removal by a federal agency or employee in carrying out the provisions of the Federal Disaster Relief Act, 42 U.S.C. 5173. See DA Pam 27–162, paragraph 2–42.

(e) *Non-justiciability doctrine.* A claim is not payable under any subpart if it arises from activities that present a non-justiciable political question. See DA Pam 27–162, paragraph 2–43.

(f) *National Vaccine Act.* (42 U.S.C. 300aa-l through 300aa-7). A claim is not payable under any subpart if it arises from the administration of a vaccine unless the conditions listed in the National Vaccine Injury Compensation Program (42 U.S.C. 300aa-9 through 300aa-19) have been met. See DA Pam 27–162, paragraph 2–17c(6)(a).

(g) *Defense Mapping Agency.* A claim is not payable under any subpart if it arises from inaccurate charting by the Defense Mapping Agency, 10 U.S.C. 456. See FTCH section II, B4s (Web address at paragraph (a) of this section).

(h) *Quiet Title Act.* Within the U.S., a claim is not payable if it falls under the Quiet Title Act 28 U.S.C. 2409a.

(i) *Defense Bases Act.* A claim arising outside the United States is not payable if it is covered by the Defense Bases Act, 42 U.S.C. 1651–1654.

Note to § 536.46: See parallel discussion at DA Pam 27–162, paragraphs 2–40 through 2–43.

§ 536.47 Statute of limitations.

To be payable, a claim against the United States under any subpart, except §§ 536.114 through 536.116 (Claims arising overseas), must be filed no later than two years from the date of accrual as determined by federal law. The accrual date is the date on which the claimant is aware of the injury and its cause. The claimant is not required to know of the negligent or wrongful nature of the act or omission giving rise to the claim. The date of filing is the date of receipt by the appropriate federal agency, not the date of mailing. See also § 536.26(a) and parallel discussion at DA Pam 27–162, paragraph 2–44.

§ 536.48 Federal employee requirement.

To be payable, a claim under any subpart except subpart K of this part, §§ 536.153 through 536.157 (Claims involving tortfeasors other than nonappropriated fund employees), must be based on the acts or omissions of a member of the armed forces, a member of a foreign military force within the United States with which the United States has a reciprocal claims agreement, or a federal civilian employee. This does not include a contractor of the United States. Apply federal case law for interpretation. See parallel discussion at DA Pam 27–162, paragraph 2–46.

§ 536.49 Scope of employment requirement.

To be payable, a claim must be based on acts or omissions of a member of the armed forces, a member of a foreign military force within the United States with which the United States has a reciprocal claims agreement, or a federal employee acting within the scope of employment, except for subparts E, J, or subpart K of this part, §§ 536.153 through 536.157 (Claims involving tortfeasors other than nonappropriated fund employees). A claim arising from noncombat activities must be based on the armed service's official activities. Excluded are claims based on vicarious liability or the holder theory in which the owner of the vehicle is responsible for any injury or damage regardless of who the operator was. See parallel discussion at DA Pam 27–162, paragraph 2–46.

§ 536.50 Determination of damages—applicable law.

(a) *The Federal Tort Claims Act.* The whole law of the place where the incident giving rise to the claim occurred, including choice of law rules, is applicable. Therefore, the law of the place of injury or death does not necessarily apply. Where there is a conflict between local law and an express provision of the FTCA, the latter governs.

(b) *The Military Claims Act or National Guard Claims Act.* See subparts C and F of this part. The law set forth in § 536.80 applies only to claims accruing on or after September 1, 1995. The law of the place of the incident giving rise to the claim will apply to claims arising in the United States, its commonwealths, territories and possessions prior to September 1, 1995. The general principles of U.S. tort law will apply to property damage or loss claims arising outside the United States prior to September 1, 1995. Established principles of general maritime law will apply to injury or death claims arising outside the United States prior to September 1, 1995. See *Moragne* v. *States Marine Lines, Inc.,* 398 U.S. 375 (1970) and federal case law. Where general maritime law provides no guidance, the general principles of U.S. tort law will apply.

(c) *The Foreign Claims Act.* See subpart J of this part. The law of the place of occurrence applies to the resolution of claims. However, the law of damages set forth in § 536.139 will serve as a guide.

(d) *The Army Maritime Claims Settlement Act.* Maritime law applies.

(e) *Damages not payable.* Under all subparts, property loss or damage refers

to actual tangible property. Accordingly, consequential damages, including, but not limited to bail, interest (prejudgment or otherwise), or court costs are not payable. Costs of preparing, filing, and pursuing a claim, including expert witness fees, are not payable. The payment of punitive damages, that is, damages in addition to general and special damages that are otherwise payable, is prohibited. See DA Pam 27–162, paragraphs 2–56 and 3–4b.

(f) *Source of attorney's fees.* Attorney's fees are taken from the settlement amount and not added thereto. They may not exceed 20 percent of the settlement amount under any subpart.

Note to § 536.50: For further discussion see DA Pam27–162, paragraph 2–51.

§ 536.51 Collateral source rule.

Where permitted by applicable state or maritime law, damages recovered from collateral sources are payable under subparts D and H, but not under subparts C, E, F, or J of this part. For further discussion see DA Pam 27–162, paragraph 2–57.

§ 536.52 Subrogation.

Subrogation is the substitution of one person in place of another with regard to a claim, demand or right. It should not be confused with a lien, which is an obligation of the claimant. Applicable state law should be researched to determine the distinction between subrogation and a lien. Subrogation claims are payable under subparts D and H, but not under subparts C, E, F or J of this part. For further discussion see DA Pam 27–162, paragraph 2–58.

§ 536.53 Evaluation of claims—general rules and guidelines.

(a) Before claims personnel evaluate a claim:

(1) A claimant or claimant's legal representative will be furnished the opportunity to substantiate the claim by providing essential documentary evidence according to the claim's nature including, but not instead of, the following: medical records and reports, witness statements, itemized bills and paid receipts, estimates, federal tax returns, W–2 forms or similar proof of loss of earnings, photographs, and reports of appraisals or investigation. If necessary, request permission, through the legal representative, to interview the claimant, the claimant's family, proposed witnesses and treating health care providers (HCPs). In a professional negligence claim, the claimant will submit an expert opinion when requested. State law concerning the requirement for an affidavit of merit should be cited.

(2) When the claimant or the legal representative fails to respond in a timely manner to informal demands for documentary evidence, interviews, or an independent medical examination (IME), make a written request. Such written request provides notice to the claimant that failure to provide substantiating evidence will result in an evaluation of the claim based only on information currently in the file. When, despite the government's request, there is insufficient information in the file to permit evaluation, the claim will be denied for failure to document it. Failure to submit to an IME or sign an authorization to use medical information protected by HIPAA, for review or evaluation by a source other than claims personnel, are both grounds for denial for failure to document, provided such evaluation is essential to the determination of liability or damages. State a time limit, for example, 30 or 60 days, to furnish the substantiation or expert opinion required in a medical malpractice claim.

(3) If, in exchange for complying with the government's request for the foregoing information, the claimant or the legal representative requests similar information from the file, the claimant may be provided such information and documentation as is releasable under the Federal Rules of Civil Procedure (FRCP). Additionally, work product may be released if such release will help settle the claim. See § 536.18.

(b) An evaluation should be viewed from the claimant's perspective. In other words, before denying a claim, first determine whether there is any reasonable basis for compromise. Certain jurisdictional issues and statutory bases may not be open for compromise. The incident to service and FECA exclusions are rarely subject to compromise, whereas the SOL is more subject to compromise. Factual and legal disputes are compromisable, frequently providing a basis for limiting damages, not necessarily grounds for denial. Where a precise issue of dispute is identified and is otherwise unresolvable, mediation by a disinterested qualified person, such as a federal judge, or foreign equivalent for claims arising under the FCA, should be obtained upon agreement with the claimant or the claimant's legal representative. Contributory negligence has given way to comparative negligence in most United States jurisdictions. In most foreign countries, comparative negligence is the rule of law.

Note to § 536.53: For further discussion see DA Pam 27–162, paragraph 2–59.

§ 536.54 Joint tortfeasors.

When joint tortfeasors are liable, it is DA policy to pay only the fair share of a claim attributable to the fault of the United States rather than pay the claim in full and then bring suit against the joint tortfeasor for contribution. If payment from a joint tortfeasor is not forthcoming after the CJA's demand, the United States should settle for its fair share, provided the claimant is willing to hold the United States harmless. Where a joint tortfeasor's liability greatly outweighs that of the United States, the claim should be referred to the joint tortfeasor for action.

§ 536.55 Structured settlements.

(a) The use of future periodic payments, including reversionary medical trusts, is encouraged to ensure that the injured party is adequately compensated and able to meet future needs.

(1) It is necessary to ensure adequate care and compensation for a minor or other incompetent claimant or unemployed survivor over a period of years.

(2) A medical trust is necessary to ensure the long-term availability of funds for anticipated future medical care, the cost of which is difficult to predict.

(3) The injured party's life expectancy cannot be reasonably determined or is likely to be shortened.

(b) Under subpart D of this part, structured settlements cannot be required but are encouraged in situations listed above or where state law permits them. In the case of a minor, every effort should be made to insure that the minor, and not the parents, receives the benefit of the settlement. Annuity payments at the age of majority should be considered. If rejected, a blocked bank account may be used.

(c) It is the policy of the Department of Justice never to discuss the tax-free nature of a structured settlement.

Note to § 536.55: For further discussion, see DA Pam 27–162, paragraph 2–63.

§ 536.56 Negotiations—purpose and extent.

It is DA policy to settle meritorious claims promptly and fairly through direct negotiation at the lowest possible level. The Army's negotiator should not admit liability as such is not necessary. However, the settlement should reflect diminished value where contributory negligence or other value-diminishing

factors exist. The negotiator should be thoroughly familiar with all aspects of the case, including the claimant's background, the key witnesses, the anticipated testimony and the appearance of the scene. There is no substitute for the claims negotiator's personal study of, and participation in, the case before settlement negotiations begin. If settlement is not possible due to the divergence in the offers, refine the issues as much as possible in order to expedite any subsequent suit. Mediation should be used if the divergence is due to an issue of law affecting either liability or damages. For further discussion see DA Pam 27–162, paragraph 2–64.

§ 536.57 Who should negotiate.

An AAO or, when delegated additional authority, an ACO or a CPO, has authority to settle claims in an amount exceeding the monetary authority delegated by regulation. It is DA policy to delegate USARCS authority, on a case-by-case basis, to an ACO or a CPO possessing the appropriate ability and experience. Only an attorney should negotiate with a claimant's attorney. Negotiations with unrepresented claimants may be conducted by a non-attorney, under the supervision of an attorney. For further discussion see DA Pam 27–162, paragraph 2–65.

§ 536.58 Settlement negotiations with unrepresented claimants.

All aspects of the applicable law and procedure, except the amount to be claimed, should be explained to both potential and actual claimants. The negotiator will ensure that the claimant is aware of whether the negotiator is an attorney or a non-attorney, and that the negotiator represents the United States. As to claims within USARCS' monetary authority, the chronology and details of negotiations should be memorialized with a written record furnished to the claimant. The claimant should understand that it is not necessary to hire an attorney, but when an attorney is needed, the negotiator should recommend hiring one. In a claim where liability is not an issue, the claimant should be informed that if an attorney is retained, the claimant should attempt to negotiate an hourly fee for determination of damages only. For further discussion see DA Pam 27–162, paragraph 2–68.

§ 536.59 Settlement or approval authority.

"Settlement authority" is a statutory term (10 U.S.C. 2735) meaning that officer authorized to approve, deny or compromise a claim, or make final action. "Approval authority" means the officer empowered to settle, pay or compromise a claim in full or in part, provided the claimant agrees. "Final action authority" means the officer empowered to deny or make a final offer on a claim. Determining the proper officer empowered to approve or make final action on a claim depends on the claims statute involved and any limitations that apply under that statute. DA Pam 27–162, paragraph 2–69, outlines how various authority is delegated among offices.

§ 536.60 Splitting property damage and personal injury claims.

Normally, a claim will include all damages that accrue by reason of the incident. Where a claimant has a claim for property damage and personal injury arising from the same incident, the property damage claim may be paid, under certain circumstances, prior to the filing of the personal injury claim. The personal injury claim may be filed later provided it is filed within the applicable statute of limitations. When both property damage and personal injury arise from the same incident, the property damage claim may be paid to either the claimant or, under subparts D or H of this part, the insurer and the same claimant may receive a subsequent payment for personal injury. Only under subparts D or H of this part may the insurer receive subsequent payment for subrogated medical bills and lost earnings when the personal injury claim is settled. The primary purpose of settling an injured claimant's property damage claim before settling the personal injury claim is to pay the claimant for vehicle damage expeditiously and avoid costs associated with delay such as loss of use, loss of business, or storage charges. The Commander USARCS' approval must be obtained whenever the estimated value of any one claim exceeds $25,000, or the value of all claims, actual or potential, arising from the incident exceeds $50,000; however, if the claim arises under the FTCA or AMCSA, only if the amount claimed exceeds $50,000, or $100,000 per incident.

§ 536.61 Advance payments.

(a) This section implements 10 U.S.C. 2736 (Act of September 8, 1961 (75 Stat. 488)) as amended by Public Law 90–521 (82 Stat. 874); Public Law 98–564 (90 Stat. 2919); and Public Law 100–465 (102 Stat. 2005)). No new liability is created by 10 U.S.C. 2736, which merely permits partial advance payments, only under subparts C, F or J of this part, on claims not yet filed. See AR 27–20, paragraph 11–18 for information on emergency partial payments in personnel claims, which are not governed by 10 U.S.C. 2736.

(b) The Judge Advocate General (TJAG) and the Assistant Judge Advocate General (TAJAG) may make advance payments in amounts not exceeding $100,000; the Commander USARCS, in amounts not exceeding $25,000, and the authorities designated in §§ 536.78(b)(4) and (b)(5) and 536.101, in amounts not exceeding $10,000, subject to advance coordination with USARCS, if the estimated total value of the claim exceeds their monetary authority. Requests for advance payments in excess of $10,000 will be forwarded to USARCS for processing.

(c) Under subpart J of this part, three-member foreign claims commissions may make advance payments under the FCA in amounts not exceeding $10,000, subject to advance coordination with USARCS if the estimated total value of the claim exceeds their monetary authority.

(d) An advance payment, not exceeding $100,000, is authorized in the limited category of claims or potential claims considered meritorious under subparts C, F or J of this part, that result in immediate hardship. An advance payment is authorized only under the following circumstances:

(1) The claim, or potential claim, must be determined to be cognizable and meritorious under the provisions of subparts C, F or J of this part.

(2) An immediate need for food, clothing, shelter, medical or burial expenses, or other necessities exists.

(3) The payee, so far as can be determined, would be a proper claimant, including an incapacitated claimant's spouse or next-of-kin.

(4) The total damage sustained must exceed the amount of the advance payment.

(5) A properly executed advance payment acceptance agreement has been obtained. This acceptance agreement must state that it does not constitute an admission of liability by the United States and that the amount paid shall be deducted from any subsequent award.

(e) There is no statutory authority for making advance payments for claims payable under subparts D or H of this part.

Note to § 536.61: For further discussion see DA Pam 27–162, paragraph 2–71.

§ 536.62 Action memorandums.

(a) *When required.* (1) All claims will be acted on prior to being closed except for those that are transferred. For claims on which suit is filed before final action,

see § 536.66. A settlement authority may deny or pay in full or in part any claim in a stated amount within his or her delegated authority. An approval authority may pay in full or in part, but may not deny, a claim in a stated amount within his or her delegated authority. If any one claim arising out of the same incident exceeds a settlement or approval authority's monetary jurisdiction, all claims from that incident will be forwarded to the authority having jurisdiction.

(2) In any claim which must be supported by an expert opinion as to duty, negligence, causation or damages, an expert opinion must be submitted upon request. All opinions must meet the standards set forth in Federal Rule of Evidence 702.

(3) An action memorandum is required for all final actions regardless of whether payment is made electronically. The memorandum will contain a sufficient rendition of the facts, law or damages to justify the action being taken. (A model action is posted on the USARCS Web site; for the address see § 536.2(a).)

(b) *Memorandum of Opinion.* Upon completion of the investigation, the ACO or CPO will prepare a memorandum of opinion in the format prescribed at DA Pam 27–162, when a claim is forwarded to USARCS for action. This requirement can be waived by the USARCS AAO.

(c) *Claim brought by a claims authority or superior.* A claim filed by an approval or settlement authority or his or her superior officer in the chain of command or a family member of either will be investigated and forwarded for final action, without recommendation, to the next higher settlement authority (in an overseas area, this includes a command claims service) or to USARCS.

Note to § 536.62: For further discussion see DA Pam 27–162, paragraph 2–72.

§ 536.63 Settlement agreements.

(a) *When required.* (1) A claimant's acceptance of an award constitutes full and final settlement and release of any and all claims against the United States and its employees, except as to payments made under §§ 536.60 and 536.61. A settlement agreement is required prior to payment on all tort claims, whether the claim is paid in full or in part.

(2) DA Form 1666 (Claims Settlement Agreement) may be used for payment of COE claims of $2500 or less or all Army Central Insurance Fund and Army and Air Force Exchange Service claims.

(3) DA Form 7500 (Tort Claim Payment Report) will be used for all payments from the Defense Finance and Accounting Service (DFAS), for example, FTCA claims of $2500 or less, FCA and MCA claims of $100,000 or less and all maritime claims regardless of amount.

(4) Financial Management Service (FMS) Forms 194, 196 and 197 will be used for all payments from the Judgment Fund, for example, FTCA claims exceeding $2,500, MCA and FCA claims exceeding $100,000.

(5) An alternative settlement agreement will be used when the claimant is represented by an attorney, or when any of the above settlement agreement forms are legally insufficient (such as when multiple interests are present, a hold harmless agreement is reached, or there is a structured settlement). For further discussion, see DA Pam 27–162, paragraph 2–73c.

(b) *Unconditional settlement.* The settlement agreement must be unconditional. The settlement agreement represents a meeting of the minds. Any changes to the agreement must be agreed upon by all parties. The return of a proffered settlement agreement with changes written thereon or on an accompanying document represents, in effect, a counteroffer and must be resolved. Even if the claimant signs the agreement and objects to its terms, either in writing or verbally, the settlement is defective and the objection must be resolved. Otherwise a final offer should be made.

(c) *Court approval. (1) When required.* Court approval is required in a wrongful death claim, or where the claimant is a minor or incompetent. The claimant is responsible to obtain court approval in a jurisdiction that is locus of the act or omission giving rise to the claim or in which the claimant resides. The court must be a state or local court, including a probate court. If the claimant can show that court approval is not required under the law of the jurisdiction where the incident occurred or where the claimant resides, the citation of the statute will be provided and accompany the payment documents.

(2) *Attorney representation.* If the claimant is a minor or incompetent, the claimant must be represented by a lawyer. If not already represented, the claimant should be informed that the requirement is mandatory unless state or local law expressly authorizes the parents or a person in loco parentis to settle the claim.

(3) *Costs.* The cost of obtaining court approval will be factored into the amount of the settlement; however, the amount of the costs and other costs will not be written into the settlement, only the 20% limitation on attorney fees will be included.

(4) *Claims involving an estate or personal representative of an estate.* On claims presented on behalf of a decedent's estate, the law of the state having jurisdiction should be reviewed to determine who may bring a claim on behalf of the estate, if court appointment of an estate representative is required, and if court approval of the settlement is required.

(d) *Signature requirements.* (1) Except as noted below, all settlement agreements will be signed individually by each claimant. A limited power of attorney signed by the claimant specifically stating the amount being accepted and authorizing an attorney at law or in fact to sign is acceptable when the claimant is unavailable to sign. The signatures of the administrator or executor of the estate, appointed by a court of competent jurisdiction or authorized by local law, are required. The signatures of all adult beneficiaries, acknowledging the settlement, should be obtained unless permission is given by Commander USARCS. Court approval must be obtained where required by state law. If not required by state law, the citation of the state statute will accompany the payment document. Additionally, all adult heirs will sign as acknowledging the settlement. In lieu thereof, where the adult heirs are not available, the estate representative will acknowledge that all heirs have been informed of the settlement.

(2) Generally, only a court-appointed guardian of a minor's estate, or a person performing a similar function under court supervision, may execute a binding settlement agreement on a minor's claim. In the United States, the law of the state where the minor resides or is domiciled will determine the age of majority and the nature and type of court approval that is needed, if any. The age of majority is determined by the age at the time of settlement, not the date of filing.

(3) For claims arising in foreign countries where the amount agreed upon does not exceed $2,500, the requirement to obtain a guardian may be eliminated. For settlements over $2,500, whether or not the claim arose in the United States, refer to applicable local law, including the law of the foreign country where the minor resides.

(4) In claims where the claimant is an incompetent, and for whom a guardian has been appointed by a court of competent jurisdiction, the signature of the guardian must be obtained. In cases in which competence of the claimant appears doubtful, a written statement by

the plaintiff's attorney and a member of the immediate family should be obtained.

(5) Settlement agreements involving subrogated claims must be executed by a person authorized by the corporation or company to act in its behalf and accompanied by a document signed by a person authorized by the corporation or company to delegate execution authority.

(6) If it is believed that the foregoing requirements are materially impeding settlement of the claim, bring the matter to the attention of the Commander USARCS for appropriate resolution.

(e) *Attorneys' fees and costs.* (1) Attorneys' fees for all subparts fall under the American Rule and are payable only out of the up front cash in any settlement. Attorneys' fees will be stated separately in the settlement agreement as a sum not to exceed 20% of the award.

(2) Costs are a matter to be determined solely between the attorney and the claimant and will not be set forth or otherwise enumerated in the settlement agreement.

(f) *Claims involving workers' compensation carriers.* The settlement of a claim involving a claimant who has elected to receive workers' compensation benefits under local law may require the consent of the workers' compensation insurance carrier, and in certain jurisdictions, the state agency that has authority over workers' compensation awards. Accordingly, claims approval and settlement authorities should be aware of local requirements.

(g) *Claims involving multiple interests.* Where two or more parties have an interest in the claim, obtain signatures on the settlement agreement from all parties. Examples are where both the subrogee and subrogor file a single claim for property damage, where both landlord and tenant file a claim for damage to real property, or when a POV is leased, both the lessor or lessee.

(h) *Claims involving structured settlements.* All settlement agreements involving structured settlements will be prepared by the Tort Claims Division, USARCS, and approved by the Chief or Deputy Chief, Tort Claims Division.

§ 536.64 Final offers.

(a) When claims personnel believe that a claim should be compromised, and after every reasonable effort has been made to settle at less than the amount claimed, a settlement authority will make a written final offer within his or her monetary jurisdiction or forward the claim to the authority having sufficient monetary jurisdiction, recommending a final offer under the applicable statute. The final offer notice will contain sufficient detail to outline each element of damages as well as discuss contributory negligence, the SOL or other reasons justifying a compromise offer. The offer letter should include language indicating that if the offer is not accepted within a named time period, for example, 30 or 60 days, the offer is withdrawn and the claim is denied.

(b) A final offer under subpart D of this part will notify the claimant of the right to sue, not later than six months from the notice's date of mailing, and of the right to request reconsideration. The procedures for processing a request for reconsideration are set forth in § 536.89.

(c) Under subparts C or F of this part, the notice will contain an appeal paragraph. A similar procedure will be followed in subparts E and H of this part. Subpart J of this part sets forth its own procedures for FCA final offers. The procedures for processing an appeal are set forth in § 536.79 of this part. The letter must inform claimants of the following:

(1) They must accept the offer within 60 days or appeal. The appeal should state a counteroffer.

(2) The identity of the official who will act on the appeal, and the requirement that the appeal will be addressed to the settlement authority who last acted on the claim.

(3) No form is prescribed for the appeal, but the notice of appeal must fully set forth the grounds for appeal or state that it is based on the record as it exists at the time of denial or final offer.

(4) The appeal must be postmarked not later than 60 days after the date of mailing of the final notice of action. If the last day of the appeal period falls on a Saturday, Sunday, or legal holiday, as specified in Rule 6a of the Federal Rules of Civil Procedure, the following day will be considered the final day of the appeal period.

(d) Where a claim for the same injury falls under both subparts C and D of this part (the MCA and the FTCA), and the denial or final offer applies equally to each such claim, the letter of notification must advise the claimant that any suit brought on any portion of the claim filed under the FTCA must be brought not later than six months from the date of mailing of the notice of final offer and any appeal under subpart C of this part must be made as stated in paragraph (c) of this section. Further, the claimant must be advised that if suit is brought, action on any appeal under subpart C of this part will be held in abeyance pending final determination of such suit.

(e) Upon request, the settlement authority may extend the six-month reconsideration or 60-day appeal period provided good cause is shown. The claimant will be notified as to whether the request is granted under the FTCA and that the request precludes the filing of suit under the FTCA for 6 months. Only one reconsideration is authorized. Accordingly, that claimant should be informed of the need to make all submissions timely.

Note to § 536.64: For further discussion see DA Pam 27–162, paragraph 2–74.

§ 536.65 Denial notice.

(a) Where there is no reasonable basis for compromise, a settlement authority will deny a claim within his or her monetary jurisdiction or forward the claim recommending denial to the settlement authority that has jurisdiction. The denial notice will contain instructions on the right to sue or request reconsideration. The notice will state the basis for denial. No admission of liability will be made. A notice to an unrepresented claimant should detail the basis for denial in lay language sufficient to permit an informed decision as to whether to request appeal or reconsideration. In the interest of deterring reconsideration, appeal or suit, a denial notice may be releasable under the Federal Rules of Civil Procedure or by the work product documents doctrine.

(b) Regardless of the claim's nature or the statute under which it may be considered, letters denying claims on jurisdictional grounds that are valid, certain, and not easily overcome (and for this reason no detailed investigation as to the merits of the claim was conducted), must state that denial on such grounds is not to be construed as an opinion on the merits of the claim or an admission of liability. In medical malpractice claims, the denial should state that the file is being referred to U.S. Army Medical Command for review. If sufficient factual information exists to make a tentative ruling on the merits of the claim, liability may be expressly denied.

Note to § 536.65: See § 536.53, on denying a claim for failure to substantiate. In addition, the procedures and rules in DA Pam 27–162, paragraph 2–69, settlement and approval authority, apply equally to the denial of claims. See also DA Pam 27–162, paragraph 2–75.

§ 536.66 The "Parker" denial.

(a) When suit is filed before final action is taken on a subpart D of this part claim, a denial letter will be issued only upon request of DOJ or the trial

attorney. If suit is filed prematurely or in error, the claimant may be requested to withdraw the suit without prejudice. Such a request must be coordinated with the trial attorney.

(b) Claimants who have filed companion claims should be notified that, due to suit being filed, no action can be taken pending the outcome of suit and they may file suit if they wish.

Note to § 536.66: For further discussion see DA Pam 27–162, paragraph 2–76.

§ 536.67 Mailing procedures.

Thirty or sixty day letters seeking information from claimants, final offers and denial notices are time-sensitive as they require a claimant to take additional action within certain time limits. Accordingly, follow procedures to ensure that the date of mailing and receipt of a request for reconsideration are documented. Use certified mail with return receipt requested (or registered mail, if being sent to a foreign country other than by the military postal system) to mail such notices. Upon receipt, an appeal or request for reconsideration will be date-time stamped, logged in, and acknowledged as set forth in § 536.68.

Note to § 536.67: See also AR 27–20, paragraph 13–5, and DA Pam 27–162, paragraph 2–77.

§ 536.68 Appeal or reconsideration.

(a) An appeal or a request for reconsideration will be acknowledged in writing. A request for reconsideration under subpart D of this part invokes the six-month period during which suit cannot be filed, 28 CFR 14.9(b). The acknowledgment letter will underscore this restriction.

(b) Where the contents of the appeal or request for reconsideration indicate, additional investigation will be conducted and the original action changed if warranted. Except for subpart J of this part, which sets forth separate rules for FCCs, if the relief requested is not warranted the settlement authority will forward the claim to a higher settlement authority with a claims memorandum of opinion (see § 536.62) stating the reasons why the request is invalid.

Note to § 536.68: See also DA Pam 27–162, paragraph 2–78.

§ 536.69 Retention of file.

After final action has been taken, the settlement authority will retain the file until at least one month after either the period of filing suit or the appeal has expired and until all data has been entered into the database. A paid claim file will be retained until final action has been taken on all other claims arising out of the same incident. If any single claim arising out of the same incident must be forwarded to higher authority for final action, all claims files for that incident will be forwarded at the same time. For further discussion see DA Pam 27–162, paragraph 2–79.

§ 536.70 Preparation and forwarding of payment vouchers.

(a) An unrepresented claimant will be listed as the sole payee. Joint claimants will not be listed since settlement agreements must specify the amount payable to each claimant individually and each must be issued a separate check.

(b) When a claimant is represented by an attorney, only one payment voucher will be issued with the claimant and the attorney as joint payees. The payment will be sent to the office of the claimant's attorney. The attorney of record, either an individual or firm designated by the claimant, will be the co-payee. If claimant has been represented by other attorneys in the same claim, such attorneys will not be listed as payees, even if they have a lien. Satisfaction of any such fee will be a matter between the claimant and such attorney. If payment is made by electronic transfer, the funds will be paid into the account of the claimant. However, if requested, the payment may be made into the attorney's escrow account provided the claimant has provided written authorization.

(c) In a structured settlement the structured settlement broker will be the sole payee, who is authorized to issue checks for the amounts set forth in the settlement agreement. The up-front cash payment may be deposited into an escrow account established for the benefit of the claimant.

(d) If a claimant is a minor or has been declared incompetent by a court or other authority authorized to do so, payment will be made to the court-appointed guardian of the minor or incompetent, at a financial institution approved by the court approving the settlement.

(e) If the claimant is representing a deceased's estate on a wrongful death claim, or a survival action on behalf of the deceased, the payment will be made to the court-appointed representative of the estate. No payment will be made directly to the estate.

Note to § 536.70: See also § 536.63 and DA Pam 27–162, paragraphs 2–73 and 2–81.

§ 536.71 Fund sources.

(a) 31 U.S.C. 1304 sets forth the type and limits of claims payable out of the Judgment Fund. Only final payments that are not payable out of agency funds are allowable, per the Treasury Financial Manual, Volume I, part 6, Chapter 3110, at Section 3115, September 2000 (available at *http://www.fms.treas.gov/tfm/vol1/v1p6c310.pdf*). Threshold amounts for payment from the judgment fund vary according to the subpart and statutes under which a claim is processed. To determine the threshold amount for any given payment procedure one must arrive at a sum of all awards for all claims arising out of that incident, including derivative claims. A joint amount is not acceptable. A claim for injury to a spouse or a child is a separate claim from one for loss of consortium or services by a spouse or parent. The monetary limits of $2,500 set forth in subpart D and $100,000 set forth in subparts C, F or J of this part, apply to each separate claim.

(b) A subpart D, E, or subpart G of this part, §§ 536.107 through 536.113 claim for $2,500 or less is paid from the open claims allotment (see AR 27–20 paragraph 13–6b(1)) or, if arising from a project funded by a civil works appropriation, from COE civil works funds. The Department of the Treasury pays any settlement exceeding $2,500 in its entirety, from the Judgment Fund. However, if a subpart G of this part, §§ 536.107–536.113 claim is treated as a noncombat activity claim, payment is made as set forth in paragraph (c) of this section.

(c) The first $100,000 for each claimant on a claim settled under subparts C, F or J of this part is paid from the open claims allotment. Any amount over $100,000 is paid out of the Judgment Fund.

(d) If not over $500,000, a claim arising under subpart H of this part is paid from the open claims allotment or civil works project funds as appropriate. A claim exceeding $500,000 is paid entirely by a deficiency appropriation.

(e) AAFES or NAFI claims are paid from nonappropriated funds, except when such claims are subject to apportionment between appropriated and nonappropriated funds. See DA Pam 27–162, paragraph 2–80h.

(f) COE claims arising out of projects not funded out of civil works project funds are payable from the open claims allotment not to exceed $2,500 for subpart D claims and $100,000 for claims arising from subparts C, F or J of this part and from the Judgment Fund, over such amounts.

Note to § 536.71: For further discussion see DA Pam 27–162, paragraph 2–80.

§ 536.72 Finality of settlement.

A claimant's acceptance of an award, except for an advance payment or a split payment for property damage only, constitutes a release of the United States and its employees from all liability. Where applicable, a release should include the ARNG or the sending State. For further discussion see DA Pam 27–162, paragraph 2–82.

Subpart C—Claims Cognizable Under the Military Claims Act

§ 536.73 Statutory authority for the Military Claims Act.

The statutory authority for this subpart is contained in the Act of August 10, 1956 (70A Stat. 153, 10 U.S.C. 2733), commonly referred to as the Military Claims Act (MCA), as amended by 90–521, September 1968 (82 Stat. 874); Public Law 90–522, September 1968 (82 Stat. 875); Public Law 90–525, September 1968 (82 Stat. 877); Public Law 93–336, July 8, 1974 (88 Stat. 291); Public Law 98–564, October 1984 (98 Stat. 2918); and Public Law 103–337, October 1994 (108 Stat. 2664).

§ 536.74 Scope for claims under the Military Claims Act.

(a) The guidance set forth in this subpart applies worldwide and prescribes the substantive bases and special procedural requirements for the settlement of claims against the United States for death or personal injury, or damage to, or loss or destruction of, property:

(1) Caused by military personnel or civilian employees (enumerated in § 536.23(b)) acting within the scope of their employment, except for non-federalized Army National Guard soldiers as explained in subpart F of this part; or

(2) Incident to the noncombat activities of the armed services (see AR 27–20, Glossary).

(b) A tort claim arising in the United States, its commonwealths, territories, and possessions may be settled under this subpart if the Federal Tort Claims Act (FTCA) does not apply to the type of claim under consideration or if the claim arose incident to noncombat activities. For example, a claim by a service member for property loss or damage incident to service may be settled if the loss arises from a tort and is not payable under AR 27–20, Chapter 11.

(c) A tort claim arising outside the United States may be settled under this subpart only if the claimant has been determined to be an inhabitant (normally a resident) of the United States at the time of the incident giving rise to the claim. See § 536.136(b).

§ 536.75 Claims payable under the Military Claims Act.

(a) *General.* Unless otherwise prescribed, a claim for personal injury, death, or damage to, or loss or destruction of, property is payable under this subpart when:

(1) Caused by an act or omission of military personnel or civilian employees of the DA or DOD, acting within the scope of their employment, that is determined to be negligent or wrongful; or

(2) Incident to the noncombat activities of the armed services.

(b) *Property.* Property that may be the subject of claims for loss or damage under this subpart includes:

(1) Real property used and occupied under lease (express, implied, or otherwise). See § 536.34(m) and paragraph 2–15m of DA Pam 27–162.

(2) Personal property bailed to the government under an agreement (express or implied), unless the owner has expressly assumed the risk of damage or loss.

(3) Registered or insured mail in the DA's possession, even though the loss was caused by a criminal act.

(4) Property of a member of the armed forces that is damaged or lost incident to service, if such a claim is not payable as a personnel claim under AR 27–20, chapter 11.

(c) *Maritime claims.* Claims that arise on the high seas or within the territorial waters of a foreign country are payable unless settled under subpart H of this part.

§ 536.76 Claims not payable under the Military Claims Act.

(a) Those resulting wholly from the claimant's or agent's negligent or wrongful act. (See § 536.77(a)(1)(i) on contributory negligence).

(b) Claims arising from private or domestic obligations rather than from government transactions.

(c) Claims based solely on compassionate grounds.

(d) A claim for any item, the acquisition, possession, or transportation of which was in violation of DA directives, such as illegal war trophies.

(e) Claims for rent, damage, or other payments involving the acquisition, use, possession or disposition of real property or interests therein by and for the Department of the Army (DA) or Department of Defense (DOD). See § 536.34(m) and paragraph 2–15m of DA Pam 27–162.

(f) Claims not in the best interests of the United States, contrary to public policy, or otherwise contrary to the basic intent of the governing statute (10 U.S.C. 2733); for example, claims for property damage or loss or personal injury or death of inhabitants of unfriendly foreign countries or individuals considered to be unfriendly to the United States. When a claim is considered not payable for the reasons stated in this section, it will be forwarded for appropriate action to the Commander USARCS with the recommendations of the responsible claims office.

(g) Claims presented by a national, or a corporation controlled by a national, of a country at war or engaged in armed conflict with the United States, or any country allied with such enemy country unless the appropriate settlement authority determines that the claimant is, and at the time of the incident was, friendly to the United States. A prisoner of war or an interned enemy alien is not excluded from bringing an otherwise payable claim for damage, loss, or destruction of personal property in the custody of the government.

(h) A claim for damages or injury, which a receiving State should adjudicate and pay under an international agreement, unless a consistent and widespread alternative process of adjudicating and paying such claims has been established within the receiving State. See DA Pam 27–162, paragraph 3–4a, for further discussion of the conditions of waiver.

(i) Claims listed in §§ 536.42, 536.43, 536.44, 536.45, and 536.46 of this part, except for the exclusion listed in § 536.45(k). Additionally, the exclusions in §§ 536.45(a), (b), (e) and (k) do not apply to a claim arising incident to noncombat activities.

(j) Claims based on strict or absolute liability and similar theories.

(k) Claims payable under subparts D or J of this part, or under AR 27–20, chapter 11.

(l) Claims involving DA vehicles covered by insurance in accordance with requirements of a foreign country unless coverage is exceeded or the insurer is bankrupt. When an award is otherwise payable and an insurance settlement is not reasonably available, a field claims office should request permission from the Commander USARCS to pay the award, provided that an assignment of benefits is obtained.

§ 536.77 Applicable law for claims under the Military Claims Act.

(a) *General principles.* (1) *Tort claims excluding claims arising out of noncombat activities.* (i) In determining liability, such claims will be evaluated

under general principles of law applicable to a private individual in the majority of American jurisdictions, except where the doctrine of contributory negligence applies. The MCA requires that contributory negligence be interpreted and applied according to the law of the place of the occurrence, including foreign (local) law for claims arising in foreign countries (see 10 U.S.C. 2733(b)(4)).

(ii) Claims are cognizable when based on those acts or omissions recognized as tortious by a majority of jurisdictions that require proof of duty, negligence, and proximate cause resulting in compensable injury or loss subject to the exclusions set forth at § 536.76. Strict or absolute liability and similar theories are not grounds for liability under this subpart.

(2) *Tort claims arising out of noncombat activities.* Claims arising out of noncombat activities under §§ 536.75(a)(2) and (b) are not tort claims and require only proof of causation. However, the doctrine of contributory negligence will apply, to the extent set forth in 10 U.S.C. 2733(b)(4) and paragraph (a)(1)(i) of this section.

(3) *Principles applicable to all subpart C claims.* (i) Interpretation of meanings and construction of questions of law under the MCA will be determined in accordance with federal law. The formulation of binding interpretations is delegated to the Commander USARCS, provided that the statutory provisions of the MCA are followed.

(ii) Scope of employment will be determined in accordance with federal law. Follow guidance from reported FTCA cases. The formulation of a binding interpretation is delegated to the Commander USARCS, provided the statutory provisions of the MCA are followed.

(iii) The collateral source doctrine is not applicable.

(iv) The United States will only be liable for the portion of loss or damage attributable to the fault of the United States or its employees. Joint and several liability is inapplicable.

(v) No allowance will be made for court costs, bail, interest, inconvenience or expenses incurred in connection with the preparation and presentation of the claim.

(vi) Punitive or exemplary damages are not payable.

(vii) Claims for negligent infliction of emotional distress may only be entertained when the claimant suffered physical injury arising from the same incident as the claim for emotional distress, or the claimant is the immediate family member of an injured party/decedent, was in the zone of danger and manifests physical injury for the emotional distress. Claims for intentional infliction of emotional distress will be evaluated under general principles of American law as set forth in paragraph (a)(1)(i) of this section and will be considered as an element of damages under paragraph (b)(3)(ii) of this section. Claims for either negligent or intentional infliction of emotional distress are excluded when they arise out of assault, battery, false arrest, false imprisonment, malicious prosecution, abuse of process, libel, or slander, as defined in § 536.45(h).

(viii) In a claim for personal injury or wrongful death, the total award for non-economic damages to any direct victim and all persons, including those derivative to the claim, who claim injury by or through that victim will not exceed $500,000. However, separate claims for emotional distress considered under paragraph (b)(1) of this section are not subject to the $500,000 cap for the wrongful death claim as they are not included in the wrongful death claim; rather, each is a separate claim with its own $500,000 cap under paragraph (b)(3)(ii) of this section. Continuous or repeated exposure to substantially the same or similar harmful activity or conditions is treated as one incident for the purposes of determining the extent of liability. If the claim accrued prior to September 1, 1995, these limitations do not apply. Any such limitation in the law of the place of occurrence will apply.

(b) *Personal injury claims.* (1) *Eligible claimants.* Only the following may claim:

(i) Persons who suffer physical injuries or intentional emotional distress, but not subrogees (when claiming property loss or damage, medical expenses or lost earnings); see paragraph (a)(3)(iii) of this section.

(ii) Spouses for loss of consortium, but not parent-child or child-parent loss of consortium;

(iii) Members of the immediate family who were in the zone of danger of the injured person as defined in paragraph (a)(3)(vii) of this section.

(2) *Economic damages.* Elements of economic damage are limited to the following:

(i) Past expenses, including medical, hospital and related expenses actually incurred. Nursing and similar services furnished gratuitously by a family member are compensable. Itemized bills or other suitable proof must be furnished. Expenses paid by, or recoverable from, insurance or other sources are not recoverable.

(ii) Future medical, hospital, and related expenses. When requested, a medical examination is required.

(iii) Past lost earnings as substantiated by documentation from both the employer and a physician.

(iv) Loss of earning capacity and ability to perform services, as substantiated by acceptable medical proof. When requested, past federal income tax forms must be submitted for the previous five years and the injured person must undergo an independent medical examination (IME). Estimates of future losses must be discounted to present value at a discount rate of one to three percent after deducting for income taxes. When a medical trust providing for all future care is established, personal consumption may be deducted from future losses.

(v) Compensation paid to a person for essential household services that the injured person can no longer provide for himself or herself. These costs are recoverable only to the extent that they neither have been paid by, nor are recoverable from, insurance.

(3) *Non-economic damages.* Elements of non-economic damages are limited to the following:

(i) *Past and future conscious pain and suffering.* This element is defined as physical discomfort and distress as well as mental and emotional trauma. Loss of enjoyment of life, whether or not it is discernible by the injured party, is compensable. The inability to perform daily activities that one performed prior to injury, such as recreational activities, is included in this element. Supportive medical records and statements by health care personnel and acquaintances are required. When requested, the claimant must submit to an interview.

(ii) *Emotional distress.* Emotional distress under the conditions set forth in paragraph (a)(3)(vii) of this section.

(iii) *Physical disfigurement.* This element is defined as impairment resulting from an injury to a person that causes diminishment of beauty or symmetry of appearance rendering the person unsightly, misshapen, imperfect, or deformed. A medical statement and photographs, documenting claimant's condition, may be required.

(iv) *Loss of consortium.* This element is defined as conjugal fellowship of husband and wife and the right of each to the company, society, cooperation, and affection of the other in every conjugal relation.

(c) *Wrongful death claims.* The law of the place of the incident giving rise to the claim will apply to claims arising in the United States, its commonwealths, territories or possessions.

(1) *Claimant.* (i) Only one claim may be presented for a wrongful death. It shall be presented by the decedent's personal representative on behalf of all parties in interest. The personal representative must be appointed by a court of competent jurisdiction prior to any settlement and must agree to make distribution to the parties in interest under court jurisdiction, if required.

(ii) Parties in interest are the surviving spouse, children, or dependent parents to the exclusion of all other parties. If there is no surviving spouse, children, or dependent parents, the next of kin will be considered a party or parties in interest. A dependent parent is one who meets the criteria set forth by the Internal Revenue Service to establish eligibility for a DOD identification card.

(2) *Economic loss.* Elements of economic damages are limited to the following:

(i) Loss of monetary support of a family member from the date of injury causing death until expiration of decedent's worklife expectancy. When requested, the previous five years federal income tax forms must be submitted. Estimates must be discounted to present value at one to three percent after deducting for taxes and personal consumption. Loss of retirement benefits is compensable and similarly discounted after deductions.

(ii) Loss of ascertainable contributions, such as money or gifts to other than family member claimants as substantiated by documentation or statements from those concerned.

(iii) Loss of services from date of injury to end of life expectancy of the decedent or the person reasonably expected to receive such services, whichever is shorter.

(iv) Expenses as set forth in paragraph (b)(2)(i) of this section. In addition, burial expenses are allowable. Expenses paid by, or recoverable from, insurance or other sources are not recoverable.

(3) *Non-economic loss.* Elements of damages are limited to the following:

(i) Pre-death conscious pain and suffering.

(ii) Loss of companionship, comfort, society, protection, and consortium suffered by a spouse for the death of a spouse, a child for the death of a parent, or a parent for the death of a child.

(iii) Loss of training, guidance, education, and nurture suffered by a child under the age of 18 for the death of a parent, until the child becomes 18 years old.

(iv) Claims for the survivors' emotional distress, mental anguish, grief, bereavement, and anxiety are not payable, in particular claims for intentional or negligent infliction of emotional distress to survivors arising out of the circumstances of a wrongful death are personal injury claims falling under § 536.77(b)(3).

(d) *Property damage claims.* The following provisions apply to all claims arising in the United States, its commonwealths, territories and possessions.

(1) Such claims are limited to damage to, or loss of, tangible property and costs directly related thereto. Consequential damages are not included. (See § 536.50(e) and DA Pam 27–162, paragraph 2–56a.)

(2) Proper claimants are described in § 536.27. Claims for subrogation are excluded. (See § 536.27(e)). However, there is no requirement that the claimant use personal casualty insurance to mitigate the loss.

(3) Allowable elements of damages and measure of proof (additions to these elements are permissible with concurrence of the Commander USARCS). These elements are discussed in detail in DA Pam 27–162, paragraph 2–54.

(i) Damages to real property.

(ii) Damage to or loss of personal property, or personal property that is not economically repairable.

(iii) Loss of use.

(iv) Towing and storage charges.

(v) Loss of business or profits.

(vi) Overhead.

§ 536.78 Settlement authority for claims under the Military Claims Act.

(a) *Authority of the Secretary of the Army.* The Secretary of the Army, the Army General Counsel, as the Secretary's designee, or another designee of the Secretary of the Army may approve settlements in excess of $100,000.

(b) *Delegations of authority.* (1) Denials and final offers made under the delegations set forth herein are subject to appeal to the authorities specified in paragraph (d) of this section.

(2) The Judge Advocate General (TJAG) and the Assistant Judge Advocate General (TAJAG) are delegated authority to pay up to $100,000 in settlement of a claim and to disapprove a claim regardless of the amount claimed.

(3) The Commander USARCS is delegated authority to pay up to $25,000 in settlement of a claim and to disapprove or make a final offer in a claim regardless of the amount claimed.

(4) The Judge Advocate (JA) or Staff Judge Advocate (SJA), subject to limitations that USARCS may impose, and chiefs of a command claims service are delegated authority to pay up to $25,000 in settlement, regardless of the amount claimed, and to disapprove or make a final offer in a claim presented in an amount not exceeding $25,000.

(5) A head of an area claims office (ACO) is delegated authority to pay up to $25,000 in settlement of a claim, regardless of the amount claimed, and to disapprove or make a final offer in a claim presented in an amount not exceeding $25,000. A head of a claims processing office (CPO) with approval authority is delegated authority to approve, in full or in part, claims presented for $5,000 or less, and to pay claims regardless of the amount claimed, provided an award of $5,000 or less is accepted in full satisfaction of the claim.

(6) Authority to further delegate payment authority is set forth in § 536.3(g)(1) of this part. For further discussions also related to approval, settlement and payment authority see also paragraph 2–69 of DA Pam 27–162.

(c) *Settlement of multiple claims arising from a single incident.* (1) Where a single act or incident gives rise to multiple claims cognizable under this subpart, and where one or more of these claims apparently cannot be settled within the monetary jurisdiction of the authority initially acting on them, no final offer will be made. All claims will be forwarded, along with a recommended disposition, to the authority who has monetary jurisdiction over the largest claim for a determination of liability. However, where each individual claim, including derivative claims, can be settled within the monetary authority initially acting on them, and none are subject to denial, all such claims may be settled even though the total amount exceeds the monetary jurisdiction of the approving or settlement authority.

(2) If such authority determines that federal liability is established, he or she may return claims of lesser value to the field claims office for settlement within that office's jurisdiction. The field claims office must take care to avoid compromising the higher authority's discretion by conceding liability in claims of lesser amount.

(d) *Appeals.* Denials or final offers on claims described as follows may be appealed to the official designated:

(1) For claims presented in an amount over $100,000, final decisions on appeals will be made by the Secretary of the Army or designee.

(2) For claims presented for $100,000 or less, and any denied claim, regardless of the amount claimed, in which the denial was based solely upon an incident-to-service bar, exclusionary language in a federal statute governing compensation of federal employees for

job-related injuries (see § 536.44), or untimely filing, TJAG or TAJAG will render final decisions on appeals, except that claims presented for $25,000 or less, and not acted upon by the Commander USARCS, are governed by paragraph (d)(3) of this section.

(3) For claims presented for $25,000 or less, final decisions on appeals will be made by the Commander USARCS, his or her designee, or the chief of a command claims service when such claims are acted on by an ACO under such service's jurisdiction.

(4) Sections 536.64, 536.65, and 536.66 of this part set forth the rules relating to the notification of appeal rights and processing.

(e) *Delegated authority.* Authority delegated by this section will not be exercised unless the settlement or approval authority has been assigned an office code.

§ 536.79 Action on appeal under the Military Claims Act.

(a) The appeal will be examined by the settlement authority who last acted on the claim, or his or her successor, to determine if the appeal complies with the requirements of this regulation. The settlement authority will also examine the claim file and decide whether additional investigation is required; ensure that all allegations or evidence presented by the claimant, agent, or attorney are documented; and ensure that all pertinent evidence is included. If claimants state that they appeal, but do not submit supporting materials within the 60-day appeal period or an approved extension thereof, these appeals will be determined on the record as it existed at the time of denial or final offer. Unless action under paragraph (b) of this section is taken, the claim and complete investigative file, including any additional investigation, and a tort claims memorandum will be forwarded to the appropriate appellate authority for necessary action on the appeal.

(b) If the evidence in the file, including information submitted by the claimant with the appeal and that found by any necessary additional investigation, indicates that the appeal should be granted in whole or in part, the settlement authority who last acted on the claim, or his or her successor, will attempt to settle the claim. If a settlement cannot be reached, the appeal will be forwarded in accordance with paragraph (a) of this section.

(c) As to an appeal that requires action by TJAG, TAJAG, or the Secretary of the Army or designee, the Commander USARCS may take the action in paragraph (b) of this section or forward the claim together with a recommendation for action. All matters submitted by the claimant will be forwarded and considered.

(d) Since an appeal under this subpart is not an adversarial proceeding, no form of hearing is authorized. A request by the claimant for access to documentary evidence in the claim file to be used in considering the appeal will be granted unless law or regulation does not permit access.

(e) If the appellate authority upholds a final offer or authorizes an award on appeal from a denial of a claim, the notice of the appellate authority's action will inform the claimant that he or she must accept the award within 180 days of the date of mailing of the notice of the appellate authority's action or the award will be withdrawn, the claim will be deemed denied, and the file will be closed without future recourse.

§ 536.80 Payment of costs, settlements, and judgments related to certain medical malpractice claims.

(a) *General.* Costs, settlements, or judgments cognizable under 10 U.S.C. 1089(f) for personal injury or death caused by any physician, dentist, nurse, pharmacist, paramedic, or other supporting personnel (including medical and dental technicians, nurse assistants, therapists, and Red Cross volunteers of the Army Medical Department (AMEDD), AMEDD personnel detailed for service with other than a federal department, agency, or instrumentality and direct contract personnel identified in the contract as federal employees), will be paid provided that:

(1) The alleged negligent or wrongful actions or omissions occurred during the performance of medical, dental, or related health care functions (including clinical studies and investigations) while the medical or health care employee was acting within the scope of employment.

(2) Such personnel furnish prompt notification and delivery of all process served or received and other documents, information, and assistance as requested.

(3) Such personnel cooperate in the defense of the action on its merits.

(b) *Requests for contribution or indemnification.* All requests for contribution or indemnification under this section should be forwarded to the Commander USARCS for action, following the procedures set forth in this subpart.

§ 536.81 Payment of costs, settlements, and judgments related to certain legal malpractice claims.

(a) *General.* Costs, settlements, and judgments cognizable under 10 U.S.C. 1054(f) for damages for personal injury or loss of property caused by any attorney, paralegal, or other member of a legal staff will be paid if:

(1) The alleged negligent or wrongful actions or omissions occurred during the provision or performance of legal services while the attorney or legal employee was acting within the scope of duties or employment;

(2) Such personnel furnish prompt notification and delivery of all process served or received and other documents, information, and assistance as requested;

(3) Such personnel cooperate in the defense of the action on the merits.

(b) *Requests for contribution or indemnification.* All requests for contribution or indemnification under this section should be forwarded to the Commander USARCS for action, following the procedures set forth in this subpart.

§ 536.82 Reopening an MCA claim after final action by a settlement authority.

(a) *Original approval or settlement authority (including TAJAG, TJAG, Secretary of the Army, or the Secretary's designees).* (1) An original settlement authority may reconsider the denial of, or final offer on, a claim brought under the MCA upon request of the claimant or the claimant's authorized agent. In the absence of such a request, the settlement authority may on his or her initiative reconsider a claim.

(2) An original approval or settlement authority may reopen and correct action on an MCA claim previously settled in whole or in part (even if a settlement agreement has been executed) when it appears that the original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently received. For errors in fact, the new evidence must not have been discoverable at the time of final action by either the Army or the claimant through the exercise of reasonable diligence. Corrective action may also be taken when an error contrary to the parties' mutual understanding is discovered in the original action. If the settlement or approval authority determines that their original action was incorrect, they will modify the action and, if appropriate, make a supplemental payment. The basis for a change in action will be stated in a memorandum included in the file. For example, a claim was settled for $15,000, but the settlement

agreement was typed to read "$1,500" and the error is not discovered until the file is being prepared for payment. If appropriate, a corrected payment will be made. A settlement authority who has reason to believe that a settlement was obtained by fraud on the part of the claimant or claimant's legal representative will reopen action on that claim and, if the belief is substantiated, correct the action. The basis for correcting an action will be stated in a memorandum and included in the file.

(b) *A successor approval or settlement authority (including TAJAG, TJAG, Secretary of the Army, or the Secretary's designees).* (1) Reconsideration. A successor approval or settlement authority may reconsider the denial of, or final offer on, an MCA claim upon request of the claimant or the claimant's authorized agent only on the basis of fraud, substantial new evidence, errors in calculation, or mistake (misinterpretation) of law.

(2) *Settlement correction.* A successor approval or settlement authority may reopen and correct a predecessor's action on a claim that was previously settled in whole or in part for the same reasons that an original authority may do so.

(c) *Time requirement for filing request for reconsideration.* Requests postmarked more than five years from the date of mailing of final notice will be denied based on the doctrine of laches.

(d) *Finality of action.* Action by the appropriate authority (either affirming the prior action or granting full or granting full or partial relief) is final under the provisions of 10 U.S.C. 2735. Action upon a request for reconsideration constitutes final administrative disposition of a claim. No further requests for reconsideration will be allowed except on the basis of fraud.

Subpart D—Claims Cognizable Under the Federal Tort Claims Act

§ 536.83 Statutory authority for the Federal Tort Claims Act.

The statutory authority for this subpart is the Federal Tort Claims Act (FTCA) (60 Stat. 842, 28 U.S.C. 2671–2680), as amended by Public Law 89–506, July 1966 (80 Stat. 306); Public Law 93–253, March 1974 (88 Stat. 50); Public Law 97–124, December 1981 (93 Stat. 1666); Public Law 100–694, November 1988 (102 Stat. 4563–67); and Public Law 101–552, November 1996 (104 Stat. 734); and as implemented by the Attorney General's Regulations (28 CFR 14.1 through 14.11 and its Appendix), all of which are posted on the USARCS Web site; for the address see § 536.2(a).

§ 536.84 Scope for claims under the Federal Tort Claim Act.

(a) *General.* This subpart applies in the United States, its commonwealths, territories and possessions (all hereinafter collectively referred to as United States or U.S.). It prescribes the substantive bases and special procedural requirements under the FTCA and the implementing Attorney General's regulations for the administrative settlement of claims against the United States based on death, personal injury, or damage to, or loss of, property caused by negligent or wrongful acts or omissions by the United States or its employees acting within the scope of their employment. If a conflict exists between this part and the Attorney General's regulations, the latter governs.

(b) *Effect of the Military Claims Act.* A tort claim arising in the United States, its commonwealths, territories, and possessions may be settled under subpart C of this part if the Federal Tort Claims Act (FTCA) does not apply to the type of claim under consideration or if the claim arose incident to noncombat activities. If a claim is filed under both the FTCA and the Military Claims Act (MCA), or when both statutes apply equally, final action thereon will follow the procedures set forth in DA Pam 27–162, paragraphs 2–74 through 2–76, discussing final offers and denial letters.

§ 536.85 Claims payable under the Federal Tort Claims Act.

(a) Unless otherwise prescribed, claims for death, personal injury, or damage to, or loss of, property (real or personal) are payable under this subpart when the injury or damage is caused by negligent or wrongful acts or omissions of military personnel or civilian employees of the Department of the Army or Department of Defense while acting within the scope of their employment under circumstances in which the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The FTCA is a limited waiver of sovereign immunity without which the United States may not be sued in tort. Similarly, neither the Fifth Amendment nor any other provision of the U.S. Constitution creates or permits a federal cause of action allowing recovery in tort. Immunity must be expressly waived, as the FTCA waives it.

(b) To be payable, a claim must arise from the acts or omissions of an "employee of the government" under 28 U.S.C. 2671. Categories of such employees are listed in § 536.23(b) of this part.

§ 536.86 Claims not payable under the Federal Tort Claims Act.

A claim is not payable if it is identified as an exclusion in DA Pam 27–162, paragraphs 2–36 through 2–43.

§ 536.87 Applicable law for claims under the Federal Tort Claims Act.

The applicable law for claims falling under the Federal Tort Claims Act is set forth in §§ 536.41 through 536.52.

§ 536.88 Settlement authority for claims under the Federal Tort Claims Act.

(a) *General.* Subject to the Attorney General's approval of payments in excess of $200,000 for a single claim, or if the total value of all claims and potential claims arising out of a single incident exceeds $200,000 (for which USARCS must write an action memorandum for submission to the Department of Justice), the following officials are delegated authority to settle (including payment in full or in part, or denial) and make final offers on claims under this subpart:

(1) The Judge Advocate General (TJAG);

(2) The Assistant Judge Advocate General (TAJAG); and

(3) The Commander USARCS.

(b) *ACO heads.* A head of an area claims office (ACO) is delegated authority to pay up to $50,000 in settlement of a claim, regardless of the amount claimed, and to disapprove or make a final offer in a claim presented in an amount not exceeding $50,000, provided the value of all claims and potential claims arising out of a single incident does not exceed $200,000.

(c) *CPO heads.* A head of a claims processing office (CPO) with approval authority is delegated authority to approve, in full or in part, claims presented for $5,000 or less, and to pay claims regardless of amount, provided an award of $5000 or less is accepted in full satisfaction of the claim.

(d) *Further guidance.* Authority to further delegate payment authority is set forth in § 536.3(g)(1) of this part. For further discussions related to approval, settlement and payment authority see paragraphs 2–69 and 2–71 of DA Pam 27–162.

(e) *Settlement of multiple claims from a single incident.* (1) Where a single act or incident gives rise to multiple claims cognizable under this subpart, and where one claim cannot be settled within the monetary jurisdiction for one claim of the authority acting on the claim or all claims cannot be settled within the monetary jurisdiction for a

single incident, no final offer will be made. All claims will be forwarded, along with a recommended disposition, to the Commander USARCS.

(2) If the Commander USARCS determines that all claims can be settled for a total of $200,000 or less, he may return claims to the field office for settlement. If the Commander USARCS, determines that all claims cannot be settled for a total of $200,000, he must request Department of Justice authority prior to settlement of any one claim. The field claims office must not concede liability by paying any one claim of lesser value.

§ 536.89 Reconsideration of Federal Tort Claims Act claims.

(a) *Reconsideration of paid claims.* Under the provision of 28 U.S.C. 2672, neither an original or successor authority may reconsider a claim which has been paid except as expressly set forth below. Payment of an amount for property damage will bar payment for personal injury or death except for a split claim provided the provisions of § 536.60 are followed. Supplemental payments for either property or injury are barred by 10 U.S.C. 2672. Accordingly, claimants will be informed that only one claim or payment is permitted.

(b) *Notice of right to reconsideration.* Notice of disapproval or final offer issued by an authority listed in § 536.88(b) will advise the claimant of a right to reconsideration to be submitted in writing not later than six months from the date of mailing the notice. Such a request will suspend the requirement to bring suit for a minimum of six month or until action is taken on the request. The claimant will be so informed. See the Attorney General's Regulations at 28 CFR 14.9(b), posted on the USARCS Web site; for the address see § 536.2(a).

(c) *Original approval or settlement authority.* (1) Reconsideration. An original settlement authority may reconsider the denial of, or final offer on, a claim brought under the FTCA upon request of the claimant or the legal representative.

(2) *Settlement correction.* An original approval or settlement authority may reopen and correct action on a claim previously settled in whole or in part (even if a settlement agreement has been executed) when an error contrary to the parties' mutual understanding is discovered in the original action. For example: a claim was settled for $15,000, but the settlement agreement was typed to read "$1,500" and the error is not discovered until the file is being prepared for payment. If appropriate, a corrected payment will be made. An approval or settlement authority who has reason to believe that a settlement was obtained by fraud on the part of the claimant or claimant's legal representative will reopen action on that claim, and if the belief is substantiated, correct the action. The basis for correcting an action will be stated in a memorandum and included in the file.

(d) *A successor approval or settlement authority.* (1) *Reconsideration.* A successor approval or settlement authority may reconsider the denial of, or final offer on, an FTCA claim upon request of the claimant, the claimant's authorized agent, or the claimant's legal representative only on the basis of fraud, substantial new evidence, errors in calculation, or mistake (misinterpretation) of law.

(2) *Settlement correction.* A successor approval or settlement authority may reopen and correct a predecessor's action on a claim that was previously settled in whole or in part for the same reasons that an original authority may do so.

(e) *Requirement to forward a request for reconsideration.* When full relief is not granted, forward all requests for reconsideration of an ACO's denial or final offer to the Commander USARCS for action. Include all investigative material and legal analyses generated by the request.

(f) *Action prior to forwarding.* A request for reconsideration should disclose fully the legal and/or factual bases that the claimant has asserted as grounds for relief and provide appropriate supporting documents or evidence. Following completion of any investigation or other action deemed necessary for an informed disposition of the request, the approval or settlement authority will reconsider the claim and attempt to settle it, granting relief as warranted. When further settlement efforts appear unwarranted, the entire file with a memorandum of opinion will be forwarded to the Commander USARCS. The claimant will be informed of such transfer.

(g) *Finality of action.* Action by the appropriate authority (either affirming the prior action or granting full or partial relief) upon a request for reconsideration constitutes final administrative disposition of a claim. No further requests for reconsideration will be allowed except on the basis of fraud. Attempted further requests for reconsideration on other grounds will not toll the six-month period set forth in 28 U.S.C. 2401(b).

Subpart E—Claims Cognizable Under the Non-Scope Claims Act

§ 536.90 Statutory authority for the Non-Scope Claims Act.

The statutory authority for this subpart is set forth in the Act of October 1962, 10 U.S.C. 2737, 76 Stat. 767, commonly called the "Non-Scope Claims Act (NSCA)."

§ 536.91 Scope for claims under the Non-Scope Claims Act.

(a) This subpart applies worldwide and prescribes the substantive bases and special procedural requirements for the administrative settlement and payment of not more than $1,000 for any claim against the United States for personal injury, death or damage to, or loss of, property caused by military personnel or civilian employees, incident to the use of a U.S. vehicle at any location, or incident to the use of other U.S. property on a government installation, which claim is not cognizable under any other provision of law.

(b) For the purposes of this subpart, a "government installation" is a facility having fixed boundaries owned or controlled by the government, and a "vehicle" includes every description of carriage or other artificial contrivance used, or capable of being used, as means of transportation on land (1 U.S.C. 4).

(c) Any claim in which there appears to be a dispute about whether the employee was acting within the scope of employment will be considered under subparts C, D, or F of this part. Only when all parties, including an insurer, agree that there is no "in scope" issue will the claim be considered under this subpart.

§ 536.92 Claims payable under the Non-Scope Claims Act.

(a) *General.* A claim for personal injury, death, or damage to, or loss of, property, real or personal, is payable under this subpart when:

(1) Caused by negligent or wrongful acts or omissions of Department of Defense or Department of the Army (DA) military personnel or civilian employees, as listed in § 536.23(b):

(i) Incident to the use of a vehicle belonging to the United States at any place or;

(ii) Incident to the use of any other property belonging to the United States on a government installation.

(2) The claim is not payable under any other claims statute or regulation available to the DA for the administrative settlement of claims.

(b) *Personal injury or death.* A claim for personal injury or death is allowable only for the cost of reasonable medical,

hospital, or burial expenses actually incurred and not otherwise furnished or paid by the United States.

(c) *Property loss or damage.* A claim for damage to or loss of property is allowable only for the cost of reasonable repairs or value at time of loss, whichever is less.

§ 536.93 Claims not payable under the Non-Scope Claims Act.

Under this subpart, a claim is not payable that:

(a) Results in whole or in part from the negligent or wrongful act of the claimant or his or her agent or employee. The doctrine of comparative negligence does not apply.

(b) Is for medical, hospital, or burial expenses furnished or paid by the United States.

(c) Is for any element of damage pertaining to personal injuries or death other than as provided in § 536.93(b). All other items of damage, for example, compensation for loss of earnings and services, diminution of earning capacity, anticipated medical expenses, physical disfigurement and pain and suffering are not payable.

(d) Is for loss of use of property or for the cost of substitute property, for example, a rental.

(e) Is legally recoverable by the claimant under an indemnifying law or indemnity contract. If the claim is in part legally recoverable, the part recoverable by the claimant is not payable.

(f) Is a subrogated claim.

(g) In some circumstances some claims may be partially payable. See DA Pam 27–162, paragraph 5–4 for more information on claims that may be partially payable.

§ 536.94 Settlement authority for claims under the Non-Scope Claims Act.

(a) *Settlement authority.* The following are delegated authority to pay up to $1,000 in settlement of each claim arising out of one incident and to disapprove a claim presented in any amount under this subpart:

(1) The Judge Advocate General (TJAG);

(2) The Assistant Judge Advocate General (TAJAG);

(3) The Commander USARCS;

(4) The Judge Advocate (JA) or Staff Judge Advocate (SJA) or chief of a command claims service; and

(5) The head of an area claims office (ACO).

(b) *Approval authority.* The head of a claims processing office (CPO) with approval authority is delegated authority to approve and pay, in full or in part, claims presented for $1,000 or less and to compromise and pay, regardless of amount claimed, an agreed award of $1,000 or less.

(c) *Further guidance.* Authority to further delegate payment authority is set forth in § 536.3(g)(1) of this part. For further discussions also related to approval, settlement and payment authority see also paragraphs 2–69 and 2–71 of DA Pam 27–162.

§ 536.95 Reconsideration of Non-Scope Claims Act claims.

The provisions of § 536.89 addressing reconsideration apply and are incorporated herein by reference. If the claim is not cognizable under the Federal Tort Claims Act, appellate procedures under the Military Claims Act or NGCA apply.

Subpart F—Claims Cognizable Under the National Guard Claims Act

§ 536.96 Statutory authority for the National Guard Claims Act.

The statutory authority for this subpart is contained in the Act of September 1960 (32 U.S.C. 715, 74 Stat. 878), commonly referred to as the "National Guard Claims Act" (NGCA), as amended by Public Law 87–212, (75 Stat. 488), September 1961; Public Law 90–486, (82 Stat. 756), August 1968; Public Law 90–521, (82 Stat. 874), September 1968; Public Law 90–525, (82 Stat. 877), September 1968; Public Law 91–312, (84 Stat. 412), July 1970; Public Law 93–336, (88 Stat. 291), July 1974; and Public Law 98–564, (98 Stat. 2918), October 1984.

§ 536.97 Scope for claims under National Guard Claims Act.

This subpart applies worldwide and prescribes the substantive bases and special procedural regulations for the settlement of claims against the United States for death, personal injury, damage to, or loss or destruction of property.

(a) Soldiers of the Army National Guard (ARNG) can perform military duty in an active duty status under the authority of Title 10 of the United States Code, in a full-time National Guard duty or inactive-duty training status under the authority of Title 32 of the United States Code, or in a state active duty status under the authority of a state code.

(1) When ARNG soldiers perform active duty, they are under federal command and control and are paid from federal funds. For claims purposes, those soldiers are treated as active duty soldiers. The NGCA, 32 U.S.C. 715, does not apply.

(2) When ARNG soldiers perform full-time National Guard duty or inactive-duty training, they are under state command and control and are paid from federal funds. The NGCA does apply, but as explained in paragraph (c) of this section it is seldom used.

(3) When ARNG soldiers perform state active duty, they are under state command and control and are paid from state funds. Federal claims statutes do not apply, but state claims statutes may apply.

(b) The ARNG also employs civilians, referred to as technicians and employed under 32 U.S.C. 709. Technicians are usually, but not always, ARNG soldiers who perform the usual 15 days of annual training (a category of full-time duty) and 48 drills (inactive-duty training) per year.

(c) NGCA coverage applies only to ARNG soldiers performing full-time National Guard duty or inactive-duty training and to technicians. However, since the NGCA's enactment in 1960, Congress has also extended Federal Tort Claims Act (FTCA) coverage to these personnel.

(1) In 1968, technicians, who were state employees formerly, were made federal employees. Along with federal employee status came FTCA coverage. Technicians no longer have any state status, albeit they are hired, fired, and administered by a state official, the Adjutant General, acting as the agent of the federal government.

(2) In 1981, Congress extended FTCA coverage to ARNG soldiers performing full-time National Guard duty or inactive-duty training (such as any training or other duty under 32 U.S.C. 316, 502–505). Unlike making technicians federal employees, this extension of coverage did not affect their underlying status as state military personnel.

(d) Claims arising from the negligent acts or omissions of ARNG soldiers performing full-time National Guard duty or inactive-duty training, or of technicians, will be processed under the FTCA. Therefore, the NGCA is generally relevant only to claims arising from noncombat activities or outside the United States. Additionally, claims by members of the National Guard may be paid for property loss or damage incident to service if the claim is based on activities falling under this subpart and is not payable under AR 27–20, chapter 11.

§ 536.98 Claims payable under the National Guard Claims Act.

The provisions of § 536.75 apply to claims arising under this subpart.

§ 536.99 Claims not payable under the National Guard Claims Act.

The provisions of § 536.76 apply to claims arising under this subpart.

§ 536.100 Applicable law for claims under the National Guard Claims Act.

The provisions of § 536.77 apply to claims arising under this subpart.

§ 536.101 Settlement authority for claims under the National Guard Claims Act.

The provisions of § 536.78 apply to claims arising under this subpart.

§ 536.102 Actions on appeal under the National Guard Claims Act.

The provisions of § 536.79 apply to claims arising under this subpart.

Subpart G—Claims Cognizable Under International Agreements

§ 536.103 Statutory authority for claims cognizable under international claims agreements.

The authority for claims presented or processed under this subpart is set forth in the following federal laws and bi- or multinational agreements:

(a) 10 U.S.C. 2734a and 10 U.S.C. 2734b (the International Agreements Claims Act) as amended, for claims arising overseas under international agreements.

(b) Various international agreements, such as the North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA) and the Partnership for Peace (PFP) SOFA.

§ 536.104 Current agreements in force.

Current listings of known agreements in force are also posted on the USARCS Web site; for the address see § 536.2(a).

§ 536.105 Responsibilities generally/ international agreements claims.

(a) The Commander USARCS is responsible for:

(1) Providing policy guidance to command claims services or other responsible judge advocate (JA) offices on SOFA or other treaty reimbursement programs implementing 10 U.S.C. 2734a and 2734b.

(2) Monitoring the reimbursement system to ensure that programs for the proper verification and certification of reimbursement are in place.

(3) Monitoring funds reimbursed to or by foreign governments.

(b) Responsibilities in the continental United States (CONUS)—The responsibility for implementing these agreements within the United States has been delegated to the Secretary of the Army (SA). The SA, in turn, has delegated that responsibility to the Commander USARCS, who is in charge of the receiving State office for the United States, as prescribed in DODD 5515.8. The Commander USARCS is responsible for maintaining direct liaison with sending State representatives and establishing procedures designed to carry out the provisions of this subpart.

§ 536.106 Definitions for international agreements claims.

(a) *"Force and civilian component of force."* Members of the sending State's armed forces on temporary or permanent official duty within the receiving State, civilian employees of the sending State's armed forces, and those individuals acting in an official capacity for the sending State's armed forces. However, under provisions of the applicable SOFAs the sending State and the receiving State may agree to exclude from the definition of "force" certain individuals, units or formations that would otherwise be covered by the SOFA. Where such an exclusion has been created, this subpart will not apply to claims arising from actions or omission by those individuals, units or formations. "Force and civilian component of force" also includes claims arising out of acts or omissions made by military or civilian personnel, regardless of nationality, who are assigned or attached to, or employed by, an international headquarters established under the provisions of the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty, dated August 28, 1952, such as Supreme Allied Command, Atlantic.

(b) *Types of claims under agreements.* (1) *Intergovernmental claims.* Claims of one contracting party against any other contracting party for damage to property owned by its armed services, or for injury or death suffered by a member of the armed services engaged in the performance of official duties, are waived. Claims above a minimal amount for damage to property owned by a governmental entity other than the armed services may be asserted. NATO SOFA, Article VIII, paragraph 1–4; Singapore SOFA, Article XVI, paragraph 2–3.

(2) *Third-party scope claims.* Claims arising out of any acts or omissions of members of a force or the civilian component of a sending State done in the performance of official duty or any other act, omission, or occurrence for which the sending State is legally responsible shall be filed, considered and settled in accordance with the laws and regulations of the receiving State with respect to claims arising from the activities of its own armed service; see, for example, NATO SOFA, Article VIII, paragraph 5.

(3) *Ex gratia claims.* Claims arising out of tortious acts or omissions not done in the performance of official duties shall be considered by the sending State for an "ex gratia" payment that is made directly to the injured party; see, for example, NATO SOFA, Article VIII, paragraph 6.

§ 536.107 Scope for international agreements claims arising in the United States.

This section sets forth procedures and responsibilities for the investigation, processing, and settlement of claims arising out of any acts or omissions of members of a foreign military force or civilian component present in the United States or a territory, commonwealth, or possession thereof under the provisions of cost sharing reciprocal international agreements which contain claims settlement provisions applicable to claims arising in the United States. Article VIII of the NATO SOFA has reciprocal provisions applying to all NATO member countries; the Partnership for Peace (PFP) Agreement has similiar provisions, as do the Singapore and Australian SOFAs.

§ 536.108 Claims payable under international agreements (for those arising in the United States).

(a) Within the United States, Art. VIII, NATO SOFA applies to claims arising within the North Atlantic Treaty Area, which includes CONUS and its territories and possessions north of the Tropic of Cancer (23.5 degrees north latitude). This excludes Puerto Rico, the Virgin Islands, and parts of Hawaii. Third-party scope claims are payable under subpart D or, if the claim arises incident to noncombat activities, under subpart C of this part. Maritime claims are payable under subpart H of this part. The provisions of these subparts on what claims are payable apply equally here. The members of the foreign force or civilian component must be acting in pursuance of the applicable treaty's objectives.

(b) Within the United States, third-party ex gratia claims are payable only by the sending State and are not payable under subpart E of this part.

§ 536.109 Claims not payable under international agreements (for those arising in the United States).

The following claims are not payable:

(a) Claims arising from a member of a foreign force or civilian component's acts or omissions that do not accord with the objectives of a treaty

authorizing their presence in the United States.

(b) Claims arising from the acts or omissions of a member of a foreign force or civilian component who has been excluded from SOFA coverage by agreement between the sending State and the United States.

(c) Third-party scope claims arising within the United States that are not payable under subparts C, D, or H of this part are listed as barred under those subparts. As sending State forces are considered assimilated into the U.S. Armed Services for purposes of the SOFAs, their members are also barred from receiving compensation from the United States when they are injured incident to their service, *Daberkow* v. *United States*, 581 F.2d 785 (9th Cir. 1978).

§ 536.110 Notification of incidents arising under international agreements (for claims arising in the United States).

To enable USARCS to properly discharge its claims responsibilities under the applicable SOFAs, it must be notified of all incidents, including off-duty incidents, in which members of a foreign military force or civilian component are involved. Any member or employee of the U.S. armed services who learns of an incident involving a member of a foreign military force or civilian component resulting in personal injury, death, or property damage will immediately notify the judge advocate (JA) or legal officer at the installation or activity to which such person is assigned or attached. The JA or legal officer receiving such notification will in turn notify the Commander USARCS. If the member is neither assigned nor attached to any installation or activity within the United States, the Commander USARCS, will be notified.

§ 536.111 Investigation of claims arising under international agreements (for those claims arising in the United States).

Responsibility for investigating an incident rests upon the area claims office (ACO) or claims processing office (CPO) responsible for the geographic area in which the incident occurred. The Commander USARCS, an ACO, and a CPO are authorized to designate the legal office of the installation at which the member of the foreign force or civilian component is attached, including the legal office of another armed force, to carry out the responsibility to investigate. The investigation will comply with the responsible Service's implementing claims regulation. When the member is neither assigned nor attached within the United States, the Commander USARCS will furnish assistance.

§ 536.112 Settlement authority for claims arising under international agreements (for those claims arising in the United States).

Settlement authority is delegated to the Commander USARCS, except for settlement amounts exceeding the Commander's authority as set forth in subparts C, D, or H of this part, or in those cases where settlement is reserved to a higher authority. Pursuant to the applicable SOFA, the Commander USARCS will report the proposed settlement to the sending State office for concurrence or objection. See, for example, NATO SOFA, Article VIII.

§ 536.113 Assistance to foreign forces for claims arising under international agreements (as to claims arising in the United States).

All claims arising from activities of members of NATO, Partnership for Peace, Singaporean, or Australian forces in the United States are processed in the same manner as those arising from activities of U.S. government personnel. All JAs and legal offices will provide assistance similar to that provided to U.S. armed services personnel.

§ 536.114 Scope for claims arising overseas under international agreements.

(a) This section sets forth guidance on claims arising from any act or omission of soldiers or members of the civilian component of the U.S. armed services done in the performance of official duty or arising from any other act or omission or occurrence for which the U.S. armed services are responsible under an international agreement. Claims incidents arising in countries for which the SOFA requires the receiving State to adjudicate and pay the claims in accordance with its laws and regulations are subject to partial reimbursement by the United States.

(b) Claims by foreign inhabitants based on acts or omissions outside the scope of official duties are cognizable under subpart J of this part. Claims arising from nonscope acts or omissions by third parties who are not foreign inhabitants are cognizable under subpart E but not under subparts C or F of this part.

§ 536.115 Claims procedures for claims arising overseas under international agreements.

(a) SOFA provisions that call for the receiving State to adjudicate claims have been held to be the exclusive remedy for claims against the United States, *Aaskov* v. *Aldridge*, 695 F. Supp. 595 (D.D.C. 1988); *Dancy* v. *Department of Army*, 897 F. Supp. 612 (D.D.C. 1995).

(b) SOFA provisions that call for the receiving State to adjudicate claims against the United States usually refer to claims by third parties brought against members of the force or civilian component. This includes claims by tourists or business travelers as well as inhabitants of foreign countries. Depending on how the receiving State interprets the particular SOFA's class of proper claimants, the receiving State may also consider claims by U.S. soldiers, civilian employees, and their family members. Chiefs of command claims services or other Army JA offices responsible for claims that arise in countries bound by SOFA or other treaty provisions requiring a receiving State to consider claims against the United States will ensure that all claims personnel know the receiving State's policy on which persons or classes of persons are proper claimants under such provisions. When a claim is filed both with the receiving State and under either the Military Claims Act (MCA) or Foreign Claims Act (FCA), the provisions of § 536.76(h) of this part and DA Pam 27–162, paragraph 3–4a apply.

(c) When SOFA provisions provide for receiving State claims consideration, the time limit for filing such claims may be much shorter than the two years otherwise allowed under the FCA or MCA. For example, receiving State claims offices in Germany require that a claim be filed under the SOFA within three months of the date that the claimant is aware of the U.S. involvement. If the filing period is about to expire for claims arising in Germany, have the claimant fill out a claim form, make two copies, and date-stamp each copy as received by a sending State claims office. Return the date-stamped original of the claim to the claimant with instructions to promptly file with the receiving State claims office. Keep one date-stamped copy as a potential claim. Forward one date-stamped copy of the claim to the U.S. Army Claims Service Europe (USACSEUR). This may toll the applicable German statute of limitations. Additionally, many receiving State claims offices do not require claimants to demand a sum certain. All claims personnel must familiarize themselves with the applicable receiving State law and procedures governing SOFA claims.

(d) All foreign inhabitants who file claims against the United States that fall within the receiving State's responsibility, such as claims based on acts or omissions within the scope of U.S. Armed Forces members' or civilian employees' duties, must file the claim

with the appropriate receiving State office. Those U.S. inhabitants whose claims would be otherwise cognizable under the Military Claims Act (subpart C of this part) and whom the receiving State deems proper claimants under the SOFA must also file with the receiving State.

(e) A claim filed with, and considered by, a receiving State under a SOFA or other international agreement claims provision may be considered under other subparts of this part only if the receiving State denied the claim on the basis that it was not cognizable under the treaty or agreement provisions. See DA Pam 27–162, paragraph 3–4a(2), for conditions of waiver of the foregoing requirement. See also §§ 536.76(h) and 536.138(j) of this part. When a claimant has filed a claim with a receiving State and received payment, or the claim has been denied on the merits, such action will be the claimant's final and exclusive remedy and will bar any further claims against the United States.

§ 536.116 Responsibilities as to claims arising overseas under international agreements.

(a) Command claims services or other responsible JA offices within whose jurisdiction SOFA or other treaty provisions provide for a claim reimbursement system, and where DA has been assigned single-service responsibility for the foreign country seeking reimbursement (see § 536.17) are responsible for:

(1) Establishing programs for verifying, certifying, and reimbursing claims payments. Such service or JA office will provide a copy of its procedures implementing the program to the Commander USARCS.

(2) Providing the Commander USARCS with budget estimates for reimbursements in addition to the reports required by AR 27–20, paragraph 13–7.

(3) Providing the Commander USARCS each month in which payments are made, with statistical information on the number of individual claims reimbursed, the total amount paid by the foreign government, and the total amount reimbursed by the United States.

(4) Providing the Commander USARCS with a quarterly report showing total reimbursements paid during the quarter for maneuver damage and tort claims classified according to major categories of damage determined by the Commander USARCS, and an update on major issues or activities that could affect the reimbursement system's operation or funding.

(b) Command claims services or other responsible Army JA offices will ensure that all claims personnel within their areas of responsibility:

(1) Receive annual training on the receiving State's claims procedures, including applicable time limitations, procedures and the responsible receiving State claims offices' locations.

(2) Screen all new claims and inquiries about claims to identify those claimants who must file with the receiving State.

(3) Ensure that all such claimants are informed of this requirement and the applicable time limitation.

(4) Ensure that all applicable SOFA claims based on incidents occurring in circumstances that bring them within the United States' primary sending State jurisdiction are fully investigated.

Subpart H—Maritime Claims

§ 536.117 Statutory authority for maritime claims.

The Army Maritime Claims Settlement Act (AMCSA) (10 U.S.C. 4801–04, 4806, as amended) authorizes the Secretary of the Army or his designee to administratively settle or compromise admiralty and maritime claims in favor of, and against, the United States.

§ 536.118 Related statutes for maritime claims.

(a) The AMCSA permits the settlement of claims that would ordinarily fall under the Suits in Admiralty Act (SIAA), 46 U.S.C. app. 741–752; the Public Vessels Act (PVA), 46 U.S.C. app. 781–790; or the Admiralty Extension Act (AEA), 46 U.S.C. app. 740. Outside the United States the AMCSA may be used to settle admiralty claims in lieu of the Military Claims Act or Foreign Claims Act. Within the United States, filing under the AMCSA is not mandatory for causes of action as it is for the SIAA or PVA.

(b) Similar maritime claims settlement authority is exercised by the Department of the Navy under 10 U.S.C. 7363 and 7621–23 and by the Department of the Air Force under 10 U.S.C. 9801–9804 and 9806.

§ 536.119 Scope for maritime claims.

The AMCSA applies worldwide and includes claims that arise on high seas or within the territorial waters of a foreign country. At 10 U.S.C. 4802 it provides for the settlement or compromise of claims for:

(a) Damage caused by a vessel of, or in the service of, the Department of Army (DA) or by other property under the jurisdiction of the DA.

(b) Compensation for towage and salvage service, including contract salvage, rendered to a vessel of, or in the service of, the DA or other property under the jurisdiction of the DA.

(c) Damage that is maritime in nature and caused by tortious conduct of U.S. military personnel or federal civilian employees, an agent thereof, or property under the Army's jurisdiction.

§ 536.120 Claims payable as maritime claims.

A claim is cognizable under this subpart if it arises in or on a maritime location, involves some traditional maritime nexus or activity, and is caused by the wrongful act or omission of a member of the U.S. Army, Department of Defense (DOD) or DA civilian employee, or an agent thereof, while acting within the scope of employment. This class of claims includes, but is not limited to:

(a) Damage to a ship, boat, barge, or other watercraft;

(b) An injury that involves a ship, boat, barge, or other watercraft;

(c) Damage to a wharf, pier, jetty, fishing net, farm facilities or other structures in, on, or adjacent to any body of water;

(d) Damage or injury on land or on water arising under the AEA and allegedly due to operation of an Army-owned or leased ship, boat, barge, or other watercraft;

(e) An injury that occurs on board an Army ship, boat, barge or other watercraft; and

(f) Crash into water of an Army aircraft.

§ 536.121 Claims not payable as maritime claims.

Under this subpart, claims are not payable if they:

(a) Are listed in §§ 536.42, 536.43, 536.44, 536.45 (except at (e) and (k)), and 536.46;

(b) Are not maritime in nature;

(c) Are not in the best interests of the United States, are contrary to public policy, or are otherwise contrary to the basic intent of the governing statute, for example, claims for property loss or damage or personal injury or death by inhabitants of unfriendly foreign countries or by individuals considered to be unfriendly to the United States. When a claim is considered not payable for the reasons stated in this section, it will be forwarded for appropriate action to the Commander USARCS, along with the recommendations of the responsible claims office.

(d) Are presented by a national, or a corporation controlled by a national, of a country at war or engaged in armed

conflict with the United States, or any country allied with such enemy country, unless the appropriate settlement authority determines that the claimant is and, at the time of incident, was friendly to the United States. A prisoner of war or an interned enemy alien is not excluded or barred from bringing a claim for damage, loss, or destruction of personal property while held in the custody of the government if the claim is otherwise payable.

(e) Are for damages or injuries that a receiving State should pay for under an international agreement. See § 536.34(c).

§ 536.122 Limitation of settlement of maritime claims.

(a) Within the United States the period of completing an administrative settlement under the AMCSA is subject to the same time limitation as that for beginning suit under the SIAA or PVA; that is, a two-year period from the date the cause of the action accrued. The claimant must have agreed to accept the settlement and it must be approved for payment by the Secretary of the Army or other approval authority prior to the end of such period. The presentation of a claim, or its consideration by the DA, neither waives nor extends the two-year limitation period and the claimant should be so informed, in writing, when the claim is acknowledged. See § 536.28.

(b) For causes of action under the AEA, filing an administrative claim is mandatory. However, suit is required under the two-year time limit applicable to the SIAA and PVA, even though the AEA provides that no suit shall be filed under six months after filing a claim.

(c) For causes of action arising outside the United States, there is no time limitation for completing an administrative settlement.

§ 536.123 Limitation of liability for maritime claims.

For admiralty claims arising within the United States under the provisions of the Limitation of Shipowners' Liability Act, 46 U.S.C. app. 181–188, in cases alleging injury or loss due to negligent operation of its vessel, the United States may limit its liability to the value of its vessel after the incident from which the claim arose. The act requires filing of an action in federal District Court within six months of receiving written notice of a claim. Therefore, USARCS, or the Chief Counsel, U.S. Army Corps of Engineers (COE), or his designee, must be notified within 10 working days of the receipt of any maritime claim arising in the United States or on the high seas out of the operation of an Army vessel, including pleasure craft owned by the United States. USARCS or Chief Counsel, COE will coordinate with the Department of Justice (DOJ) as to whether to file a limitation of liability action.

§ 536.124 Settlement authority for maritime claims.

(a) The Secretary of the Army, the Army General Counsel as designee of the Secretary, or other designee of the Secretary may approve any settlement or compromise of a claim in any amount. A claim settled or compromised in a net amount exceeding $500,000 will be investigated and processed and, if approved by the Secretary of the Army or his or her designee, will be certified to Congress for final approval.

(b) The Judge Advocate General (TJAG), The Assistant Judge Advocate General (TAJAG), the Commander USARCS, the Chief Counsel COE, or Division or District Counsel Offices are delegated authority to settle, such as to deny or approve payment in full or in part, any claim under this subpart regardless of the amount claimed, provided that any award does not exceed $100,000.

(c) A Staff Judge Advocate (SJA) or chief of a command claims service and heads of area claims offices (ACOs) are delegated authority to pay up to $50,000, regardless of the amount claimed, and to disapprove or make a final offer on a claim presented in an amount not exceeding $50,000.

(d) Authority to further delegate payment authority is set forth in § 536.3(g)(1) of this part. For further discussion also related to settlement and approval authority see paragraph 2–69 of DA Pam 27–162.

(e) Where the claimed amount or potential claim damage exceeds $100,000 for COE claims or $50,000 for all others, Commander USARCS will be notified immediately, and be furnished a copy of the claim and a mirror file thereafter. See § 536.30 and AR 27–20, paragraph 2–12.

Subpart I—Claims Cognizable Under Article 139, Uniform Code of Military Justice

§ 536.125 Statutory authority for Uniform Code of Military Justice (UCMJ) Claims.

The authority for this subpart is Article 139, Uniform Code of Military Justice (UCMJ) (10 U.S.C. 939, which provides redress for property willfully damaged or destroyed, or wrongfully taken, by members of the Armed Forces of the United States.

§ 536.126 Purpose of UCMJ claims.

This subpart sets forth the standards to apply and the procedures to follow in processing claims for the wrongful taking or willful damage or destruction of property by military members of the Department of the Army.

§ 536.127 Proper claimants; unknown accused—under the UCMJ.

(a) A proper claimant under this subpart includes any individual (whether civilian or military), a business, charity, or state or local government that owns, has an ownership interest in, or lawfully possesses property.

(b) When cognizable claims are presented against a unit because the individual offenders cannot be identified, this subpart sets forth the procedures for approval authorities to direct pay assessments, equivalent to the amount of damages sustained, against the unit members who were present at the scene and to allocate individual liability in such proportion as is just under the circumstances.

§ 536.128 Effect of disciplinary action, voluntary restitution, or contributory negligence for claims under the UCMJ.

(a) *Disciplinary action.* Administrative action under Article 139, UCMJ, and this subpart is entirely separate and distinct from disciplinary action taken under other sections of the UCMJ or other administrative actions. Because action under both Article 139, UCMJ, and this subpart requires independent findings on issues other than guilt or innocence, a soldier's conviction or acquittal of claim-related charges is not dispositive of liability under Article 139, UCMJ.

(b) *Voluntary restitution.* The approval authority may terminate Article 139 proceedings without findings if the soldier voluntarily makes full restitution to the claimant.

(c) *Contributory negligence.* A claim otherwise cognizable and meritorious is payable whether or not the claimant was negligent.

§ 536.129 Claims cognizable as UCMJ claims.

Claims cognizable under Article 139, UCMJ, are limited to the following:

(a) *Requirement that conduct constructively violate UCMJ.* In order to subject a person to liability under Article 139, the soldier's conduct must be such as would constitute a violation of one or more punitive Articles of the UCMJ. However, a referral of charges is not a prerequisite to action under this subpart.

(b) *Claims for property willfully damaged.* Willful damage is damage

inflicted intentionally, knowingly, and purposefully without justifiable excuse, as distinguished from damage caused inadvertently, thoughtlessly or negligently. Damage, loss, or destruction of property caused by riotous, violent, or disorderly acts or acts of depredation, or through conduct showing reckless or wanton disregard of the property rights of others, may be considered willful damage.

(c) *Claims for property wrongfully taken.* A wrongful taking is any unauthorized taking or withholding of property, with the intent to deprive, temporarily or permanently, the owner or person lawfully in possession of the property. Damage, loss, or destruction of property through larceny, forgery, embezzlement, fraud, misappropriation, or similar offense may be considered wrongful taking. However, mere breach of a fiduciary or contractual duty that does not involve larceny, forgery, embezzlement, fraud, or misappropriation does not constitute wrongful taking.

(d) *Definition of property.* Article 139 provides compensation for loss of or damage to both personal property, whether tangible or intangible, and real property. Contrast this to the Personnel Claims Act and chapter 11 of AR 27–20, which provides compensation only for tangible personal property. Monetary losses may fall into the category of either tangible property (for example, cash), or intangible property (for example, an obligation incurred by a claimant to a third party as a result of fraudulent conduct by a soldier), although recovery for losses of intangible property may be limited by other provisions of this part, such as the exclusion of theft of services (see § 536.130(f)) or consequential damages (see § 536.130(g)).

(e) *Claims cognizable under more than one statute.* Claims cognizable under other claims statutes may be processed under this subpart.

§ 536.130 Claims not cognizable as UCMJ claims.

Claims not cognizable under Article 139, UCMJ, and this subpart, include the following:

(a) Claims resulting from negligent acts.

(b) Claims for personal injury or death.

(c) Claims resulting from acts or omissions of military personnel acting within the scope of their employment, including claims resulting from combat activities or noncombat activities, as those terms are defined in the Glossary of AR 27–20.

(d) Claims resulting from the conduct of Reserve component personnel who are not subject to the UCMJ at the time of the offense.

(e) Subrogated claims.

(f) Claims for theft of services, even if such theft constitutes a violation of Article 134 of the UCMJ.

(g) Claims for indirect, remote, or consequential damages.

(h) Claims by entities in conflict with the United States or whose interests are hostile to the United States.

§ 536.131 Limitations on assessments arising from UCMJ claims.

(a) *Limitations on amount.* (1) A special court-martial convening authority (SPCMCA) has authority to approve a pay assessment in an amount not to exceed $5,000 per claimant per incident and to deny a claim in any amount. If the Judge Advocate responsible for advising the SPCMCA decides that the SPCMCA's final action under the provisions of Rule for Courts-Martial 1107 in a court martial arising out of the same incident would be compromised, the SPCMCA may forward the Article 139 claim to the general court-martial convening authority (GCMCA) for action.

(2) A GCMCA, or designee, has authority to approve a pay assessment in an amount not to exceed $10,000 per claimant per incident and to deny a claim in any amount.

(i) If the GCMCA or designee determines that a claim exceeding $10,000 per claimant per incident is meritorious, that officer will assess the soldier's pay in the amount of $10,000 and forward the claim to the Commander USARCS, with a recommendation to increase the assessment.

(ii) If the head of the area claims office (ACO) (usually the GCMCA's Staff Judge Advocate (SJA)) decides that the GCMCA's final action under the provisions of Rule for Courts-Martial 1107 in a court-martial arising out of the same incident would be compromised, that officer may forward the Article 139 claim to USARCS for action.

(3) Only TJAG, TAJAG, the Commander USARCS, or designee has authority to approve assessments in excess of $10,000 per claimant per incident.

(b) *Limitations on type of damages.* Property loss or damage assessments are limited to direct damages. This subpart does not provide redress for indirect, remote, or consequential damages.

§ 536.132 Procedure for processing UCMJ claims.

(a) *Time limitations on submission of a claim.* A claim must be submitted within 90 days of the incident that gave rise to it, unless the SPCMCA acting on the claim determines there is good cause for delay. Lack of knowledge of the existence of Article 139, or lack of knowledge of the identity of the offender, are examples of good cause for delay.

(b) *Form and presentment of a claim.* The claimant or authorized agent may present a claim orally or in writing. If presented orally, the claim must be reduced to writing, signed, and seek a definite sum in U.S. dollars within 10 days after oral presentment.

(c) *Action upon receipt of a claim.* Any officer receiving a claim will forward it within two working days to the SPCMCA exercising jurisdiction over the soldier or soldiers against whom the claim is made. If the claim is made against soldiers under the jurisdiction of two or more convening SPCMCAs who are under the same GCMCA, forward the claim to that GCMCA. That GCMCA will designate one SPCMCA to investigate and act on the claim as to all soldiers involved. If the claim is made against soldiers under the jurisdiction of more than one SPCMCA at different locations and not under the same GCMCA, forward the claim to the SPCMCA whose headquarters is located nearest the situs of the alleged incident. That SPCMCA will investigate and act on the claim as to all soldiers involved. If a claim is brought against a member of one of the other military services, forward the claim to the commander of the nearest major command of that service equivalent to a major Army command (MACOM).

(d) *Action by the special court-martial convening authority.* (1) If the claim appears to be cognizable, the SPCMCA will appoint an investigating officer within four working days of receipt of a claim. The investigating officer will follow the procedures of this subpart supplemented by DA Pam 27–162, chapter 9, and AR 15–6, chapter 4, which applies to informal investigations. The SPCMCA may appoint the claims officer of a command (if the claims officer is a commissioned officer) as the investigating officer. In cases where the special court-martial convening authority is an inactive duty soldier of the United States Army Reserve, the appointment of an investigating officer will be made within 30 calendar days.

(2) If the claim is not brought against a person who is a member of the Armed Forces of the United States at the time the claim is received, or if the claim does not appear otherwise cognizable under Article 139, UCMJ, the SPCMCA

may refer it for legal review (see paragraph (g) of this section) within four working days of receipt. If after legal review the SPCMCA determines that the claim is not cognizable, final action may be taken disapproving the claim (see paragraph (h) of this section) without appointing an investigating officer. In claims where the special court-martial convening authority is an inactive duty soldier of the United States Army Reserve, the request for a legal review will be made within 30 calendar days.

(e) *Expediting payment through Personnel Claims Act and Foreign Claims Act procedures.* When assessment action on a particular claim will be unduly delayed, the claims office supporting the SPCMA may consider the claim under the Personnel Claims Act, 31 U.S.C. 3721, and chapter 11 of AR 27–20, or under the Foreign Claims Act, 10 U.S.C. 2734, and subpart J of this part, as long as it is otherwise cognizable under that authority. If the Article 139 claim is later successful, the claims office will inform the claimant of the obligation to repay to the government any overpayment received under these statutes.

(f) *Action by the investigating officer.* The investigating officer will notify the soldier against whom the claim is made.

(1) If the soldier wishes to make voluntary restitution, the investigating officer may, with the SPCMCA's concurrence, delay proceedings until the end of the next pay period to permit restitution. If the soldier makes payment to the claimant's full satisfaction, the SPCMCA will dismiss the claim.

(2) In the absence of full restitution, the investigating officer will determine whether the claim is cognizable and meritorious under the provisions of Article 139, UCMJ, and this subpart, and the amount to be assessed against each offender. This amount will be reduced by any restitution the claimant accepts from an offender in partial satisfaction. Within 10 working days, or such time as the SPCMCA may determine, the investigating officer will submit written findings and recommendations to the SPCMCA.

(3) If the soldier is absent without leave and cannot be notified, a claims office may process the Article 139 claim in the soldier's absence. If an assessment is approved, forward a copy of the claim and the memorandum authorizing pay assessment by transmittal letter to the servicing Defense Accounting Office (DAO) for offset against the soldier's pay. If the soldier is dropped from the rolls, the servicing DAO will forward the assessment documents to: Commander, Defense Finance and Accounting Service (DFAS), ATTN: Military Pay Operations, 8899 E. 56th Street, Indianapolis, IN 46249.

(g) *Legal review.* The SPCMCA will refer the claim for legal review to its servicing legal office upon either completion of the investigating officer's report or the SPCMCA's determination that the claim is not cognizable (see paragraph (d)(2) of this section).

(1) Within five working days or such time as the SPCMCA determines, that office will furnish a written opinion as to:

(i) Whether the claim is cognizable under the provisions of Article 139, UCMJ, and this subpart.

(ii) Whether the findings and recommendations are supported by a preponderance of the evidence.

(iii) Whether the investigation substantially complies with the procedural requirements of Article 139, UCMJ; this subpart; DA Pam 27–162, chapter 9; and AR 15–6, chapter 4.

(iv) Whether the claim is clearly not cognizable (see paragraph (d)(2) of this section) and final denial action can be taken without appointing an investigating officer.

(2) If the investigating officer's recommended assessment does not exceed $5,000, the claims judge advocate (CJA) or claims attorney will, upon legal review, forward the claim to the SPCMCA for final action.

(3) If the investigating officer's recommended assessment is more than $5,000, the CJA or claims attorney will, upon legal review, forward the claim file to the head of the ACO, who will also conduct a legal review within five working days.

(i) If the recommended assessment does not exceed $10,000, the head of the ACO will forward the claim file to the GCMCA for final action.

(ii) If the recommended assessment exceeds $10,000, the head of the ACO will forward the claim file to the GCMCA for approval of an assessment up to $10,000 and for a recommendation of an additional assessment. The head of the ACO will then forward the claims file and the GCMCA's recommendation to the Commander USARCS for approval.

(h) *Final action.* After consulting with the legal advisor, the approval authority will disapprove or approve the claim in an amount equal to, or less than, the amount of the assessment limitation. The approval authority is not bound by the findings or recommendations of the investigating officer; AR 15–6, paragraph 2–3a. The approval authority will notify the claimant, and any soldier subject to that officer's jurisdiction, of the determination and the right of any party to request reconsideration (see § 536.133). A copy of the investigating officer's findings and recommendation will be enclosed with the notice. The approval authority will then suspend action on the claim for 10 working days pending receipt of a request for reconsideration, unless the approval authority determines that this delay will result in substantial injustice. If after this period the approval authority determines that an assessment is still warranted, the approval authority will direct the appropriate DAO to withhold such amount from the soldier's pay account (see § 536.131(a)). For any soldier not subject to the approval authority's jurisdiction, the approval authority will forward the claim to the commander who exercises SPCMCA jurisdiction over the soldier for assessment. The receiving SPCMCA is bound by the determination of the approval authority.

(i) *Assessment.* Subject to any limitations set forth in appropriate regulations, the servicing DAO will withhold the amount directed by the approval authority and pay it to the claimant. The assessment is not subject to appeal and is binding on any finance officer. If the servicing DAO cannot withhold the required amount because it does not have custody of the soldier's pay record, the record is missing, or the soldier is in a no pay due status, that office will promptly notify the approval authority of this fact in writing.

(j) *Remission of indebtedness.* 10 U.S.C. 4837, which authorizes the remission and cancellation of indebtedness of an enlisted person to the United States or its instrumentalities, is not applicable and may not be used to remit and cancel indebtedness determined as a result of action under Article 139, UCMJ.

§ 536.133 Reconsideration of UCMJ claims.

(a) *General.* Although Article 139, UCMJ, does not provide for a right of appeal, either the claimant or a soldier whose pay is assessed may request the approval authority (SPCMCA or GCMCA, depending on the amount assessed) or successor in command to reconsider the action. Either party must submit such a request for reconsideration in writing and clearly state the factual or legal basis for the relief requested. The approval authority may direct that the matter be reinvestigated.

(b) *Reconsideration by the original approval authority.* The original approval authority may reconsider the action at any time while serving as the approval authority for the claim in

question, even after the transfer of the soldier whose pay was assessed. The original approval authority may modify the action if it was incorrect, subject to paragraph (d) of this section. However, the approval authority should modify the action only because of fraud, substantial new evidence, errors in calculation, or mistake of law.

(c) *Reconsideration by a successor in command.* Subject to paragraph (d) of this section, a successor in command may modify an action only because of fraud, substantial new evidence, errors in calculation, or mistake of law apparent on the face of the record.

(d) *Legal review and action.* Prior to modifying the original action, the approval authority will have the servicing claims office render a legal opinion and fully explain the basis for modification as part of the file. If the legal review agrees that a return of the assessed pay is appropriate, the approval authority should request in writing that the claimant return the money, setting forth in the letter the basis for the request. There is no authority for repayment from appropriated funds.

(e) *Disposition of files.* After completing action on reconsideration, the approval authority will forward the reconsideration action to the servicing claims office, which will then file the action per § 536.132(h).

§ 536.134 Additional claims judge advocate and claims attorney responsibilities (for UCMJ claims).

In addition to the duties set forth in this subpart, the CJA or claims attorney is responsible for forwarding copies of completed Article 139 actions to USARCS, maintaining a log, monitoring the time requirements of pending Article 139 actions, and publicizing the Article 139 program to commanders, soldiers, and the community.

Subpart J—Claims Cognizable Under the Foreign Claims Act

§ 536.135 Statutory authority for the Foreign Claims Act.

(a) The statutory authority for this subpart is the Act of August 10, 1956, 10 U.S.C. 2734 (70 Stat. 154), commonly referred to as the Foreign Claims Act (FCA), as amended by Public Law 86–223, September 1959 (73 Stat. 453); Public Law 86–411, April 1960 (74 Stat. 16); Public Law 90–521, September 1968 (82 Stat. 874); Public Law 91–312, July 1970 (84 Stat. 412); Public Law 93–336, July 1974 (88 Stat. 292); Public Law 96–513, Title V, section 511 (95), December 1980 (94 Stat. 2928). It is posted on the USARCS Web site; for the address see § 536.2(a).

(b) Claims arising from the acts or omissions of the U.S. Armed Forces in the Marshall Islands or the Federated States of Micronesia are settled in accordance with Art. XV, Non-contractual Claims, of the U.S.-Marshall Islands and Micronesian Status of Forces Agreement (the "SOFA") (posted on the USARCS Web site; for the address see § 536.2(a)). This is pursuant to the "agreed upon minutes" that are appended to the SOFA, pursuant to Section 323 of the Compact of Free Association between the U.S. and the Marshall Islands and the Federated States of Micronesia, enacted by Public Law 99–239, January 14, 1986. (The Compact may be viewed at *http://www.fm/jcn/compact/relindex.html*). The "agreed upon minutes" state that "all claims within the scope of paragraph 1 of Article XV [Claims], [of the Compact] * * * shall be processed and settled exclusively pursuant to the Foreign Claims Act, 10 U.S.C. 2734, and any regulations promulgated in implementation thereof." Therefore, Title I, Article 178 of the Compact, regarding claims processing, is not applicable to claims arising from the acts or omissions of the U.S. armed forces, but only to other federal agencies. Those agencies are required to follow the provisions of the Federal Tort Claims Act, 28 U.S.C. 2672.

§ 536.136 Scope for claims arising under the Foreign Claims Act.

(a) *Application.* This subpart, which is applicable outside the United States, its commonwealths, territories and possessions, including areas under the jurisdiction of the United States, implements the FCA and prescribes the substantive basis and special procedural requirements for settlement of claims of inhabitants of a foreign country, or of a foreign country or a political subdivision thereof, against the United States for personal injury, death, or property damage caused by service members or civilian employees, or claims that arise incident to noncombat activities of the armed forces.

(b) *Effect of Military Claims Act (MCA).* Claims arising in foreign countries will be settled under the MCA if the injured party is an inhabitant of the U.S., for example, a member of the U.S. armed forces, a U.S. civilian employee, or a family member of either category. In a wrongful death case, if the decedent is an inhabitant of a foreign country, even though his survivors are U.S. inhabitants, the FCA will apply. See § 536.74(c).

(c) *Effect of Army Maritime Claims Settlement Act (AMCSA) (10 U.S.C. 4801, 4802 and 4808).* A maritime claim may be settled under the FCA.

§ 536.137 Claims payable under the Foreign Claims Act.

(a) A claim for death, personal injury, or loss of or damage to property may be allowed under this subpart if the alleged damage results from noncombat activity or a negligent or wrongful act or omission of soldiers or civilian employees of the U.S. armed forces, as enumerated in § 536.23(b), regardless of whether the act or omission was made within the scope of their employment. This includes non-U.S. citizen employees recruited elsewhere but employed in a country of which they are not a citizen. However, a claim generated by non-U.S. citizen employees in the country in which they were recruited and are employed will be payable only if the act or omission was made in the scope of employment. But claims arising from the operation of U.S. armed forces vehicles or other equipment by such employees may be paid, even though the employees are not acting within the scope of their employment, provided the employer or owner of the vehicle or other equipment would be liable under local law in the circumstances involved.

(b) Claims generated by officers or civilian employees of the American Battle Monuments Commission (36 U.S.C. 2110), acting within the scope of employment, will be paid from American Battle Monuments Commission appropriations.

(c) Claims for the loss of, or damage to, property that may be settled under this subpart include the following:

(1) Real property used and occupied under lease, express, implied, or otherwise. See § 536.34(m) of this part and paragraph 2–15m of DA Pam 27–162.

(2) Personal property bailed to the government under an agreement, express or implied, unless the owner has expressly assumed the risk of damage or loss.

§ 536.138 Claims not payable under the Foreign Claims Act

A claim is not payable if it:

(a) Results wholly from the negligent or wrongful act of the claimant or agent;

(b) Is purely contractual in nature;

(c) Arises from private or domestic obligations as distinguished from government transactions;

(d) Is based solely on compassionate grounds;

(e) Is a bastardy claim for child support expenses;

(f) Is for any item whose acquisition, possession, or transportation is in

violation of Department of the Army (DA) or Department of Defense (DOD) directives, such as illegal war trophies.

(g) Is for rent, damage, or other payments involving the acquisition, use, possession, or disposition of real property or interests therein by and for the DA. See § 536.34(m) of this part and paragraph 2–15m of DA Pam 27–162.

(h) Is not in the best interest of the United States, is contrary to public policy, or otherwise contrary to the basic intent of the governing statute (10 U.S.C. § 2734); for example, claims for property loss or damage, or personal injury or death caused by inhabitants of unfriendly foreign countries or by individuals considered to be unfriendly to the United States.

(i) Is presented by a national, or a corporation controlled by a national, of a country at war or engaged in armed conflict with the United States, or any country allied with such enemy country unless the appropriate settlement authority determines that the claimant is, and at the time of the incident was friendly to the United States. A prisoner of war or an interned enemy alien is not excluded from filing a claim for damage, loss, or destruction of personal property within the federal government's custody if the claim is otherwise payable.

(j) Is for damages or injury, the claim for which a receiving State should adjudicate and pay pursuant to an international agreement, subject to waiver by the Commander USARCS. See DA Pam 27–162, paragraph 3–4a(2), for a discussion of the conditions of waiver.

(k) Is listed in §§ 536.45 and 536.46, except for the exclusions listed in §§ 536.45(e), (h) and (k). Additionally, the exclusions set forth in §§ 536.45(a) and (b) do not apply to a claim arising incident to noncombat activities.

(l) Is brought by a subrogee.

(m) Is covered by insurance on the involved U.S. Armed Forces' vehicle or the tortfeasor's privately owned vehicle (POV), in accordance with requirements of a foreign country, unless the claim exceeds the coverage or the insurer is insolvent. See § 536.139(c).

(n) Is payable under subpart C of this part or AR 27–20, chapter 11.

(o) Is brought by or on behalf of a member of a foreign military force for personal injury or death arising incident to service, or pursuant to combined military operations. Combined military operations include exercises and United Nations and North Atlantic Treaty Organization (NATO) peacekeeping and humanitarian missions. Derivative claims arising from these incidents are also excluded.

§ 536.139 Applicable law for claims under the Foreign Claims Act.

(a) *Venue of incident and domicile of claimant.* In determining an appropriate award, apply the law and custom of the country in which the incident occurred to determine which elements of damages are payable and which individuals are entitled to compensation. However, where the claimant is an inhabitant of another foreign country and only temporarily within the country in which the incident occurred, the quantum of certain elements of damages, such as lost wages and future medical care, may be calculated based on the law and economic conditions in the country of the claimant's permanent residence. Where the decedent is the subject of a wrongful death case, the quantum will be determined based on the country of the decedent's permanent residence regardless of the fact that his survivors live in the U.S. or a different foreign country than the decedent. See § 536.77 for further damages guidance.

(b) *Other guidance.* The guidance set forth in §§ 536.77(b) through (d) as to allowable elements of damages is generally applicable. Where moral damages, as defined in DA Pam 27–162, paragraph 2–53c(4), are permitted, such damages are payable. In some countries it is customary to get a professional appraisal to substantiate certain claims and pass this cost on to the tortfeasor. The Commander USARCS or the chief of a command claims service may, as an exception to policy, permit the reimbursement of such costs in appropriate cases. Where feasible, claimants should be discouraged from incurring such costs.

(c) *Deductions for insurance.* (1) Insurance coverage recovered or recoverable will be deducted from any award. In that regard, every effort will be made to monitor the insurance aspect of the case and encourage direct settlement between the claimant and the insurer of the tortfeasor.

(2) When efforts under paragraph (c)(1) of this section are of no avail, or when it otherwise is determined that an insurance settlement will not be reasonably available for application to the award, no award will be made until the chief of the command claims service or the Commander USARCS, has first granted consent. In such cases, an assignment of the insured's rights against the insurer will be obtained and, in appropriate cases, reimbursement action will be instituted against the insurer under applicable procedures.

(3) If an insurance settlement is not available due to the insurer's insolvency or bankruptcy, a report on the bankruptcy will be forwarded to the Commander USARCS without delay, setting forth all pertinent information, including the alleged reasons for the bankruptcy and the facts concerning the licensing of the insurer.

(d) *Deductions for amounts paid by tortfeasor.* Settlement authorities will deduct from the damages any direct payments by a member or civilian employee of the U.S. armed forces for damages (other than solatia).

§ 536.140 Appointment and functions of Foreign Claims Commissions.

(a) Claims cognizable under this subpart will be referred to the command responsible for claims arising within its geographic area of responsibility, including claims transferred by agreement between the services involved. The senior judge advocate of a command having a command claims service, or his delegee, will appoint a sufficient number of Foreign Claims Commissions (FCCs) to dispose of the claims. If there is no command claims service, the responsible commander may ask the Commander USARCS for permission to establish one. Otherwise, the Commander USARCS will appoint a sufficient number of FCCs from personnel furnished by the command involved. See § 576.3(d) of this chapter for more information about command claims services.

(b) The Commander USARCS will appoint all other FCCs to act on all other claims, regardless of where such claims arose, unless they arose in a country for which single-service responsibility has been assigned to another service. FCCs appointed by the Commander USARCS at units based in the continental United States (CONUS) may act on any claim arising out of such unit's operations. Any FCC operating in, or adjudicating claims arising out of, a geographical area within a command claims service's jurisdiction, will comply with that service's legal and procedural rules.

(c) An FCC may operate as an integral part of a command claims service, which will determine the cases to be assigned to it, furnish necessary administrative services, and establish and maintain its records. Where an FCC does not operate as part of a command claims service, it may operate as part of the office or a division, corps or higher command staff judge advocate (SJA), which will perform the foregoing functions.

(d) An appointing authority who appoints or relieves an FCC whom he or she has appointed will forward one copy of each order addressing an FCC's appointment, relief, or change of responsibility to the Commander

USARCS. Upon receipt of an initial appointing order, the Commander USARCS will assign an office code number to the FCC. Without such a number the FCC has no authority to approve or pay claims. See AR 27–20, paragraph 13–1.

(e) Normally, the FCC is responsible for the investigation of all claims referred to it, using both the procedures set forth in subpart B of this part and any local procedures established by the appointing authority or command claims service responsible for the geographical area in which the claim arose. Chiefs of a command claims service may request assistance on claims investigation within their geographical areas from units or organizations other than the FCC. The Commander USARCS may make the same request for any claim referred to an FCC appointed under his or her authority.

(f) When an FCC intends to deny a claim, or offer an award less than the amount claimed, it will notify in writing the claimant, the claimant's authorized agent, or legal representative of the intended action on the claim and the legal and factual bases for that action. If the FCC proposes a partial award, a settlement agreement should be enclosed with the notice. Claimants will be advised that they may either accept the FCC action by returning the signed settlement agreement or, if dissatisfied with the FCC's action, they may submit a request for reconsideration stating the factual or legal reasons why they believe the FCC's proposed action is incorrect. This notice serves to give the claimant an opportunity to request reconsideration of the FCC action and state the reasons for the request before final action is taken on the claim. When the FCC intends to award the amount claimed, or recommend an award equal to the amount claimed to a higher authority, this procedure is not necessary. However, a settlement agreement is required for all awards, full or partial. See § 536.63(a).

(1) This notice should be given at least 30 days before the FCC takes final action, except on small claims processed pursuant to § 536.33. The notice should be mailed via certified or registered mail to the claimant. The claimant should be informed that any request for reconsideration should be addressed to the FCC that took final action, and that all materials the claimant wishes the FCC to consider should be included with the request for reconsideration.

(2) An FCC may alter its initial decision based on the claimant's response or proceed with the intended action. If the claimant's response raises a general policy issue, the FCC may request an advisory opinion from the Commander USARCS or the chief of the command claims service while retaining the claim for final action at its level.

(3) Upon completing of its evaluation of the claimant's response, the FCC will notify the claimant of its final decision and advise the claimant that its action is final and conclusive as a matter of law (10 U.S.C. 2735), unless the final decision is a recommendation for payment above its authority. In that case, the FCC will forward any response submitted by the claimant along with its claims memorandum of opinion to the approval authority, and will notify the claimant accordingly.

(4) When an FCC determines that a claim is valued at more than $50,000 or all claims arising out of a single incident are valued at more than $100,000, the file will be transferred to the Commander USARCS for further action; see § 536.143(d)(2). Upon request of the Commander USARCS, the FCC may negotiate a settlement, the amount of which exceeds the FCC's authority; however, prior approval by a higher authority is required.

(5) Every reasonable effort should be made to negotiate a mutually agreeable settlement on meritorious claims. When an agreement can be reached, the notice and response provisions above are not necessary. If the FCC recommends an award in excess of its monetary authority, the settlement agreement should indicate that its recommendation is contingent upon approval by higher authority.

(g) The chief of an overseas command claims service may delegate to a one-member FCC the responsibility for the receipt, processing, and investigation of any claim, regardless of amount, except those required to be referred to a receiving State office for adjudication under the provisions of a treaty concerning the status of U.S. forces in the country in which the claim arose. If, after investigation, it appears that action by a three-member FCC is appropriate, the one-member FCC should send the claim to the appropriate three-member FCC with a complete investigation report, including a discussion of the applicable local law and a recommendation for disposition.

§ 536.141 Composition of Foreign Claims Commissions.

(a) Normally, an FCC will be composed of either one or three members. Alternate members of three-member FCCs may be appointed when circumstances require, and may be substituted for regular members on specific cases by order of the appointing authority. The appointing orders will clearly designate the president of a three-member FCC. Two members of a three-member FCC will constitute a quorum, and the FCC's decision will be determined by majority vote.

(b) Upon approval by the Commander USARCS and the appropriate authority of another uniformed service, the membership may be composed of one or more members of another uniformed service. If another service has single-service responsibility over the foreign country in which the claim arose, that service is responsible for the claim. If requested, the Commander USARCS may furnish a JAG officer or claims attorney to be a member of another service's FCC.

§ 536.142 Qualification of members of Foreign Claims Commissions.

Normally, a member of an FCC will be either a commissioned officer or a claims attorney. At least two members of a three-member FCC must be JAs or claims attorneys. In exigent circumstances, a qualified non-lawyer employee of the armed forces may be appointed to an FCC, subject to prior approval by the Commander USARCS. Such approval may be granted only upon a showing of the employee's status and qualifications and adequate justification for such appointment (for example, lack of legally qualified personnel). The FCC will be limited to employees who are citizens of the United States. An officer, claims attorney, or employee of another armed force will be appointed a member of an Army FCC only if approved by the Commander USARCS.

§ 536.143 Settlement authority of Foreign Claims Commissions.

(a) In order to determine whether the claim will be considered by a one-member or three-member FCC, the claimed amount will be converted to the U.S. dollar equivalent (based on the annual Foreign Currency Fluctuation Account exchange rate, where applicable). However, the FCC's jurisdiction to approve is determined by the conversion rate on the date of final action. Accordingly, if the value of the U.S. dollar has decreased, the FCC will forward the recommendation to a higher authority, if necessary.

(b) Payment will be made in the currency of the country in which the incident occurred or in which the claimant resided at the time of the incident, unless the claimant requests payment in U.S. dollars or another currency and such request is approved by the chief of a command claims service or the Commander USARCS.

However, if the claimant resides in another foreign country at the time of payment, payment in an amount equivalent to that which would have been paid under the preceding sentence may be made in the currency of that third country without the approval of the Commander USARCS.

(c) A one-member FCC may consider and pay claims presented in any amount provided a mutually agreed settlement may be reached in an amount not exceeding the FCC's monetary authority. A one-member FCC may deny any claim when the claimed amount does not exceed its monetary authority. Unless otherwise restricted by the appointing authority, a one-member FCC who is a JA or claims attorney has $15,000 monetary authority, while any other one-member commission has $5,000 monetary authority.

(d) A three-member FCC, unless otherwise restricted by the appointing authority, may take the following actions on a claim that is properly before it:

(1) *Disapprove a claim presented in any amount.* After following the procedures in § 536.140, including reconsideration, the disapproval is final and conclusive under 10 U.S.C. 2735. The FCC will inform the appointing authority of its action. After it takes final action and disapproves a claim presented in any amount over $50,000, the FCC will forward to the appointing authority the written notice to the claimant required by § 536.140(f), any response from the claimant, and its notice of final action on the claim.

(2) *Approve and pay meritorious claims presented in any amount.* (i) Claims paid in full or in part for an amount not exceeding $50,000 will be paid after any reconsideration as set forth in § 536.140. This action is final and conclusive under 10 U.S.C. 2735.

(ii) Claims valued at an amount exceeding $50,000, or multiple claims arising from the same incident valued at more than $100,000, will be forwarded through the appointing authority with a memorandum of opinion to the Commander USARCS for action; see DA Pam 27–162, paragraph 2–60. The memorandum of opinion will discuss the amount for which the claimant will settle and include the recommendation of the FCC.

(e) The Judge Advocate General (TJAG), The Assistant Judge Advocate General (TAJAG) and the Commander USARCS, or his or her designee serving at USARCS, may approve and pay, in whole or in part, any claim as long as the amount of the award does not exceed $100,000; may disapprove any claim, regardless of either the amount claimed or the recommendation of the FCC forwarding the claim; or, if a claim is forwarded to USARCS for approval of payment in excess of $50,000, refer the claim back to the FCC or another FCC for further action.

(f) Payments in excess of $100,000 will be approved by the Secretary of the Army, the Army General Counsel as the Secretary's designee, or other designee of the Secretary.

(g) Following approval where required and receipt of an agreement by the claimant accepting the specific sum awarded by the FCC, the claim will be processed for payment in the appropriate currency. The first $100,000 of any award will be paid from Army claims funds. The excess will be reported to the Financial Management Service, Department of Treasury, with the documents listed in DA Pam 27–162, paragraph 2–81.

(h) If the settlement authority upholds a final offer or authorizes an award on appeal from a denial of a claim, the notice of the settlement authority's action will inform the claimant that he or she must accept the award within 180 days of the date of mailing of the notice of the settlement authority's action or the award will be withdrawn, the claim will be deemed denied, and the file will be closed without future recourse.

§ 536.144 Reopening a claim after final action by a Foreign Claims Commission.

(a) *Original approval or settlement authority (including TAJAG, TJAG, Secretary of the Army, or the Secretary's designees).* (1) An original settlement authority may reconsider the denial of, or final offer on a claim brought under the FCA upon request of the claimant or the claimants authorized agent. In the absence of such a request, the settlement authority may reconsider a claim on its own initiative.

(2) An original approval or settlement authority may reopen and correct action on an FCA claim previously settled in whole or in part (even if a settlement agreement has been executed) when it appears that the original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently received. For errors in fact, the new evidence must not have been discoverable at the time of final action by either the Army or the claimant through the exercise of reasonable diligence. Corrective action may also be taken when an error contrary to the parties' mutual understanding is discovered in the original action. If it is determined that the original action was incorrect, the action will be modified, and if appropriate, a supplemental payment made. The basis for a change in action will be stated in a memorandum included in the file. For example, a claim was settled for $15,000, but the settlement agreement was typed to read "$1,500" and the error is not discovered until the file is being prepared for payment. If appropriate, a corrected payment will be made. A settlement authority who has reason to believe that a settlement was obtained by fraud on the part of the claimant or the claimant's legal representative, will reopen action on that claim and, if the belief is substantiated, correct the action. The basis for correcting an action will be stated in a memorandum and included in the file.

(b) *A successor approval or settlement authority (including TAJAG, TJAG, Secretary of the Army, or the Secretary's designees).* (1) *Reconsideration.* A successor approval or settlement authority may reconsider the denial of, or final offer on, an FCA claim upon request of the claimant or the claimant's authorized agent only on the basis of fraud, substantial new evidence, errors in calculation, or mistake (misinterpretation) of law.

(2) *Settlement correction.* A successor approval or settlement authority may reopen and correct a predecessor's action on a claim that was previously settled in whole or in part for the same reasons that an original authority may do so.

(c) *Time requirement for filing request for reconsideration.* Requests postmarked more than five years from the date of mailing of final notice will be denied based on the doctrine of laches.

(d) *Finality of action.* Action by the appropriate authority (either affirming the prior action or granting full or partial relief) is final under the provisions of 10 U.S.C. 2735. Action upon request for reconsideration constitutes final administrative disposition of a claim. No further requests for reconsideration will be allowed except on the basis of fraud.

§ 536.145 Solatia payment.

Payment of solatia in accordance with local custom as an expression of sympathy toward a victim or his or her family is common in some overseas commands. Solatia payments are known to be a custom in the Federated States of Micronesia, Japan, Korea, and Thailand. In other countries, the FCC should consult the command claims service or Commander USARCS for guidance. Such payments are not to be made from the claims expenditure allowance. These payments are made from local operation and maintenance

funds. This applies even where a command claims service is directed to administer the command's solatia program. See, for example, United States Forces Korea Regulation 526–11 regarding solatia amounts and procedures.

Subpart K—Nonappropriated Fund Claims

§ 536.146 Claims against nonappropriated fund employees—generally.

This subpart sets forth the procedures to follow in the settlement and payment of claims generated by the acts or omissions of the employees of nonappropriated fund (NAF) activities. NAF activities include NAF or Army and Air Force Exchange Service (AAFES) facilities, post exchanges, bowling centers, officers and noncommissioned officers' clubs, and other facilities located on land or situated in a building used by an activity that employs personnel compensated from NAFs.

§ 536.147 Claims by NAFI employees for losses incident to employment.

Claims by employees for the loss of or damage to personal property incident to employment will be processed in the manner prescribed by AR 27–20, chapter 11 and will be paid from NAFs in accordance with § 536.152.

§ 536.148 Claims generated by the acts or omissions of NAFI employees.

(a) *Processing.* Claims arising out of acts or omissions of employees of NAFI activities will be processed and settled in the manner specified for similar claims against the United States, except that payment will be made from NAFs in accordance with AR 215–1 (Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalites) and § 536.152 of this part.

(b) *Procedural requirements.* Procedural requirements of this part's pertinent subparts, as stated below, will be followed except as provided in §§ 536.151 and 536.152. However, when the Nonappropriated Fund Instrumentality (NAFI) is protected by a commercial insurer (for example, flying and parachute activities), the claim will be referred to the insurer as outlined in § 536.148(d). See Department of Defense Directive (DODD) 5515.6, dated November 3, 1956, posted on the USARCS Web site (see § 536.2(a)).

(1) Claims arising within the United States, its territories, commonwealths, or possessions. Such claims will be processed in the manner prescribed by subparts C, D, E, F, H or J of this part, as appropriate.

(2) Claims arising outside the United States, its territories, commonwealths, or possessions. Such claims will be processed in accordance with the provisions of applicable Status of Forces Agreements (SOFAs) or in the manner prescribed by subparts C, D, E, F, H or J of this part, as appropriate.

(b) *Reporting and investigation.* Such claims will be investigated in accordance with AR 215–1 and subpart B of this part.

(1) *Reporting.* Personal injury, death, or property damage resulting from vehicular collisions, falls, falling objects, assaults, or accidents of similar nature will be reported immediately to the person in charge of the NAFI or activity at which it occurred. The report should be made by the employee who initially received notice of the incident, even if the individual involved denies sustaining personal injury or property damage. Upon receipt of the report of the incident, the person in charge of the NAF activity concerned will transmit the report to the area claims office (ACO) or claims processing office (CPO) for investigation.

(2) *Investigation.* Claims arising out of acts or omissions of employees of NAF activities will be investigated in the manner set forth in subpart B of this part. A determination as to whether the claim is cognizable under this section will be made as soon as practicable.

(c) *Customer complaints.* AAFES-generated complaints will be handled in accordance with Exchange Service Manual 57–2. NAFI-generated complaints will be handled in accordance with AR 215–1, chapter 3. Complaints generated by appropriated funds laundry and dry-cleaning operations will be handled in accordance with AR 210–130, chapter 2. Complaints generated by refunds of sales proceeds will be handled in accordance with Exchange Operating Procedures (EOP) 57–2.

(d) *Commercial insurance.* Certain NAFI activities (such as flying and parachute activities, and all AAFES concessionaires) may have private commercial insurance.

(1) A claims investigation under subpart B of this part will not be conducted except when the claim's estimated value may exceed the insurance policy limits. In that event, the Commander USARCS, will be notified immediately and an investigation will be conducted with a view to determining whether the United States may be liable under subparts C, D, F, H or J of this part. Otherwise, the ACO or CPO will refer the claim to the insurer and furnish copies to the USARCS AAO, as required in AR 27–20, paragraph 2–12. Assistance will be furnished to the insurer as needed. Copies of any other required investigations may be furnished to the insurer.

(2) The claim will be reviewed at key intervals to ensure that progress is being made, negotiations are properly conducted, and the file is closed. The Commander USARCS will be advised of any problems.

(3) If requested by either the insurer or NAFI officials, the appropriate claims authority will assist in or conduct negotiations.

(4) Where NAFI vehicles are required to be covered by insurance in foreign countries, the insurer will process the claim. However, if the policy coverage limit is exceeded or the insurer is insolvent, the claim may be processed under subpart G, §§ 536.114 through 536.116 (Claims arising overseas) or, if subpart G does not apply, under subparts C or J of this part. See § 536.139(c) for additional guidance.

§ 536.149 Identification of persons whose actions may generate liability.

Claims resulting from the acts or omissions of members of the classes of persons listed below may be processed under this section. An ACO or a CPO authority will ask the Commander USARCS, for an advisory opinion prior to settling any claim where the person whose conduct generated the claim does not clearly fall within one of the following categories:

(a) Civilian employees of NAFI activities whose salaries are paid from NAFs.

(b) Active duty military personnel while performing off-duty part-time work for which they are compensated from NAFIs, not to include members who are acting in their capacity as an officer or other official of the NAFI.

(c) Volunteers serving in an official capacity in furtherance of the business of the United States, limited to those categories set forth in DA Pam 27–162, paragraph 2–45d.

§ 536.150 Claims payable from appropriated funds.

Claims payable from appropriated funds (APFs) will be processed under the appropriate subpart. Appropriated fund payable claims include those resulting from:

(a) Acts or omissions of military personnel while performing assigned military duties in connection with NAFI activities.

(b) Acts or omissions of civilian employees paid from appropriated funds in connection with NAFI activities.

(c) Negligent maintenance of an appropriated funds facility used by a NAFI activity but for which the Department of Defense or Department of the Army (DA) command concerned is responsible and has been notified of the deficiency by the NAF. Where liability is determined to exist for both a NAFI and an appropriated fund activity, liability will be apportioned between the two activities.

(d) Temporary use of a NAFI facility by an appropriated fund activity.

(e) Operation of government owned or rented vehicles on authorized missions for NAFI activities where the driver is a DA soldier or civilian employee and is paid from APFs.

§ 536.151 Settlement authority for claims generated by acts or omissions of NAFI employees.

(a) *Settlement.* Claims cognizable under this section and processed under subparts C, D, E, G, H or J of this part will be settled by claims authorities authorized to settle claims under those subparts subject to the same monetary and denial authority limitations, except that The Judge Advocate General (TJAG), The Assistant Judge Advocate General (TAJAG), and the Commander USARCS may settle such claims without regard to monetary limitations. However, the approval of the Attorney General or Assistant General Counsel may be required for an apportioned amount to be paid from APFs when subpart D of this part procedures are used and the amount to be paid from APFs exceeds $200,000. Similarly, approval of TAJAG, the Attorney General or the Assistant General Counsel is required when using procedures under subparts C, F, H, or J of this part and an apportioned amount to be paid from APFs exceeds the limits set for the Commander, USARCS.

(b) *Finality of settlement.* A determination made by a claims settlement authority on a claim processed under subpart D of this part is subject to suit. A claim processed under subparts C or F of this part may be appealed. Claims processed under subparts C, D, E, H, or J of this part, or AR 27–20, chapter 11 may be reconsidered in accordance with the sections addressing reconsideration in those subparts (or paragraphs in the case of Chapter 11).

§ 536.152 Payment of claims generated by acts or omissions of NAFI employees.

(a) The settlement or approval authority will forward the appropriate payment documents to the office listed in DA Pam 27–162, paragraph 2–80h, for payment.

(b) Reimbursement to a foreign country of the United States' pro rata share of a claim paid pursuant to an international agreement will be made from NAFs.

§ 536.153 Claims involving tortfeasors other than nonappropriated fund employees: NAFI contractors.

AAFES concessionaires and NAFI contractors, such as entertainment performers or groups, carnival operators, and fireworks displayers are considered independent contractors and claims arising from their activities should be disposed of as set forth in DA Pam 27–162, paragraph 2–15f. If a dispute arises as to the availability of liability or workers compensation insurance the claims should be referred to AAFES Dallas (see address in § 536.30(e)(4)) or the Central Insurance Fund, U.S. Army Community and Family Support Agency as applicable.

§ 536.154 Claims involving tortfeasors other than nonappropriated fund employees: NAFI risk management program (RIMP) claims.

The risk management program (RIMP) is administered by the U.S. Army Community and Family Support Center under the provisions of AR 215–1 and AR 608–10 (Family Child Care Provider Claims). Providers in order to encourage authorized personnel, that is, military and civilian employees, to use the family child care program and sports equipment, such claims are processed in a manner similar to NAFI claims in §§ 536.146 through 536.152 of this subpart. Certain claims are payable from nonappropriated funds even though the U.S. is not liable under the FTCA or the MCA as the tortfeasor is not an appropriated fund or nonappropriated fund employee.

§ 536.155 Claims payable involving tortfeasors other than nonappropriated fund employees.

(a) Non-NAFI RIMP claims can arise from the activities of:

(1) Members of NAFIs or authorized users of NAFI sports equipment or devices for recreational purposes, while using such property, except real property, in the manner and for the purposes authorized by DA regulations and the charter, constitution, and bylaws of the particular NAF activity.

(2) Family child care providers, authorized members of the provider's household and approved substitute providers while care under the family child care program is being provided in the manner prescribed in AR 608–10, except as excluded below. Such claims are generally limited to injuries to, or death of, children receiving care under the family child care program that are caused by the negligence of authorized providers. Claims arising from the transportation of such children in motor vehicles and claims involving loss of or damage to property are not cognizable.

(b) An ACO or a CPO will ask the Commander USARCS for an advisory opinion prior to settling any non-NAFI RIMP claim where the person whose conduct generated liability does not fall clearly within the categories listed above. Such authorities may also ask, through the Commander USARCS, for an advisory opinion from the U.S. Army Community and Family Support Center prior to settling any claim arising under paragraph (a)(2) of this section, where it is not clear that the injured or deceased child was receiving care within the scope of the family child care program.

(c) Where liability has been determined to exist for both non-NAFI RIMP and APF activities, liability will be apportioned between the two activities.

(d) The total payment for all claims (including derivative claims), arising as a result of injury to, or death of, any one person is limited to $500,000 for each incident. Continuous or repeated exposure to substantially the same or similar harmful activity or conditions is treated as one incident for purposes of determining the limits of liability.

§ 536.156 Procedures for claims involving tortfeasors other than nonappropriated fund employees.

(a) *Reporting.* Non-NAFI RIMP claims (regardless of the amount claimed) and incidents that could give rise to non-NAFI RIMP claims will be reported to USARCS and the Army Central Insurance Fund immediately.

(b) *Investigation.* ACOs and CPOs are responsible for the investigation of non-NAFI RIMP claims. Such investigation will be closely coordinated with program managers responsible for the activity generating the claim. Close coordination with USARCS is also required, and USARCS will maintain mirror files containing the investigative materials of all actual and potential claims.

(c) *Payment.* Non-NAFI RIMP claims will be transmitted for payment to: The Army Central Insurance Fund, ATTN: CFSC–FM–I, 4700 King Street, Alexandria, VA 22302–4406.

(d) *Commercial insurance.* The provisions of § 536.148(d) also apply to claims arising under this section, except that in claims involving family child care providers, a claims investigation will be conducted regardless of whether commercial insurance exists.

§ 536.157 Settlement/approval authority for claims involving tortfeasors other than nonappropriated fund employees.

(a) *Settlement authority.* TJAG, TAJAG, and the Commander USARCS are authorized to approve in full or in part, or deny a non-NAFI RIMP claim, regardless of the amount claimed, except where an apportioned amount to be paid from APFs exceeds their monetary authority and the action of the Attorney General or Assistant General Counsel is required as set forth in § 536.151(a).

(b) *Approval authority.* (1) The staff judge advocate, Commander or chief of a command claims service, and a head of an area claims office are authorized to approve in full or in part non-NAFI RIMP claims presented in the amount of $50,000 or less, provided the acceptance is in full settlement and all claims and potential claims arising out of a single incident do not exceed $100,000.

(2) The above authorities are not delegated authority to deny or make a final offer on a claim under this section. Claims requiring such action will be forwarded to the Commander USARCS with an appropriate recommendation.

(c) *Finality of settlement.* A denial or final offer on a non-NAFI RIMP claim is final and conclusive and is not subject to reconsideration or appeal.

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Part III

Department of Energy

10 CFR Part 950
Standby Support for Certain Nuclear Plant Delays; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 950

RIN 1901–AB17

Standby Support for Certain Nuclear Plant Delays

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (Department) is adopting, with changes, the interim final rule published on May 15, 2006. This interim final rule established a new part to implement section 638 of the Energy Policy Act of 2005, which authorizes the Secretary of Energy to enter into Standby Support Contracts with sponsors of advanced nuclear power facilities to provide risk insurance for certain delays attributed to the regulatory process or litigation.

DATES: *Effective Date:* This final rule will become effective on September 11, 2006, except for §§ 950.10(b), 950.12(a) and 950.23 which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Department of Energy will publish a document in the **Federal Register** announcing the effective date of those sections.

FOR FURTHER INFORMATION CONTACT: Kenneth Chuck Wade, Project Manager, Office of Nuclear Energy, NE–30, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington DC 20585, (301) 903–6509; or Marvin Shaw, Attorney-Advisor, U.S. Department of Energy, Office of the General Counsel, GC–52, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2906.

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I. Section 638 of the Energy Policy Act of 2005

On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (the Act) (Pub. L. 109–58, 119 Stat. 594). Section 638 of the Act addresses the President's proposal to reduce uncertainty in the licensing of advanced nuclear facilities. (42 U.S.C. 16014). The purpose of section 638 is to facilitate the construction and full power operation of new advanced nuclear facilities by providing risk insurance for such projects. Such insurance is intended to reduce certain regulatory and litigation risks for sponsors that are beyond their control in order to encourage investment in the construction of new advanced nuclear facilities. By providing insurance to cover certain of these risks, the Federal government can reduce the financial risk to project sponsors that invest in advanced nuclear facilities, which the Administration and Congress believe are necessary to promote a more diverse and secure supply of energy for the Nation.

Section 638 contains a number of provisions to establish the Standby Support Program (the "Program"). These provisions are related to (1) the Secretary's authority to enter into contracts and details related to such contracts, (2) the establishment of funding accounts, (3) the funding of these accounts, (4) the types of regulatory and litigation delays Congress determined were to be covered by the Program, (5) the types of delays that Congress determined were to be excluded from coverage, (6) the maximum amount of coverage available for up to six advanced nuclear facilities with a distinction made for the initial two reactors and the subsequent four reactors, (7) the types of costs to be covered by the Program, (8) the requirements for a sponsor of an advanced nuclear facility, and (9) reporting requirements by the Nuclear Regulatory Commission ("Commission").

Section 638(g) requires the Department to issue regulations to carry out section 638. This section directs the Secretary to issue an interim final rule within 270 days after enactment of the Act and to adopt final regulations within one year after enactment.

II. Rulemaking History

Prior to developing and issuing this final rule, the Department held a public workshop and published two **Federal Register** notices: a Notice of Inquiry (NOI) (70 FR 71107, November 25, 2005) and an interim final rule (71 FR 28200, May 15, 2006).

The NOI discussed the major topics related to section 638, including the types of sponsors and facilities covered, the Secretary's contracting authority, appropriations and funding accounts, covered and excluded delays, covered costs and requirements, and disagreements and dispute resolution. The NOI included a general request for comments and identified certain topics on which the Department specifically requested comments. Among other matters, the Department sought comment about how the statute could be implemented most effectively to achieve the objective of reducing the risks associated with certain delays in the advanced nuclear facility licensing process and thereby facilitate the expeditious construction and operation of new advanced nuclear facilities.

On December 15, 2005, the Department sponsored a public workshop to allow the public to provide oral comments about section 638 and the NOI. Over 60 people attended the public workshop. A transcript of the proceedings is posted at *www.nuclear.gov*. The Department received nine written comments on the NOI, including comments from the Commission, a nuclear energy trade association, several utilities and other potential sponsors, an economic consulting firm, and a public advocacy group. In addition to responding to the questions posed in the NOI, the commenters provided their general views on implementing section 638.

On May 6, 2006, the Department issued an interim final rule that established a new part 950 in Title 10 of the Code of Federal Regulations (CFR), *Standby Support for Certain Nuclear Plant Delays*. The rule includes five subparts that set forth the procedures, requirements and limitations for the award and administration of Standby Support Contracts that indemnify a project sponsor of certain costs that may be incurred due to a delay in full power operation of the sponsor's advanced nuclear facility.

Subpart A set forth the purpose, scope and applicability, and definitions of the regulation. Subpart B set forth provisions addressing the Standby Support Contract process, including the process whereby a sponsor and the Program Administrator[1] enter into a

[1] In this notice of final rulemaking, the Department distinguishes among the terms

Conditional Agreement prior to a Standby Support Contract, obligations of a sponsor prior to entering into a Conditional Agreement, the provisions of that Conditional Agreement, conditions precedent that must be satisfied prior to entering into a Standby Support Contract, funding issues related to the Standby Support Program, reconciliation of costs, and termination of a Conditional Agreement. Subpart B also addressed the provisions for each Standby Support Contract. These include general contract terms, such as the contract's purpose, the advanced nuclear facility that is the subject of the contract, the sponsor's contribution, the maximum aggregate compensation, the term of the contract, cancellation provisions, termination by sponsor, assignment, claims administration, and dispute resolution; and specific contract terms that implement section 638's provisions related to covered events, exclusions, covered delay, and covered costs. Subpart C set forth the claims administration process, including the submission of claims and payment of covered costs under a Standby Support Contract. Subpart D set forth provisions related to dispute resolution, including disputes involving covered events and disputes involving covered costs. In each case, subpart D provided a two-step process, first requiring non-binding mediation and then binding arbitration, if the parties cannot reach agreement. Subpart E set forth miscellaneous provisions about the Department's authority to monitor and audit a sponsor's activities and the public disclosure of information provided by a sponsor to the Department.

The Department received four written comments addressing the interim final rule, including comments from a nuclear industry trade association, two utilities, and a public advocacy group. In telephone communications and a meeting, interested persons provided verbal communications to Department representatives that addressed the same issues raised in written comments on the interim final rule. The Department responds to all the relevant comments in section III of the preamble to this final rule.

"Program Administrator," "Claims Administrator," and "Department." "Program Administrator" is used to identify situations in which a Department representative executes a Conditional Agreement or a Standby Support Contract; "Claim Administrator" is used to identify situations in which a Department representative administers the claims process; and "Department" is used to identify general statements of policy and situations involving more general matters such as funding and appropriations.

III. Final Rule

A. Overview

In today's final rule, the Department has largely adopted the provisions set forth in the interim final rule. The revised 10 CFR part 950 adopted by this final rule will become effective thirty days after the final rule's publication in the **Federal Register**. The changes between the interim final rule and the final rule will not have any effect, given that the Department anticipates that no sponsor will apply for a combined license until after the final rule takes effect later in 2006. In addition to some editorial and other non-substantive changes that modify and clarify the interim final rule, particularly in subparts C and D, the Department is making the following changes including:

- In section 950.3, the definition for "litigation" has been modified to include "local courts;" (See also 950.14(a)(4))
- In section 950.3, the definition for "pre-operational hearing" has been modified to state "any Commission hearing, that is provided for in 10 CFR part 52, after issuance of the combined license that is provided for in 10 CFR part 52;" (See also 950.14(a)(3))
- In section 950.11(b), the following clarifying sentence has been added: "A sponsor may elect to allocate 100 percent of the coverage to either the Program Account or the Grant Account."
- In section 950.11(c)(1), the following clarifying sentence has been added with respect to funding: "Covered costs paid through the Program Account are backed by the full faith and credit of the United States;"
- In section 950.11(e), the provision addressing the process by which the anticipated contributions are specified in the Conditional Agreement has been clarified;
- In section 950.12(c), the provision on limitations to entering into a Standby Support Contract has been modified;
- In section 950.12(d), the following section has been added with respect to abandonment of a project and cancellation by the Department: "(1) If the Program Administrator cancels a Standby Support Contract for abandonment pursuant to 950.13(f)(1), the Program Administrator may re-execute a Standby Support Contract with a sponsor other than a sponsor or that sponsor's assignee with whom the Department had a cancelled contract, provided that any such replacement Standby Support Contract is executed in accordance with the terms and conditions set forth in this part, and shall be deemed to be one of the subsequent four reactors under this part. (2) Not more than two Standby Support Contracts may be re-executed in situations involving abandonment and cancellation by the Program Administrator."
- In section 950.13(f), the following has been added with respect to cancellation of a Standby Support Contract: "(1) If the sponsor abandons construction, and the abandonment is not caused by a covered event or force majeure, the Program Administrator may cancel the Standby Support Contract by giving written notice thereof to the sponsor and the parties have no further rights or obligations under the contract."
- In section 950.13(h), the following has been added with respect to assignment of payments: "The Program Administrator shall permit the assignment of payment of covered costs with prior written notice to the Department."
- In section 950.13(k), the following has been added with respect to reestimation under the Federal Credit Reform Act (FCRA) of 1990: "The sponsor is neither responsible for any increase in loan costs, nor entitled to recoup fees for any decrease in loan costs, resulting from the re-estimation conducted pursuant to FCRA."
- In section 950.14(b), certain types of excluded events have been deleted.
- In section 950.14, an additional section, 950.14(e), has been added to address adjustments to the inspections, tests, analysis and acceptance criteria (ITAAC) schedule.
- In section 950.20, the following has been added with respect to exclusions: "the Department is required to establish an exclusion in accordance with 950.14(b)."
- Sections 950.21, 950.22, and 950.24 have been modified to add information reporting requirements and to clarify the Department's role in establishing an exclusion.
- Subpart D has been revised to specify that dispute resolution will be administered by the Civilian Board of Contract Appeals.

The preamble first provides a section-by-section response to the specific comments on the interim final rule and explains modifications from the interim final rule to the final rule. The preamble then provides a detailed discussion of the Standby Support Program's estimated costs.

B. Section-by-Section Analysis

Section 950.1—Purpose

In section 950.1 of the interim final rule, the Department stated that "The

purpose of this part is to facilitate the construction and full power operation of new advanced nuclear facilities by providing risk insurance for certain delays attributed to the Nuclear Regulatory Commission regulatory process or to litigation."

The public advocacy group commented that the Department should avoid using taxpayer funds to provide an expensive subsidy to the nuclear industry. Industry commenters stated that they believe the program should provide broad coverage and financial certainty.

The Department notes that Congress specifically authorized the Standby Support Program and provided explicit direction on calculating the premium for the insurance and allocating this premium between appropriated funds and funds from sponsors or other non-Federal sources. The Department has sought to ensure that, in implementing this authorization and direction, it put in place a Program that facilitates the construction and full power operation of new advanced nuclear facilities, protects taxpayer funds, reflects both the magnitude of the risk presented and the protection provided against that risk, and avoids undermining the safety of constructing advanced nuclear facilities. The Department continues to believe that the regulations developed by the Department are appropriate and necessary to effectuate section 638's objectives.

Multiple Incentive Programs

The Department requested comment on whether sponsors should be eligible to participate in multiple Federal Government loan guarantee or other programs intended to incentivize the construction and operation of nuclear facilities and, if so, whether clarification is needed on issues such as the amounts an entity can receive under more than one Federal program.

In response to the interim final rule, industry commenters stated that participation in the different programs established under the Act should not limit a project sponsor's eligibility for any of these programs, or the amounts that a sponsor can receive under them. Industry commenters stated that the objective of these incentives is to facilitate and encourage the construction and full power operation of new advanced nuclear facilities and that the programs are complementary, not exclusive. For example, commenters stated that the cost of any loan guarantee should be adjusted downward to reflect the reduced risk of default on the underlying debt obligation as a result of the Standby Support Program. The public advocacy group stated that the nuclear industry includes some of the country's wealthiest companies and should not be eligible for numerous subsidies for the same plant.

The Department has determined that the Act does not prohibit a sponsor from acquiring for a specific facility more than one, or even all, of the various forms of incentives provided under the Act. Therefore, in this final rule, the Department is not prohibiting a sponsor from being eligible for all of the incentive programs for which the Act makes it eligible.

Section 950.3—Definitions

Advanced nuclear facility. In the notice of interim final rulemaking, the Department took the definition of "advanced nuclear facility" verbatim from the Act. The Department further noted that there are likely no reactor designs that have been approved after December 31, 1993 that are "substantially similar" to designs that were certified before that date for which potential project sponsors have suggested interest. Nevertheless, the Department reserved the right to make a final determination if a project sponsor chooses a design that the Department has not anticipated.

The Department received two comments addressing this issue. The public advocacy group stated that companies should not be encouraged to apply for design certification at the same time as a combined license. In contrast, the industry trade association generally agreed with the definition in the interim final rule, yet requested that the Department clarify the use of the word "approved," particularly with respect to what constitutes design approval. Industry further stated that under the Commission's rules in 10 CFR part 52, Commission design approval may be obtained in two ways. The design may be certified in a rulemaking proceeding, or the design may be approved in the combined licensing proceeding itself. The trade association stated that the Act does not address these two paths to design approval, and requested that the final rule state explicitly that either path to design approval is acceptable under the rule.

The Department agrees with the trade association's comment that the pathway for approval is subject to the Commission's rules under 10 CFR part 52, and that design approval may be obtained by either path. Nevertheless, the Department has determined that there is no reason to amplify or alter the statutorily specified definition. Consistent with section 638, the definition at section 950.3 states that an advanced nuclear facility must be approved by the Commission and makes no distinction as to when or how such approval is issued other then what is stated in section 638 (i.e., "the approval is made after December 31, 1993.") Although the Department agrees that sponsors should be encouraged to obtain design approval prior to filing a combined license application with the Commission, thereby expediting the combined license review process, such a stringent requirement is not mandated by the Act and is not necessary to support the purposes of the Standby Support Program.

Covered Event—Litigation. Section 638(c)(1)(B) refers to "litigation that delays the commencement of full-power operations * * *" In the interim final rule, the Department defined litigation to include only adjudication in State, federal, or tribal courts, including appeals of Commission decisions related to the combined license to such courts, and excluding administrative litigation that occurs at the Commission related to the combined license process. (See also section 950.14(a)(4) which addresses covered events.)

The Department received divergent comments on the definition of litigation. The public advocacy group expressed concern that the definition for litigation was overly expansive, claiming that it should cover only frivolous lawsuits; on the other hand, industry commenters believed it was not expansive enough. The public advocacy group disagreed with including in the definition appeals of Commission decisions to the courts and in including litigation involving safety or security issues. The industry commenters requested that administrative litigation that occurs at the Commission related to the combined license should not be excluded from the definition. The industry trade association stated that Congress did not intend to condition the coverage based on the type of litigation causing the delay or when such delay occurs. Further, the industry commenters objected to the Department's interpretation that only litigation resulting in a court order enjoining the sponsor's actions would be eligible as a covered delay.

As explained in the interim final rule, the Department has broad authority to interpret the terms in section 638, including the terms "litigation" and "pre-operational hearing." After reviewing the comments in light of section 638, the Department has determined that it is appropriate to adopt the definition in the interim final, except for minor changes as discussed below.

Section 638(c) sets forth three types of events for coverage, which Congress terms "Inclusions." These are (1) ITAAC-related delays, (2) pre-operational hearings, and (3) litigation. Based on this statutory delineation, the Department has determined that most of the requested changes to the definition set forth in the interim rule would be inappropriate and inconsistent with section 638. With respect to the public advocacy groups' request to include only frivolous lawsuits and to exclude appeals of Commission decisions to the courts, the Department has determined that such an interpretation would be inconsistent with the reference in section 638(c)(1)(B), without qualifications, to litigation that delays commencement of full power operation of the advanced nuclear facility. Obviously, litigation that is not "frivolous" has the potential to delay full operation of a facility. Moreover, what constitutes a "frivolous" lawsuit can itself be a question involving substantial uncertainty and the Department believes it would be counter to the purposes of section 638 to import this uncertainty into the Standby Support Program.

With respect to industry's specific requests, the Department has determined that most of them would likewise be inconsistent with the reference in section 638(c)(1)(B). Even if one assumes that the term "litigation" is ambiguous, the Department has determined that as a matter of policy, industry's suggested expansions of the term litigation are inappropriate, except for including litigation in local courts. Industry requested that the Department expand the definition of "litigation" to include any administrative litigation that occurs at the Commission related to the combined licensing process, and arbitration proceedings and orders. The Department reaffirms its previous determination that since section 638(c)(1)(A) covers the risk of pre-operational hearings and Commission review of ITAACs, the reference in section 638(c)(1)(B) to litigation should be interpreted to mean litigation outside the context of the Commission proceeding on the combined license. For the Department to adopt the industry's recommendation to interpret the term "litigation" even more broadly would effectively nullify these distinctions and undermine Congressional intent. The industry's recommended broad interpretation also likely would increase the risk that a covered event would occur and the insurance be triggered, thereby increasing (perhaps substantially) the premium for the risk insurance. The Department has determined that the better approach is to define each covered delay clearly and distinctly recognizing section 638's structure which delineates only certain delays that are eligible for cost recovery by categories, i.e., ITAAC-related delays, pre-operational hearings, and litigation.

With respect to the exclusionary language for administrative litigation at the Commission that is in the definition of litigation, this language is intended to clearly distinguish between proceedings that are conducted before the Commission from litigation that is conducted before a court of law. The Department could remove the exclusion language from the definition of litigation, but the effect would be the same. That is, a sponsor could be covered for delays associated with litigation that occurs in a court of law outside the context of the Commission, e.g., in state, federal, tribal or local courts. This definition of litigation precludes coverage for any form of proceeding that occurs before the Commission, whether or not the exclusion is expressly stated in the definition. Accordingly, the Department has determined that it would be inappropriate and unnecessary to remove the exclusion for other administrative litigation at the Commission.

Furthermore, the Department notes that by defining litigation to include only litigation in the courts, it is also excluding administrative litigation at federal or state agencies other than the Commission. As explained above, the Department interprets the Act to provide coverage for specific events. Even though proceedings at other federal or state agencies may be referred to as "administrative litigation" and may affect the sponsor's ability to construct or operate an advanced nuclear facility, the Department does not believe the language of the Act is properly interpreted to include those proceedings within the definition of litigation. Such an interpretation requested by the commenters would significantly expand the definition of litigation beyond the Act's objectives. As a consequence, it would also increase the cost of the risk insurance program. The Department notes, however, that such administrative proceedings may lead to court litigation and, as such, coverage for delays may be possible under the Standby Support Contract.

Similarly, the Department has determined that it would be inappropriate to expand the term litigation to cover "arbitration" which is defined as "a method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding." *Black's Law Dictionary Eighth Edition* (2004). It is generally understood that such dispute resolution is outside of litigation and the court system. The Department's exclusion of arbitration from the definition of litigation is not intended to discourage parties from alternative forms of dispute resolution. Rather, the Department recognizes the value of arbitration, either to avoid litigation or as a mechanism to end litigation in court (in which case the arbitration would be encompassed by the litigation giving rise to the arbitration and thus, as a practical matter, would be covered), but believes that it is an overly broad view of the term litigation not within the coverage of section 638. The Department also notes that making the term more expansive would result in increased cost of the risk insurance and the program.

Covered events—Pre-operational Hearings. In the interim final rule, the Department defined pre-operational hearing to mean "a hearing held pursuant to the Commission's regulation in 10 CFR 52.103." In the preamble of the interim final rule, the Department stated that it would be inappropriate and unnecessary to broaden the term to include all hearings taking place prior to operation or fuel load.

The industry trade association expressed its view that Congress did not intend to limit this coverage to only the hearing provided for in 10 CFR 52.103, but to any other hearings the Commission holds with respect to the part 52 licensing procedure and any Commission appeals or remands associated with the hearing. The industry trade association provided the example of hearings that may be requested, pursuant to 10 CFR 52.97, in the event a sponsor makes modifications, additions, or deletions to the combined license. It further stated that such a limitation would be contrary to Congress's intent to provide protection from delays resulting from the untested licensing process, and to remove this regulatory uncertainty as a barrier to the development of new nuclear power plants.

Based on further review, the Department has determined that it is appropriate to provide coverage for other types of Commission pre-operational hearings that occur after issuance of a combined license that are directly related to the part 52 proceeding on the combined license and are so referenced in the regulation. For

example, the Department notes that under part 52, the Commission addresses the situation where, prior to fuel load or initial operations, a party may petition to modify the terms or conditions of the combined license and in so doing may invoke procedures for a non-mandatory hearing. Thus, an expansion of the definition of pre-operational hearing to include such hearings is consistent with the language in section 638(c)(1). It is also consistent with the distinction in that section to provide coverage for two separate events: pre-operational hearings by the Commission and litigation. Based on these considerations, the Department has revised the definition for pre-operational hearing to state "any hearing held by the Commission after issuance of the combined license that is provided for by part 52."

However, the Department has determined that the Act's language should not be interpreted so broadly as to categorically include in the definition of pre-operational hearings any and all Commission appeals or remands associated with the hearing. The Act defines a covered delay as "the conduct of pre-operational hearings by the Commission." Like the term litigation, the term pre-operational hearing is subject to interpretation. The Department has determined that as a matter of policy, the industry's suggested expansion of this definition is inappropriate. The Department recognizes that the outcome of a Commission hearing may result in additional proceedings, such as appeals and remands, which may in turn cause a delay in construction or operations. A similar outcome is also possible in the context of litigation. Nevertheless, the Department does not believe it is appropriate or necessary to define the terms pre-operational hearings or litigation to necessarily include those additional proceedings. Rather, the Department believes that it is appropriate to determine through the claims administration process whether based on the facts of the case any ensuing proceedings are part of, or the same as, the pre-operational hearing or litigation that is a covered event. The Department notes that such additional proceedings may fall within the category of an excluded event, e.g., events within the control of the sponsor.

Full power operation. In the interim final rule, the Department defined "full power operation" to mean the point at which the sponsor first synchronizes the advanced nuclear facility to the electrical grid. This is typically at a power level in the range of 10 to 25 percent.

Industry commenters stated that definition fails to recognize adequately that full-scale commercial operation could be delayed by judicial or administrative proceedings even after a new plant has reached 10–25 percent power levels. Industry commenters argued that what they viewed as by narrowly defining the term, the Department is attempting to shift that risk back to sponsors and their investors and lenders, which they viewed as impermissible. The industry trade association recommended that the definition of "full-power operation" include two triggers: (1) Power output level at or near 100 percent of its nameplate capacity and (2) the completion and resolution of any pending or ongoing hearings or litigation.

As explained in the interim final, the Department has determined that it has broad authority to interpret the terms in section 638, especially undefined terms such as "full power operation." The Department concludes that the definition of full power operation in the interim final rule is appropriate, given that initial synchronization to the electric grid provides a clear, unambiguous point in time at which a new nuclear facility would have the ability to generate revenue. The Department views the industry's recommendation for power output at or near 100 percent as far too open-ended, given that a sponsor could make a business or operational decision to operate a facility at a level of less than 100 percent for a very long time or even permanently; there is no good reason why such a situation should result in long-term or permanent coverage for the reactor under the Program. The Department agrees that the sponsor should be eligible to submit claims for covered events prior to the resolution of pending or ongoing hearings or litigation, so long as full power operation has not commenced. Accordingly, the resolution of any pending or ongoing hearings or litigation is confined to those events that happen prior to first grid synchronization. Based on this analysis, the Department has determined that it would be inappropriate to modify the definition for full power operation.

Incremental Costs. In the interim final rule, the Department specified that "incremental costs" mean the incremental difference between: (1) The fair market price of power purchased to meet the contractual supply agreements that would have been met by the advanced nuclear facility but for a covered delay; and (2) the contractual price of power from the advanced nuclear facility subject to the delay.

The Department received two comments addressing this issue. The industry trade association commented that the concept of incremental costs is applicable to new nuclear power plants constructed as merchant power generators. However, it stated that a nuclear plant built by a regulated utility as part of its rate base may not have a contract to sell the output from the facility because the plant's output becomes part of general system supply. The trade association commented that if the nuclear plant start is delayed, a regulated utility may have to purchase power from the market to cover needs, or it may be able to supply that shortfall from general system supply. If it does purchase power, the provisions related to fair market price at section 950.25(2)(i) would apply. However, if the utility does not purchase replacement power from the market, the commenter requested that the regulations provide an alternative means to calculate the fair market price for covering demand from within its system.

The public advocacy group stated that the term "fair market price of power" needs further clarification within the regulations. Specifically, it requested that the Department make a distinction between "merchant power plants," which are only selling into the "market," and power plants that are in a utility's "rate base" and selling to retail customers under state regulation.

The Department has determined that it is neither necessary nor appropriate to create an alternative cost recovery mechanism for a sponsor that does not contract for replacement power from the market. Section 638 provided clear directions for mitigating a sponsor's delay cost for debt and contractual supply agreements. By allowing a sponsor to mitigate its cost of delay through one or both mechanisms, the Department believes that cost mitigation has been addressed for the scenarios highlighted by industry. In addition, the Department believes that the definition of "fair market price" stated in the interim final rule is sufficient and addresses potential gaming scenarios, given that the determination of the fair market price is the lower of two options: (A) The actual cost of the short-term supply contract for replacement power, purchased by the sponsor, during the period of delay, or (B) for each day of replacement power by its day-ahead weighted average index price in $/MWh at the hub geographically nearest to the advanced nuclear facility as posted on the previous day by the Intercontinental

Exchange (ICE) or an alternate electronic marketplace deemed reliable by the Department.

Sponsor. In the interim final rule, the Department defined "sponsor" to mean any person that has "applied for" a combined license and such application by the person has been docketed by the Commission. The Department believed that such a definition was necessary to ensure that an application was sufficient for docketing by the Commission.

The nuclear trade association requested that the term sponsor be expanded to address situations in which several entities apply for a combined license. Specifically, it requested that the term "sponsor" be defined in section 950.3 of the regulation to mean

> "a person or persons whose application for a combined license for an advanced nuclear facility has been docketed by the Commission. Multiple applicants involved in the same advanced nuclear facility are considered a single sponsor. Where multiple applicants are involved, the applicant for authority to operate the advanced nuclear facility is designated the lead sponsor and acts as the sponsor for purposes of these regulations. The lead sponsor is responsible to the Department for providing information, making or receiving notices, and administering claims on behalf of the applicants. Applicants having an ownership share in the advanced nuclear facility share in the benefits and obligations of the Standby Support Agreement in pro rata proportion to their NRC licensed ownership in the advanced nuclear facility."

The Department generally agrees with the goal of the comment that multiple sponsors should define their relationships and obligations. Nevertheless, the Department believes that it is inappropriate and unnecessary to specify by regulation such an arrangement, particularly since the term "sponsor" is expressly defined in section 638, and a sponsor or sponsors that have made such arrangements would qualify for coverage under the existing definition. The Department further notes that if such a definition were imposed by regulation, it would reduce the flexibility among potential sponsors. Accordingly, the Department has decided not to amend the definition for "sponsor" in section 950.3.

Subpart B—Standby Support Contract Process

Sections 950.10—Conditional Agreement

Section 638(b) authorizes the Secretary to enter into Standby Support Contracts with sponsors of advanced nuclear facilities. That subsection requires that sufficient funding be placed in designated Departmental accounts before a Standby Support Contract may be executed. In the interim final rule, the Department adopted a two-step process in which a Conditional Agreement can, for the qualifying sponsors, be converted into a Standby Support Contract at a later date, if the sponsor meets certain conditions and budgetary resources are provided. The Department noted that it has significant discretion to establish the procedures needed to manage the Standby Support Program, provided that they are consistent with section 638.

Industry commenters generally agreed with the two-step approach. In contrast, the public advocacy group asserted it was unnecessary and inappropriate. The Department continues to believe that such a two-step implementation process is appropriate because it allows the Department and potential sponsors to manage the difficult timing issues inherent in the federal appropriations process and business concerns in planning and financing a multi-billion dollar advanced nuclear facility.

In section 950.10(b)(1)–(5), the Department requires a sponsor to provide certain information to be eligible to enter into a Conditional Agreement. This includes an electronic copy of its complete combined license application docketed by the Commission, a summary schedule of the project, a detailed business plan, the sponsor's estimate of the amount and timing of payments for debt service and the estimated dollar amount to be allocated to the sponsor's covered costs.

The nuclear trade association stated that it was inappropriate for the Department to request what it termed project specific background information, claiming that this information had little or no bearing on calculating the budget score under FCRA.

The Department has determined that to ensure appropriate regulatory oversight of the Standby Support Program, it is necessary for the Department to request the information set forth in section 950.10(b)(1)–(5). Insurers of large construction projects typically obtain such information to establish due diligence. Absent such oversight, the Department would not be adequately fulfilling its responsibilities for overseeing a program with such potentially large payouts, particularly its responsibility to facilitate the full power operation of advanced nuclear facilities and to protect taxpayer funds. In addition, this information, along with other information, will assist the Department in determining the necessary amount of funding for a potential Standby Support Contract with the sponsor. Lastly, the Department believes that this information will assist the Department in refining estimated cash flows payouts in the event a claim is submitted and in estimating the full power operation schedules.

National Environmental Policy Act (NEPA)

In section 950.10(c), the Department set forth the bases upon which it will determine whether to enter into a Conditional Agreement. In the interim final rule, the Department noted that it will determine whether the Conditional Agreement may be issued consistent with applicable statutes or regulations, including the National Environmental Policy Act (NEPA). The Department anticipates that its environmental review under NEPA for the Conditional Agreement or Standby Support Contract would acknowledge or be based upon the NEPA review conducted by the Commission in relation to its review and approval of the sponsor's combined license application.

The industry commented that it generally supported the Department's position about NEPA review in the interim final rule. Nevertheless, it expressed concern that the Commission's NEPA review is likely to occur during the Commission's review of the combined license application, and therefore it is unlikely that a Commission NEPA review would have occurred at the time of the Conditional Agreement. Accordingly, it urges the Department to make a determination that entering into a Conditional Agreement is not a major federal action and does not trigger NEPA.

The Department believes that it is unlikely that a Commission NEPA review would have occurred at the time a Conditional Agreement is issued, and generally agrees that entering into a Conditional Agreement would not be a major federal action. The Department notes that prior to issuance of a combined license, which is a prerequisite for the Department to execute a Standby Support Contract, the Commission would have to complete its NEPA review of the proposed advanced nuclear facility.

Section 950.11 Terms and Conditions of the Conditional Agreement

In the interim final rule, the Department stated that a sponsor should know its funding needs prior to execution of the Standby Support Contract, and included sections 950.11 (b), (c) and (d) in the regulations to reflect the need for specificity, transparency and accuracy on funding of Standby Support Contracts prior to

execution. In particular, section 950.11(b) required each Conditional Agreement to include a provision specifying the amount of coverage to be allocated under the Program Account and Grant Accounts.

Industry commenters stated that the rule should explicitly indicate that a sponsor is not obligated to allocate coverage between the Program Account and Grant Account and may elect to allocate 100 percent of the coverage to either the Program Account or Grant Account.

The Department believes that the interim final rule permitted such an allocation of coverage, but agrees with the commenter that it would be appropriate to expressly state this in the regulatory text. Accordingly, the Department today amends section 950.11(b) to state that "a sponsor may elect to allocate 100 percent of the coverage to either the Program Account or the Grant Account." The Department notes that industry made an identical comment with respect to 950.11(c)(1).

950.11(c) Funding

In section 950.11(c) of the interim final rule, the Department specified that each Conditional Agreement contain a provision that the Program Account or the Grant Account be funded in advance of the Department entering into a Standby Support Contract. After explaining the funding of these accounts under FCRA, the Department further explained in the preamble that it was within the Department's discretion to interpret section 638 as authorizing and providing that Standby Support Contracts are backed by the full faith and credit of the United States, even though section 638 did not include that precise phrase.

The industry group requested that the regulatory text include an unequivocal statement that payment of costs covered under the Program Account is backed by the full faith and credit of the United States. It argued that such a statement in the regulation was necessary for financing purposes.

The Department has modified section 950.11(c) to state that "Covered costs paid through the Program Account are backed by the full faith and credit of the United States." The Department notes that it is making this modification to facilitate financing of advanced nuclear facilities, even though such an express statement is not actually required.

Also in section 950.11(c), the Department specifically addressed how the Standby Support Contracts will be funded. Among other things, that section states "[u]nder no circumstances will the amount of the coverage for payments of principal and (sic) interest under a Standby Support Contract exceed 80 percent of the total of the financing guaranteed under that Contract."

The industry trade association objected to the provision prohibiting payments to exceed 80 percent of the total financing. It expressed its view that this provision reflects the Office of Management and Budget (OMB) guidance in OMB Circular A–129, but that this guidance is merely "discretionary." The commenter further stated that the Department's inclusion of this provision reflected "chronic confusion in the May 15 Rule over whether the Standby Support Program Account is delay insurance or a loan guarantee program."

The commenter is correct that this provision reflects the policy set forth in OMB Circular A–129, which provides guidance for all government programs covered by FCRA. The same policy that informed the 80 percent threshold in OMB Circular A–129 also informs the Department's determination and judgment that this threshold is appropriate for the Standby Support Program. Moreover, as noted in the preamble to the interim final rule, the Department views the coverage provided through the Program Account to be a loan guarantee for purposes of FCRA and thus backed by the full faith and credit of the United States; and therefore governed by the terms of Circular A–129. Insofar as the Department uses this analysis to explain why it is appropriate and permissible to extend the full faith and credit of the United States even though those words are not used in section 638, the Department believes it should be consistent with other policies applicable to implementing loan guarantee authorities, where appropriate.

950.11(d) Reconciliation

In section 950.11(d), the Department specified that "Each Conditional Agreement shall include a provision that the sponsor shall provide no later than ninety (90) days prior to execution of a Standby Support Contract sufficient information for the Program Administrator to recalculate the loan costs and the incremental costs associated with the advanced nuclear facility, taking into account whether the sponsor's advanced nuclear facility is one of the initial two reactors or the subsequent four reactors."

The industry trade association objected to this provision, claiming that the concept of re-calculating the loan cost was inappropriate. It requested that the Department and OMB establish a procedure through which the loan cost and insurance premium are fixed at the time of the Conditional Agreement consistent with FCRA. The commenter further recommended that any increase in loan cost come from permanent indefinite budget authority.

The Department has determined that cost reassessment is consistent with other programs that employ a two-step process for approval. The Department further notes that the government would be remiss in its duty to taxpayers if it did not reassess the costs, given that several years typically will elapse between signing a Conditional Agreement and a Standby Support Contract. Failure to make such a reassessment would not be consistent with FCRA and sound financial management practices. The Department further notes that the permanent indefinite budget authority is available only for reestimates of the loan cost covered by an existing Standby Support Contract, not for changes in cost prior to the execution of the Standby Support Contract. Once the Standby Support Contract has been executed, any re-estimation costs would be covered from the Treasury's permanent indefinite budget authority consistent with FCRA.

Limitations

In section 950.11(e) of the interim final rule, the Department specified situations in which the Conditional Agreement should no longer remain in effect. Specifically, if the amount of appropriated funds is not sufficient to fund the statutorily required costs, the sponsor was given the option to either (1) not execute a Standby Support Contract or (2) provide additional contributions to fund the total amount of coverage in either the Program Account, Grant Account, or both accounts as specified in the Conditional Agreement. The Department believed that these provisions take into account the change in circumstances that may occur between the time of the Conditional Agreement and the Standby Support Contract. The provision also provided a sponsor the option either to enter into a contract or forego that opportunity.

The industry trade association commented that in addition to the two options set forth in section 950.11(e), the sponsor should be given two more options: First, to hold open its right to execute a Standby Support Contract until such time as appropriated funds become available, either through the normal appropriations process or through reprogramming. Second, the trade association requested that a

sponsor should be entitled to elect a reduced level of coverage.

The Department has determined that the first option would reduce flexibility in executing a Standby Support Contract and administering the Standby Support Program. The Department believes that it would be counter to the goal of facilitating full power operation of advanced nuclear facilities to permit a sponsor to hold a contract while waiting for funds that Congress may never appropriate, particularly since a different sponsor may be willing to pay the cost and initiate construction of an advanced nuclear facility.

The Department has determined that the second option is consistent with the goal of facilitating full power operation, and that this goal can be achieved at a lower cost to the government. The Department has modified section 950.11(e)(2) to provide the sponsor with the option to elect a reduced level of coverage based on the amounts deposited in the Program Account and Grant Account. However, to protect the Department from any potential claims by a sponsor for the maximum amount of coverage available under section 638, the Department has also added language to this section to make it clear that the Department is not responsible or liable for any claims by the sponsor for additional coverage.

950.11(f) Termination of Conditional Agreement

In section 950.11(f) of the interim final rule, the Department set forth five situations in which a Conditional Agreement remains in effect until a certain event. For instance, 950.11(f)(4) stated that event was when "The Program Administrator has entered into Standby Support Contracts that cover three different reactor designs, and the Conditional Agreement is for an advanced nuclear facility of a different reactor design than those covered under existing Standby Support Contracts; and 950.11(f)(5) stated "The Program Administrator has entered into six Standby Support Contracts."

The industry trade association stated that it generally had no objection to section 950.11(f), but that the situations under clauses (4) and (5) should accommodate the circumstances where an existing Standby Support Contract is terminated or cancelled. The commenter requested that these two provisions be modified with the phrase "such Standby Support Contracts have expired in accordance with the stated term thereof pursuant to 10 CFR 950.13(e)."

The Department has concluded that it would be inappropriate to add this language to the regulations as suggested by the commenters. Nevertheless, as discussed further in relation to section 950.12(d) there are limited circumstances under which the Department would consider re-executing a Standby Support Contract; in such circumstances, not more than two Standby Support Contracts may be re-executed by the Program Administrator in situations involving abandonment and cancellation. In addition, in those limited circumstances and conditions, a sponsor or sponsors would be in a position to initiate the process under these regulations of executing a Conditional Agreement and becoming eligible for a Standby Support Contract.

Sections 950.12, 950.13 and 950.14—Standby Support Contract

In the interim final rule, the Department noted that it is sufficient to include the critical contract terms in a regulation rather than provide a sample contract. The Department stated that a sample contract was not necessary, given that a sponsor could appropriately evaluate the potential contract's effect on risk allocation and financing during the pre-contract discussions set forth in sections 950.10 and 950.11.

The industry trade association agreed with the Department that it is not necessary to provide a sample contract in the regulation; nevertheless, it requested that the Department expeditiously develop a standardized contract with formal stakeholder input. One utility favored including a contract in the regulation.

The Department has determined that it is not necessary to include a Standby Support Contract in the regulation for the reasons set forth in the interim final rule. After completing the rulemaking, the Department intends to develop a Standby Support Contract form consistent with 10 CFR part 950 and will consider whether to provide for public input.

Section 950.12—Standby Support Contract Conditions

Conditions Precedent

In section 950.12(a) of the interim final rule, the Department set forth nine conditions precedent that a sponsor must fulfill to be eligible to enter into a Standby Support Contract. Among these conditions that a sponsor must fulfill are "[d]ocumented coverage of required insurance for the project" (950.12(a)(5)), and "a detailed systems-level construction schedule that includes a schedule identifying projected dates of construction, testing and full power operation of the advanced nuclear facility and which the Department will evaluate and approve." (950.12(a)(8)).

The industry trade association agreed that seven of the nine conditions precedent were appropriate. It nevertheless requested that the Department delete condition (5) related to documentation of required insurance coverage, claiming that such documentation is not relevant to Standby Support for covered delays. Similarly, the trade association requested that the Department delete condition (8) related to the systems-level construction schedule, claiming that this information is unnecessary to the Standby Support Program. It claimed that the Department's request for this information "represents an unnecessary interjection of the Department into the construction process" given that the construction schedule will be determined between sponsors, their contractors, and their lenders. The industry further requested that the Department should not evaluate or approve the construction schedule.

The Department has determined that to protect taxpayer funds and to ensure an appropriate level of regulatory oversight for a program with such potentially large payouts, it is appropriate to obtain the insurance information set forth in condition (5) and the construction schedule set forth in condition (8). The Department notes that both types of information are readily available to a sponsor, given that the sponsor must have this information to obtain financing from a lender and a combined license from the Commission. With respect to the construction schedule, this information has direct relevance to the timing of possible claims, e.g., projected timing of full-power operation. Consequently, this information is necessary for the effective administration of the Standby Support Contract even if, and particularly because, it is subject to change. Nevertheless, the Department agrees that it is not necessary for the Department to approve the construction schedule and thus has deleted this term in section 950.12(a). Further, the Department has revised condition (5) to state "[d]ocumented coverage of insurance required for the project by the Commission and lenders."

Funding and Limitations

In section 950.12(b) of the interim final rule, the Department specified that no later than thirty days prior to execution of the Standby Support Contract, funds in an amount sufficient to fully cover the loan costs or incremental costs as specified in the

Conditional Agreement shall be deposited in the Program Account or the Grant Account. The purpose of this provision is to ensure that the administration and funding of the Standby Support Program occurs in an efficient and orderly manner.

The industry trade association objected to the requirement that the funds need to be deposited 30 days in advance of the contract's execution. It requested that a sponsor be able to meet this condition simultaneous with closing on the financing.

The Department is required by section 638 to deposit the necessary funds in the Program Account or Grant Account before a contract is executed. While the Department appreciates the fact that a sponsor's financing arrangements may be complicated and a simultaneous closing would be desirable, the Department requires a certain amount of time prior to contract execution to ensure compliance with the requirements of the Act and coordination of the Department's administrative functions. Accordingly, the 30 day time period specified in the interim final rule is appropriate and necessary.

Cancellation by Abandonment

In its comments, the trade industry recommended the Department allow for Standby Support Contracts to "roll over" as an added incentive to advanced nuclear facility construction. In section 950.12 of the final rule, the Department has added a provision to address the situation where a sponsor may abandon a project and the Department may determine it is appropriate and consistent with the goal of the Standby Support Program to re-execute a contract. In accordance with this goal, any new contract under this provision would be deemed to replace a previously executed contract and therefore not exceed the mandate to facilitate the construction and operation of six new advanced nuclear reactor facilities.

Specifically, section 950.12(d) provides for the re-execution of a Standby Support Contract under certain conditions of abandonment pursuant to section 950.13(f)(1). The Department anticipates that situations involving abandonment are likely to be rare or non-existent given that a sponsor will have expended millions of dollars and cleared most of the regulatory and litigation hurdles once it has executed a Standby Support Contract and commenced construction. The Department has included language indicating that cancellation of a Standby Support Contract as a result of a sponsor's abandonment permits the Program Administrator to re-execute not more than two new Standby Support Contracts, provided that the new contract is executed in accordance with the terms and conditions of part 950 and such contracts are deemed to be one of the subsequent four reactors under part 950. That is, any new contract under this provision would be deemed to replace one of the subsequent four reactors, and thus would be eligible for coverage in the amounts provided for such reactors.

Section 950.13—Standby Support Contract: General Provisions

In section 950.13 of the interim final rule, the Department specified that each Standby Support Contract include provisions addressing basic contract terms, including the contract's purpose, covered facility, sponsor contribution, maximum aggregate compensation, the term, cancellation, termination by a sponsor, assignment, claims administration, and dispute resolution.

The industry group stated that it had no objection to most of these provisions, but nevertheless provided comment on four of these provisions: the cancellation provisions in (f), termination in (g), assignment in (h), and re-estimation in (k).

Cancellation

In section 950.13(f)(2), the Department set forth the bases upon which a Standby Support contract can be cancelled by stating that if a sponsor does not require continuing coverage under the contract that the sponsor may cancel the contract by giving written notice to the Program Administrator.

Industry commenters stated that they had no objection to section 950.13(f)(2); however, they commented that the Standby Support coverage should explicitly provide that in the event of cancellation by the Department, the sponsor, or as agreed by the parties, the Standby Support coverage should "roll over" both in terms of (1) making available the full 100 percent coverage to the first of the second four reactors in the event the contract that was cancelled was one of the first two contracts and (ii) making available a Standby Support Contract to the next project sponsor with a Conditional Agreement in the queue. (The commenter was of the mistaken belief that a potential sponsor that entered into a Conditional Agreement would have a higher priority in a "queue;" in fact, the Department is not creating a "queue" under the regulations.)

The Department has determined that Section 638(d) should be interpreted as not permitting a process that would allow a sponsor to cancel its contracts thereby allowing the contracts to "roll over" to a sponsor with an existing contract. This process could potentially create a total of six "premium" contracts (*i.e.*, contracts with coverage up to $500 million) going beyond the Act's cost and coverage limitation for the initial two reactors and subsequent four reactors. In addition, the purpose of risk insurance is to provide an incentive for sponsors to construct and operate new advanced nuclear power facilities. Once the Department and a sponsor have entered into a Standby Support Contract, the Department believes that it has provided the appropriate level of incentive and the proper amount of coverage. Accordingly, no additional coverage is needed, because a sponsor had decided to construct a new advanced nuclear facility.

However, the Department has determined that there could be situations where a sponsor is unwilling or unable to continue with the construction of a new nuclear plant and the Department may have to terminate the contract. In those instances, it may be prudent for the Department to re-execute a contract and it would be consistent with section 638 and its objectives for the Department to do so. Section 950.13(f) is modified to provide for the situation in which the Program Administrator may cancel a contract for abandonment of the project by the sponsor, where such abandonment is not caused by a covered event or force majeure.

Termination by Sponsor

Under section 950.13(g), if a sponsor elects to terminate a Standby Support Contract, the sponsor or any related party is prohibited from entering into another Standby Support Contract. The Department stated that such a provision is necessary to prohibit potential sponsors from "gaming" the Standby Support Program. Specifically, a sponsor could be on the verge of full power operation of an advanced nuclear facility, without the need to make any claims on the Standby Support Program. Absent this provision, the sponsor could terminate its initial Standby Support Contract and then enter into a new contract for a different facility.

The industry trade association objected to this provision, claiming that it is overbroad and may, among other things, penalize sponsors who own partial interests in different projects. The industry requested that the Department either delete 950.13(g) or limit the prohibition to situations in which a "sponsor elects to terminate its

Standby Support Contract unless the sponsor has suspended, cancelled or terminated construction of the reactor covered by such contract."

The Department has determined that it would be appropriate to modify section 950.13(g) to include the commenters requested limitation as modified; *i.e.*, "sponsor elects to terminate its Standby Support Contract unless the sponsor has cancelled or terminated construction of the reactor covered by such contract." The Department did not include a provision where the sponsor may merely "suspend" construction as that situation does not avoid possible "gaming" of the system by a sponsor. By adding the additional language as stated, the Department believes that the regulations provide the appropriate balance between preventing a sponsor from "gaming" the Program, while allowing a sponsor to cancel or terminate a no longer viable Standby Support Contract. The Department notes that the Department and taxpayer funds are sufficiently protected, in a situation in which the entire reactor project is terminated.

Assignment

In section 950.13(h) of the interim final rule, the Department required each Standby Support Contract to include a provision specifying the assignment of a sponsor's rights and obligations under the Standby Support Contract. Specifically, this provision stated that the sponsor is permitted to assign the rights under the contract with the Secretary's prior approval. The sponsor must obtain this approval, in writing, prior to assigning such rights.

The industry trade association commented that the assignment provision should address two types of assignment: (1) Assignment of payments, and (2) assignment of the Standby Support Contract. As for the assignment of payments, it recommended that each Standby Support Contract allow the assignment of covered costs to the lenders of the project with notice, but without prior Department consent. The commenter claimed that assignment of payment is a necessary condition of debt financing. As for the assignment of the contract itself, including the rights and obligations under the contract, the industry trade association commented that the Standby Support Contract should be assignable without the requirement of prior Department consent to any license transferee approved by the Commission.

The Department has determined that the assignment of payments, without the Department's prior consent, is appropriate and consistent with standard financing arrangements for construction projects. The final rule is modified to permit an assignment of payments with prior notice to the Department to facilitate contract administration. However, the Department has determined that to ensure proper regulatory oversight, it is necessary for the Department to retain the provision requiring prior approval of any rights and obligations under the Standby Support Contract. The Department anticipates that it will consent to any license transferee approved by the Commission, but is not prepared at this point to abdicate to the Commission this responsibility under a program administered by the Department.

Reestimation

In section 950.13(k) of the interim final rule, the Department required each Standby Support Contract to include a provision specifying that consistent with FCRA, the sponsor provide all needed documentation to allow the Department to annually re-estimate the loan cost (as defined by FCRA) needed in the financing account under 2 U.S.C. 661a(7) funded by the Program Account.

The industry trade association did not object to the Department re-estimating the loan cost of the Standby Support Contract on an annual basis consistent with FCRA once the contract has been executed. However, the commenter requested that this provision should expressly state that any increase in loan cost resulting from the re-estimation shall be covered from the permanent indefinite budget authority that is available for this purpose. Under FCRA, any increase in loan costs resulting from the re-estimation would be covered by the Treasury general fund through permanent indefinite budget authority; similarly, any decrease in loan costs resulting from re-estimation would be paid to the Treasury general fund. To address any uncertainty, however, this section is modified to state that any changes in loan costs resulting from the re-estimation are neither the responsibility of, nor an entitlement to the sponsor.

Section 950.14—Covered Events, Exclusions, Covered Delay, and Covered Costs

In section 950.14 of the interim final rule, the Department set forth provisions related to situations in which the Secretary will pay "covered costs." Among the situations expressly set forth in section 638(c)(1) are: (A) "the failure of the Commission to comply with schedules for review and approval of inspections, tests, analyses, and acceptance criteria [ITAAC] established under the combined license or the conduct of preoperational hearings by the Commission. * * *" or (B) "litigation that delays the commencement of full-power operations. * * *"

Covered Events

In section 950.14(a) of the interim final rule, the Department explained that it is necessary to add the term "covered event" to reflect that not all events appearing to fall under section 638(c)(1) will warrant compensation. Compensation is dependent on whether a covered event in fact leads to a delay in full power operation. For instance, there may be a delay in the Commission staff's meeting the ITAAC review schedule for an individual ITAAC, but the delay does not actually cause a delay in full power operation, because other factors may have caused the delay. In addition, there may be a delay in meeting the ITAAC review schedule but the ITAAC-related delay may have no actual effect on a facility obtaining full power operation. The same may be true for delays attributable to a pre-operational hearing or litigation. A discussion relating to the pre-operational hearing and litigation are addressed in the definition section of this preamble.

ITAAC Delays.

In section 950.14(a)(1) of the interim final rule, the Department required each Standby Support Contract to include a provision setting forth a two-tier level of review for assessing whether an ITAAC-related delay should be considered a covered event.

In its comments, the industry trade association agreed with the two-tier approach for assessing whether an ITAAC-related delay should be considered a covered event. It further commented that the final rule should outline a process for the adjustment of the ITAAC review schedule, to which both parties must agree. The commenter then stated the ITAAC review schedule should not be changed without express approval by both the sponsor and the Department. In addition, it stated that the last agreed-upon ITAAC review schedule would remain in place and be used to determine covered events, until an updated schedule was established.

The Department agrees with the comment about the ITAAC review schedules. An additional section has been added to section 950.14 (950.14(e)) to address the process for adjustments to the ITAAC schedule.

Exclusions—Burden of Proof

Section 638(c)(2) expressly precludes the Secretary from paying costs resulting from three general causes: "(A) the failure of the sponsor to take any action required by law or regulation; (B) events within the control of the sponsor; or (C) normal business risks."

In section 950.14(b)(2) of the interim final rule, the Department set forth a non-exhaustive set of example exclusions, including situations involving the sponsor's failure to take action required by law or regulation, situations within the control of a sponsor, and normal business risks.

In addition to comments about specific exclusions listed in 950.14(b), the industry trade association provided general comments about causation and burden of proof. Specifically, the trade association stated that consistent with insurance law, it should be the responsibility of the Department to establish whether an exclusion is applicable to a given situation. It further recommended a specific regulatory provision to address causation. The commenter stated that clear standards and proper allocation will simplify contract administration, facilitate claims determinations, and minimize disputes.

The Department generally agrees with the comment recommending that the regulation more precisely address causation and burden of proof. With respect to establishing an exclusion, the industry trade association is correct that an insurer is typically responsible for establishing an exclusion. (See 7 Couch on Insurance 101:63 (3rd ed. 2005) which states "[i]n keeping with the general rules of proof, any causation required to bring a loss within positive coverage terms of the [insurance] policy generally must be shown by the insured or person seeking coverage, while the insurer bears the burden of showing any causation necessary to bring the case within an exclusion for coverage.") In recognition of this general standard applicable to insurance contracts, the Department is modifying section 950.20 as a matter of policy to provide that "[a] sponsor is required to establish that there is a covered event, a covered delay and a covered cost; the Department is required to establish an exclusion in accordance with 950.14(b)."

Further, sections 950.21, 950.22 and 950.24 are also modified to clarify the Department's role in establishing an exclusion. The modifications in these sections clarify that the Department's role in establishing an exclusion is conditioned on the sponsor's cooperation in providing information to the Department. To insure the Department's ability to establish an exclusion is not unreasonably hampered by the sponsor, the Department is modifying section 950.22 to require the sponsor to provide to the Department information in its possession that is relevant to the Department's claim of an exclusion. For example, in the case where the Department claims a delay is an exclusion because it was "within the sponsor's control," the Department may require the sponsor—the party likely in possession of the best available information—to provide relevant information to the Department in support of its claim for exclusion. Failure of a sponsor to provide the necessary and relevant information to the Department would be grounds for denial of the sponsor's claim for coverage. In addition, the Department is modifying section 950.21(b) to add a clause requiring the sponsor to certify their claim for covered costs, as well as certify the absence of an exclusion.

Exclusions

In section 950.14(b) of the interim final rule, the Department sets forth the statutory exclusions and provides examples of excluded events as requested by commenters in response to the NOI and public workshop. The Department has modified this section to clarify that the Standby Support Contracts shall include the statutory exclusions and, within those exclusions, provide example types of events that may constitute an exclusion. The industry trade association had no objection to most of the examples listed, but objected to certain provisions, including clauses (1)(ii), 1(iii) and (2)(iii) that state, respectively:

(1)"The failure of the sponsor to take any action required by law, regulation, or ordinance, but not limited to * * *

(ii) The sponsor's re-performance of any inspections, tests, analyses or re-demonstration that acceptance criteria have been met due to Commission non-acceptance of the sponsor's submitted results of inspections, tests, analyses, and demonstration of acceptance criteria; [or]

(iii) Delays attributable to the sponsor's actions to redress any deficiencies in inspections, tests, analyses or acceptance criteria as a result of a Commission disapproval of fuel loading."

The commenter stated that leaving these items as examples of excluded events could result in excluding coverage where the sponsor's actions may result from the Commission's failure to comply with the ITAAC schedule or other fault of the Commission, such as an inspector's non acceptance of ITAAC or an unwarranted Commission determination of deficiency. The commenter requested that the Department remove these items from the regulation, because they should be left to the claims administration process and not be a categorical exclusion.

The Department has determined that most of the examples provided of excluded types of events are appropriate as stated in the rule and that providing such examples is not an improper incursion into the claims administration process. The Department agrees with the comment that the claims administration process is the appropriate venue to assess the specific facts of a sponsor's claim of a covered event and the Claims Administrator's determination of an exclusion. The examples provided in the regulation are meant to provide guidance for the parties in that process; the judgment of the Claims Administrator on a particular claim necessarily will be based on the facts that underlie the claim.

The examples provided in subsection 950.14(b)(1) and (2) are consistent with the language and intent of the Act. The intent of section 638 is to provide coverage to a sponsor for specified events in the untested regulatory process that are not the result of the sponsor's failure to comply with laws and regulations or are beyond the sponsor's control. If a sponsor has not met its ITAAC, as determined by the Commission, and needs additional time to satisfy the Commission's expectations, then that delay is not covered under section 683 and no further inquiry is needed into whether or not the Commission's finding was "warranted." Although not a stated example in the rule, the same reasoning would apply to any delay associated with a sponsor's need to redress some noncompliance with a law or regulation as determined by a court. Accordingly, the Department will not modify the rule to delete the examples provided of the type of events that may be exclusions.

The industry trade association also objected to the type of event in clause (3)(iv) which provides an exclusion for "[n]ormal business risks, including but not limited to * * * (iv) Acts or decisions, including the failure to act or decide, of any person, group, organization, or government body (excluding those acts or decisions or failure to act or decide by the Commission that are covered events)." The trade association requested that this clause be deleted, claiming that it was overly broad.

This clause is patterned after provisions in standard insurance

contracts covering the construction of large facilities. The Department continues to believe that it is necessary to continue its reference to acts or decisions by other government bodies like State and local governments, since such actions would be normal business risks faced by an entity constructing a large facility and go beyond the intended coverage under section 638 for Commission-related delays, even though they may be within coverage for litigation-related delays. To reiterate, however, this event is identified as an example of an event that would constitute a normal business risk to provide guidance to the parties. The ultimate determination of whether an event constitutes an exclusion in the context of a Standby Support Contract will be addressed through the claims administration process. Nevertheless, upon further review, the Department has determined that by including reference to "any person, group or organization," the clause was overly broad. Accordingly, this provision is modified to delete that reference.

The industry trade association also objected to clause (3)(viii) which includes an exclusion for "unrealistic and overly ambitious schedules set by the sponsor." It claimed that this exclusion was unnecessary and unwarranted, since it reasoned that this phrase is not referring to ITAAC schedules since those are approved by the Commission or Department. Further, it stated that any construction schedule would be determined by the sponsor and its contractors or lenders. The commenter concluded that whether a schedule is unrealistic or overly ambitious is not relevant to whether a covered event occurs.

The Department has determined that the exclusion for unrealistic or overly ambitious schedules is not appropriate. Any covered events attributable to ITAAC schedules are already covered under section 950.14(a)(1) and (2). Further, section 950.14(b)(2)(i) more appropriately addresses project planning and construction problems that are events within the control of the sponsor. In reconsidering the exclusion in 950.14(b)(3)(viii), the Department has determined that the phrase "unrealistic and overly ambitious schedules set by the sponsor" is ambiguous and would be difficult to apply. Accordingly, the Department has deleted this provision.

Lastly, the industry trade association took exception to the Department's covered event exclusion in (b)(2)(v) for litigation-related delays in those situations where a sponsor decides not to continue construction or attain full power operation unless such action is required by a court order. The industry trade association noted that in many cases litigation may cause numerous and substantial delays without a court order mandating the work stoppage. The industry trade association argues that the Department improperly categorically excluded such delays, and should allow the claims process to be used to determine whether or not the delay is covered.

The Department agrees that the exclusion language in the interim rule may be misinterpreted, and modified the rule to eliminate this type of exclusion and avoid unnecessary confusion. Nevertheless, the Department stresses that elimination of this provision does not relieve the sponsor of its substantial burden to prove that any litigation-related delay is a covered delay, and that the Department will look critically at a sponsor's claim that litigation without an order to stop activities was the cause of delay. The Department acknowledges that, even in the absence of a court order directly prohibiting construction or operational activities, pending litigation or court decisions may cause a sponsor to delay or suspend its activities thus delaying full power operation. However, depending on the nature of the litigation or court order, the decision whether to continue activities at risk or halt activities pending the outcome of the litigation is often a business decision largely within the sponsor's control. The Department does not believe it is appropriate to shift the burden or risk entailed in that decision to the standby support insurance program. Otherwise, the Department would create the perverse incentive for a sponsor to halt or delay activities unnecessarily because the costs of that delay would be covered by the insurance contract. On the other hand, the Department recognizes that in some cases, e.g., where the sponsor would breach a fiduciary duty if construction or operation activities are continued or there is an adverse decision against the Commission, a halt in the sponsor's construction or operations may be necessary and beyond the sponsor's control. As suggested by the commenters, the Department believes the appropriate forum to determine whether or not a litigation-related delay is a covered delay is the claims administration process.

Due Diligence

Section 638(e) specifies that any Standby Support Contract requires "the sponsor to use due diligence to shorten, and to end, the delay covered by the contract." Section 950.14(c)(2) requires each Standby Support Contract to include a provision to require the sponsor to use due diligence to mitigate, shorten, and end covered delay under the contract and to demonstrate that to the Program Administrator. Similarly, section 950.23(b)(2)(iii) requires a sponsor to use due diligence to mitigate, shorten and end the covered delay and the associated costs.

The industry trade association commented that the due diligence requirement is consistent with a party's obligation under general principles of contract law to mitigate damages. Nevertheless, the commenter objected that a sponsor must demonstrate due diligence to the Program Administrator in demonstrating a covered delay. Rather, the commenter requested that due diligence only be considered when determining whether covered costs should be limited. This led the commenter to request deletion of the phrase "demonstrated this to the Program Administrator."

Upon further review, the Department has modified this section to delete the phrase "demonstrated this to the Program Administrator." Removal of this phrase does not relieve the sponsor of its obligation under section 638 and part 950 to use due diligence to mitigate, shorten and end a covered delay. This requirement remains in the rule, and the sponsor's actions in that regard will be reviewed by the Claims Administrator in reaching a claim determination on covered costs pursuant to section 950.24. This allocation of responsibility is consistent with the plain language of section 638 that "the sponsor [is] to use due diligence to shorten, and to end, the delay covered by the contract."

Covered Costs

Section 638(d) provides for the coverage of costs that result from a delay during construction and in gaining approval for full power operation, specifically (A) principal or interest and (B) incremental cost of purchasing power to meet contractual agreements. In the interim final rule, the Department determined that it is appropriate to limit the concept of covered costs to those expressly set forth in paragraph (d)(5). Accordingly, under the Program Account, the Department will indemnify sponsors for the cost of principal or interest on the debt obligation for the period or duration of covered delay, less 180 days for one of the subsequent four reactors.

The public advocacy group agreed with the Department's determination to limit covered costs to the express terms of section 638. In contrast, industry

commenters requested that the Department expand coverage to operating and maintenance costs and other costs associated with delay in commercial operation, including costs of demobilization and remobilization, idle time costs incurred in respect of equipment and labor, increased general and administrative costs, and escalation costs for the completion of construction. The industry group even commented that additional costs associated with redesign or alterations should be covered, to the extent that litigation or changes in regulation resulted in a redesign.

The Department has determined that, consistent with its broad authority to interpret the terms "covered costs" and "including" in section 638(d)(5), it will limit these terms to the items specifically set forth in the statute. As the Department concluded in the interim final rule, it would be inappropriate to expand these terms, particularly given the statute's plain language and the fact that providing expanded coverage to a myriad of other costs might serve as a disincentive to a sponsor to complete a project in a timely fashion. The commenters provided no new information or justification to support a potentially dramatic expansion of coverage, which would have the effect of making the Standby Support Program significantly more expensive, without increasing the likelihood of meeting the statutory objectives of section 638, *i.e.*, the expeditious licensing, construction and full power operation of new nuclear facilities.

Subpart C—Claims Administration Process

Subpart C of the regulation sets forth the procedures and conditions to be followed by a sponsor for the submission of claims and the payment of covered costs under a Standby Support Contract.

The industry trade association generally supported the requirement that a sponsor has the burden of making a good-faith showing of a covered event, covered delay and covered cost. Further, it generally supported the two-step process for claims administration. The trade association made several suggestions related to the wording of Subpart C, including replacing the term "appropriate" with cross-references to other sections of the rule, suggesting timing changes such as that the Claims Administrator must "make a determination on the covered event within 30 days," and several other recommendations that do not substantively enhance the rule and may serve to limit the Claims Administrator's ability to effectively administer the claims in a timely fashion.

The Department has determined that it is appropriate to retain most of the wording in subpart C of the interim final rule, which is based in large part on the Department of Treasury's *Terrorism Risk Insurance Program* at 31 CFR Part 50 (69 FR 39296, June 29, 2004). The Department notes that several of the requested changes would result in increased ambiguity or would not provide greater clarity, and thus would not serve the Department's goal of an efficient and effective claims administration process. For instance, the commenter requested deleting the phrase "including an assessment of the sponsor's due diligence in mitigating or ending covered costs," in section 950.24(a)(2) as potentially duplicative or confusing even though this requirement is expressly set forth in section 638. Accordingly, the Department has determined that, aside from comments addressed in the next section, it would be inappropriate to adopt the industry group's other recommendations related to the claims process.

Burden of Proof on Claims

As discussed in connection with section 950.20, the Department agrees with the comment from the industry trade association that a sponsor bears the burden of proof on a covered event, a covered delay and a covered cost, and the Department bears the burden of proof of an exclusion from a covered event and whether a purported covered delay is the result of, or was contributed to, by the exclusion. The rule is modified in sections 950.20 through 950.24 to codify this expectation.

Determinations by the Claims Administrator

The industry trade association suggested several sections needed clarification based on their interpretation of the phrase "appropriate" in describing the Claims Administrator's determinations regarding covered events and covered costs. It noted that this language suggested the Claims Administrator could render a decision based on subjective factors outside the terms and conditions of the Standby Support Contract or the rule. This is a misinterpretation of the regulation's language. Nevertheless, to avoid the misinterpretation that the Claims Administrator would make determinations based solely on subjective judgment, subpart C of part 950 is modified in several places (e.g., 950.24 (a) and (d)) to replace the word "appropriate" with "allowable" to indicate the objective nature of the Claims Administrator's cost determinations based on the terms and conditions of the contract.

Timing of Covered Event Determinations and Payments

The industry trade association commented that notification of a covered event should be submitted "no later than" 30 days after the end of the covered event, and requested that "the Department be willing to accept notice and begin paying claims as covered losses are incurred, while a covered event is ongoing." The rule is modified to allow notification of a covered event "no later than" 30 days after the end of the covered event. This change appropriately provides flexibility to the sponsor to submit notification of a covered event to the Claims Administrator at a time the sponsor deems appropriate, particularly where a covered event may be protracted. However, the Department does not believe it is appropriate to change the timing of the claims process for payment of covered costs. Sections 950.23 and 950.24 address the process and timing of claims for covered costs, and are premised on the fact that covered costs are not expected to be incurred until the time the sponsor was scheduled to attain full power operations. In other words, a covered event that occurs early in construction (e.g., in the first year of a five year construction schedule) would not be coincident in time with the obligation of the sponsor to pay covered costs such as principal or interest, as those costs would not be incurred until much later in time (e.g., in the fifth year after construction is complete).

The industry trade association also objected to what it viewed as an open-ended process in section 950.22(c) for the Claims Administrator to render a determination on a covered event with the option for the Administrator to determine that the claim "requires further information." The Department believes it is important to provide this flexibility to the Claims Administrator and serves to facilitate a resolution of any issues between the Claims Administrator and the sponsor without resort to alternative dispute resolution. Consequently, the Department is not modifying the rule to address this objection.

Subpart D—Dispute Resolution Process

Covered Events and Covered Costs Dispute Resolution

In the interim final rule, the Department stated that claims should be resolved as effectively and efficiently as possible. Subpart D provides a two step dispute resolution process for resolving claims that first calls for mediation and then a Summary Binding Decision.

The industry trade association generally agreed with the concept of dispute resolution through a binding arbitration process as an appropriate and expeditious method of resolving disputes under the Standby Support Contract. However, the trade association objected to the use of the DOE Board of Contract Appeals (DOE Board) as the final arbiter of disputes, claiming that the Board is not independent from the Department, it does not have experience with insurance-type contracts, and it is not an appropriate venue for complex or novel cases such as a Standby Support Contract. Rather, industry preferred an independent, third-party arbitration process such as the American Arbitration Association (AAA) and its rules for commercial arbitration and expedited proceedings, which it claimed is familiar to industry and without which the industry stated a sponsor would be reluctant to agree to binding arbitration without the right of appeal to a court.

In response to the industry trade association's concern over lack of neutrality, that concern should be obviated with the establishment of the Civilian Board of Contract Appeals (Civilian Board) (Section 847 of the National Defense Authorization Act of Fiscal Year 2006, 41 U.S.C. 438). Effective January 6, 2007, Congress is establishing in the General Services Administration a board of contract appeals to be known as the Civilian Board of Contract Appeals (Civilian Board). The new Civilian Board will include any full time member of several other agency board of contract appeals in addition to the disbanded DOE Board. Thus, any concern that the Civilian Board is not independent of the Department is unfounded. The Civilian Board will provide a wide range of expertise from various agencies and departments throughout the government. It will also assume jurisdiction over any category of laws or disputes over which an agency board of contract appeals has jurisdiction. The Department believes that the Civilian Board will have the independence, expertise, and requisite procedures to ensure a fair and expeditious process for the resolution of disputes in the context of Standby Support Contracts. Moreover, the Standby Support Contracts will be new not only to the Department and the Civilian Board, but also to industry, the AAA, and any arbitrator. Accordingly, the existing rules of the AAA for commercial arbitration of complex cases are not any better suited to adjudication of claims under a Standby Support Contract than the similar procedures successfully employed by the Civilian Board to fairly and expeditiously resolve contract disputes involving the commercial sector and the federal government. The Department is confident that the Civilian Board and the dispute resolution procedures it follows are well suited to resolve any issues arising under the Standby Support Contracts; commenters have not demonstrated otherwise.

In response to the industry trade association's comment, the rule is modified in sections 950.31, 950.33 and 950.36 to clarify that the parties will jointly select the mediator that will preside over mediation of disputes.

C. Cost Analysis of the Standby Support Program

Industry commenters stated that it was critical for the Department inform potential sponsors about the cost of the insurance coverage. These commenters stated the nuclear industry cannot provide a reasoned determination of the value of the Program and the rule without knowing what the insurance contracts will cost. Accordingly, they requested the Department to establish a two-step calculation which they characterized as workable and credible to investors. Under the first step, the Department would establish a standard premium for the insurance contracts based on, and comparable to the premium charged by other government agencies and the private sector for comparable sovereign risk insurance. Under the second step, the Department would then establish a standard "loan cost" for the insurance contracts calculated under FCRA. To the extent the loan cost is higher than the premium amount, the Department would cover the difference through appropriations. The industry then stated that the Department "appears to be moving in the opposite direction: There is no standard insurance premium, and the expected sponsor payment appears to be subject to a case-by-case, contract-by-contract determination dependent largely on the Department's success in obtaining appropriations."

Although the Department understands the desire of industry commenters for certainty and relatively low contributions from industry, the Department cannot provide a definitive, standard premium for the six Standby Support Contracts available under section 638, or to commit to any specified amount of government appropriations that would be applied toward funding the Standby Support Contracts. The statutory language of section 638 provides the legal framework within which the Department must operate in establishing the regulations and contracts for the Standby Support Program. That framework requires the Department to calculate the loan costs for each Standby Support Contract consistent with FCRA, and to deposit amounts equivalent to that loan cost into the Program Account as a precondition to execution of a Standby Support Contract. Section 638 dictates that loan costs in the Program Account are the same as the cost of a loan guarantee under FCRA. While section 638 provides the possibility for government funding of a Standby Support Contract through appropriations, it does not allocate any amount of government appropriations to the contracts and it does not change existing law that prohibits the Department from obligating funds where funds are not appropriated for that purpose.

Given this statutory framework, the premium for coverage of principal or interest costs must be calculated in accordance with FCRA methodology, and the sponsor must provide the portion of the premium for which funds have not been appropriated. Thus, the Department cannot adopt the approach advanced by industry commenters. The Department, however, has revised the rule to give sponsors the ability to adjust coverage in accordance with the amount of the premium they are willing to pay. Specifically, section 950.11 permits a sponsor to specify in the Conditional Agreement, the amount of premium, (that is, its contributions to the Program Account and Grant Account) it anticipates paying when the Standby Support Contract is executed. Notwithstanding this provision, section 950.12 of the interim final rule required the sponsor to pay a premium equal to the difference between the amount of appropriated funds and the amount necessary to fully fund the Program Account and Grant Account. In the final rule, the Department has revised section 950.12 to permit a sponsor to pay the anticipated premium, with the option to pay additional amounts; provided that, if the combination of appropriated funds and payments from the sponsor is not sufficient to fully fund the Program

Account and Grant Account, the amount of coverage under the Standby Support Contract will be reduced to reflect the amount of funding deposited in the Accounts should the sponsor elect to enter into the Standby Support Contract.

In addition, in an effort to provide information now to potential sponsors about anticipated costs for the Standby Support Contracts, the Department is providing a description of the methodology it expects to follow in calculating the loan costs in accordance with FCRA, including four hypothetical examples of estimated loan costs. The hypothetical examples are a representative, but not comprehensive, sample of the project type, financing structure, coverage amount, or other factors that will inform the Department's loan cost estimates for particular projects. For each project, the Department will use the project-specific information provided by the project sponsor to develop an initial estimate at the time of the Conditional Agreement. Prior to entering into a Standby Support Contract, the loan cost estimate will be reevaluated and will determine the loan cost required by the Program Account in order to execute the Standby Support Contract. Loan costs are likely to change as the Department refines the assumptions used in the preliminary analysis and considers the extent to which other risks need to be taken into account. In particular, the preliminary analysis does not fully consider situations that may arise if the Commission does not adopt a realistic schedule for its actions or where there is an adverse decision that does not necessarily result in a stay, but nevertheless may provide a legitimate basis for a sponsor to delay actions. These discussions are detailed in this preamble in the Regulatory Review Requirements section on Executive Order 12866 (Section IV.A).

For each type of covered event (e.g., Commission delay and litigation delay), the Department's Program Account cost estimates will be based on three primary factors: first, the timing and amount of the debt service covered by the Standby Support Contract; second, the likelihood that a covered delay occurs; and third, the length of the covered delays. These factors are likely to vary across projects as they will likely have different financing structures—for example, investor-owned utilities, public utilities, cooperatives, or partnerships reflecting some combination would likely seek capital through different mechanisms. The risk of a covered event occurring and the length of the covered event will vary by the type of advanced nuclear facility, management experience, location, and a host of other factors.

Based on these factors, the Department will estimate cashflows to and from the government over the expected period of Standby Support Contract coverage and determine the present value of these expected cashflows, in accordance with FCRA, to determine the required loan cost.

In evaluating hypothetical examples for a 1,100 MWe reactor, the Department chose debt-to-equity financing structures of 80:20 and 50:50, which correspond to estimated all-in costs of $2.8 billion and $2.5 billion, respectively. The hypothetical examples adopt typical industry debt-to-equity financing structures and assume that the sponsor elects 100% of coverage through the Program Account. The Department notes that it is not possible at this time to provide the actual costs in the rule, given that more specific estimates of loan costs for individual projects can only be provided in conjunction with the issuance of a Conditional Agreement, based on the specifics of the project and coverage. Moreover, final loan costs must account for the actual terms of the debt to be guaranteed, and will be determined just prior to the execution of a Standby Support Contract, which is a time several years in the future.

The Department has determined that it would be inappropriate to adopt two specific industry recommendations. First, the Department has determined that it would be inappropriate to rely on the premium charged by other government agencies and the private sector for sovereign risk insurance such as OPIC. As explained in the interim final rule, sovereign risk insurance is significantly different than the Standby Support Program, given that the sovereign risk insurance pool is highly diversified both geographically and among projects. Further, with respect to the calculation methodology, the interim final rule's preamble discussion stated that "the cost estimate for the Program Account will be calculated consistent with FCRA." In reaffirming this approach, the Department emphasizes that section 638(b)(2) expressly references FCRA. The industry's recommended approach is especially untenable given that OMB requires the FCRA analysis to be done consistent with OMB guidance in Circular A–11, and that any Department decision related to loan costs must ultimately be approved by OMB.

Second, the Department cannot specify in advance the premium to be paid by the sponsor that will result in full coverage, especially if the premium is set at an amount less than the amount that must be deposited into the Program Account and Grant Account. The Department notes that section 638 prohibits the Department from executing a Standby Support Contract until the Program Account and Grant Account, if applicable, are funded. Accordingly, it is impossible to provide commenters the cost certainty they desire at this time. In addition, the Department cannot commit to deposit Federal funds in the Program Account or Grant Account in the absence of appropriations for that purpose.

IV. Regulatory Review Requirements

A. Review Under Executive Order 12866

The Department has determined that today's regulatory action is a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), as amended by Executive Order 13258 (67 FR 9385, February 26, 2002). Accordingly, the Department submitted this final to the Office of Information and Regulatory Affairs of the Office of Management and Budget, which has completed its review under E.O. 12866.

This discussion assesses the potential costs and benefits of this rule. This regulation affects only those entities that voluntarily elect to apply for standby support and are selected to receive such standby support assistance. It imposes no direct costs on non-participants. The economic impact of this regulatory action is difficult to estimate because the exact nature and size of the projects to be assisted will not be known until specific project applicants come forward and because of the difficulty in predicting the scope, frequency or timing of the events that would be subject to payment of standby support. The Department has completed its analysis of the annual effect of the rule on the economy and determined that the rule likely would not have an overall effect on the economy that exceeds $100 million in any one year, and will therefore not be treated as an economically significant rulemaking.

In addition to the general effect on the economy, the Department notes that the rulemaking's direct costs are the amount of funds needed in the Program Account for the Federal government to extend Standby Support. For purposes of review under E.O. 12866, this final rule provides four hypothetical examples that demonstrate the general methodology used to determine an estimate of the subsidy cost for the Standby Support Program.

In the interim final rule, the Department noted the analysis on the Commission's ITAAC process from the Secretary of Energy Advisory Board, the Nuclear Energy Task Force (NETF) in July 2004 to "assess the issues and determine the key factors that must be addressed if the Federal government and industry are to commit to the financing, construction, and deployment of new nuclear power generation plants to meet the nation's electric power demands in the 21st Century." NETF determined that the ITAAC process and the possibility of a hearing on satisfaction of the ITAAC "may" create regulatory disruption after substantial funds have been expended. Achieving the purpose of the revised regulatory process will be thwarted if the Commission does not keep the ITAAC process focused narrowly on those issues that must be subject to post-construction verification. NETF concluded that this new regulatory process which has not been tested in practice, poses a significant risk factor to generating companies. Similarly, the Department funded a report which defined critical risks and investment issues. (*Business Case for New Nuclear Power Plants: Bringing Public and Private Resources Together for Nuclear Energy,* July 2002, available at *http://www.nuclear.gov/home/bc/businesscase.html*). Its conclusions were similar to NETF's recommendations in that one of the critical risks with the construction of new nuclear power plants is the regulatory risk associated with the ITAAC process.

Congress passed section 638 after issuance of the NETF report. In so doing, Congress provided direction to the Department on the type of delays and costs that are to be covered under the Standby Support Program to facilitate construction and operation of advanced nuclear facilities. The Department is following the direction provided by Congress to structure the regulations governing the Standby Support Program.

The Department anticipates that the Standby Support Program will facilitate the construction of new nuclear facilities by decreasing the regulatory and litigation risks related to the combined license process. The program establishes a maximum of $500 million in insurance as the limit for each of the first two reactors covered and $250 million for each of the subsequent four reactors. Section 638 also establishes that the covered costs for principal or interest on the debt obligation of the advanced nuclear facility (i.e., loan costs) are to be calculated the same as the cost of a loan guarantee under FCRA and are to be deposited in the Program Account prior to contract execution. Under FCRA, the amount of budget authority necessary to support a Federal credit instrument depends upon the subsidy cost (i.e., the net present value of the estimated cash flow of payments by the government to cover the expected value of the principal or interest on any debt obligation of the owner of an advanced nuclear facility during covered delay). This subsidy cost reflects the loan costs in the Program Account, which in turn equates to the "cost of a loan guarantee" under section 502(5)(C) of FCRA. Under the Standby Support Program and FCRA, the Federal government is not authorized to extend credit assistance unless it has sufficient funds in the Program Account either in the form of budget authority or fees charged by the program to offset any potential losses. The funds deposited in the Program Account needed for the Standby Support Program will be contributed by private industry through a risk premium, in whole or in part, depending on appropriations. Loan costs may not be paid from the proceeds of debt guaranteed or funded by the Federal government.

Since the passage of the Act, the Department has conducted both qualitative and quantitative research to support four hypothetical examples that demonstrate the general methodology used to determine an estimate for the subsidy cost for the Standby Support Program. The qualitative research included interviewing experts at private firms and government agencies and determining the similarities and differences with their programs and the standby support insurance program. In particular, the Department met with or interviewed personnel at the Commission, OPIC, U.S. Export Import Bank, U.S. Department of Agriculture, and commercial insurers. The additional research included analyzing the Commission's case history and researching other federal agency loan programs. The following provides a discussion of the key assumptions used, risks considered, and the four hypothetical cost estimates developed by the Department.

Financial Assumptions of the Cost Estimate

The following information summarizes the key assumptions used in the Department's four hypothetical examples.

The Department reviewed other government insurance or loan programs to determine their cost structure and applicability to the Standby Support Program. Following its review, the Department concluded that the other government programs provide some valuable information but are sufficiently different from Standby Support that they cannot provide a direct basis for comparison. For example, the premiums of the OPIC insurance program are pooled together and if a default occurs, that pool is used to pay out the damages. This arrangement differs in critical ways from the Standby Support program. The USDA's Rural Utility Service Programs make and guarantee loans but the costs depend substantially on the credit quality of the borrowers. Moreover, the government has rights to the collateral pledged as part of the loan.

The Standby Support Program does not compare to these other programs in that: (1) The other programs insure many entities or individuals; and (2) the other programs evaluate applications and assess costs in part based on factors different than those present in this program. In the Standby Support Program, there are a limited number of applicants to pool premiums and the risks include actions by the Commission and litigation.

For financing, the Department assumed two different financing structures: 50:50 debt to equity (50:50 D/E) and 80:20 debt to equity (80:20 D/E). These two financial structures have been indicated by industry as the two most probable financing structures for new nuclear reactors. For each of these D/E structures, two scenarios were generated, one assuming level debt payments (constant principal and interest), the other assuming level principal payments (constant principal). The estimated all-in costs for a 1,100 MWe reactor were $2.5 billion and $2.8 billion for D/E financing structures of 50:50 and 80:20, respectively. The debt was assumed to have a 20 year amortization period. Exhibit 1, below, provides a summary of the financing assumptions used.

EXHIBIT 1.—FINANCING ASSUMPTIONS FOR 50:50 D/E AND 80:20 D/E STRUCTURES

Repayment Options	Level Debt Payments (Prin. + Int.)		Level Principal Payments	
Debt-to-Equity Financing Assumptions	50:50 D/E	80:20 D/E	50:50 D/E	80:20 D/E
Total All-in Costs	$2.5 Billion	$2.8 Billion	$2.5 Billion	$2.8 Billion
Construction Period	5 Years after COL	5 Years after COL	5 Years after COL	5 Years after COL
Debt Characteristics:				
Amortization Period	20 Years	20 Years	20 Years	20 Years
Interest Capitalization during Construction.	Yes	Yes	Yes	Yes
Interest Rate	7%	8%	7%	8%

Non-Financial Risks Affecting the Cost Estimate

When developing cost estimates, the Department will need to assess the non-financial risks of the Standby Support Program, which can be grouped into three categories: (1) Delays from Commission regulatory review (i.e., untimely review of ITAAC or conduct of pre-operational hearings); (2) delays from NRC-related litigation; and (3) delays from external events (non-NRC). This division groups the risks similarly, based on those risks that are within the Commission's control and those that are outside the Commission's control. The Department also assumed that the design certification and early site permit process have finality, meaning that virtually all issues have been resolved and risks of litigation after combined construction and operating license issuance (i.e., when Standby Support Contracts are in effect) is less than before issuance (i.e., when Standby Support Contracts are not in effect). The Department also assumed that ITAAC schedules will be set either by guidance from the Commission, or by agreement of the Department and sponsor, that the schedule for determination letters will be based on completed ITAAC packages, and that the sponsor would be permitted and expected to load fuel once all the ITAAC letters have been approved. The following provides additional background information, gathered by the Department, that helps to inform cost estimates.

Covered Costs From ITAAC and Pre-Operational Hearings

ITAAC Review. The Department is aware that it is difficult to predict the Commission's ability to conduct the ITAAC review process in a timely fashion, particularly since the Commission's new regulatory process under part 52 has not been tested and there are presently no schedules set by the Commission for ITAAC review. Nevertheless, in conducting its analysis the Department considered several sources of current and historical information including a review of the Commission's licensing process under part 52, a review of the Commission's ability to meet schedules in other proceedings, and interviews with the Commission staff. To estimate the frequency that an ITAAC review would not be completed on time and would cause a delay in full power operation, the Department conducted a two-step analysis based on the information gathered from its research.

The Department started out by trying to understand when ITAAC submissions would occur during the construction period. The Department's qualitative research indicated that 20 percent of ITAACs are expected to be submitted in the first four years of construction while the remaining 80 percent of ITAACs are expected to be submitted in the last year of construction. Nuclear professionals indicated that these first 20 percent of the ITAACs are for discrete, lower risk items that are likely not on the critical path for full power operation (in contrast to the last year ITAAC that are for entire systems more critical to full power operation). Hence, construction would most likely continue even if there was a delay in reviewing an ITAAC in the earlier years. As a result, the Department concluded that Commission review of the first 20 percent of ITAACs, whether on time or not, would have a negligible effect on the commencement of full power operation.

In addition, the Department reviewed the other 80 percent of the ITAAC to estimate the frequency and length of delay, and an estimated cost. To conduct this analysis, the Department evaluated the Commission's ability to meet schedules with respect to license renewals for existing nuclear facilities under 10 CFR part 54, its reviews of early site permits (ESPs) under part 52, and its design certification of the Westinghouse AP1000 nuclear power plant.

Under the license renewal process a licensee may apply to the Commission to renew its license as early as 20 years before expiration of its current license. The renewal process ensures that important systems, structures and components will continue to perform their intended functions during the 20-year period of extended operation.[2] To date, the Commission has successfully renewed the licenses for 43 reactors within schedule, with only minor deviations from established milestone dates (e.g., a few instances where schedule dates were missed by a day or two, and only 2 instances out of 40 where the delay was for more than 5 days).[3] The Department recognizes that in such cases, these are operating reactors and therefore may not necessarily be representative of newly constructed reactors.

Under part 52, the Commission can issue an early site permit (ESP) that addresses site safety issues, environmental protection issues, and emergency plans, independent of the review of a specific nuclear plant design or specific combined license application. An ESP is a partial construction permit, and is therefore subject to all procedural requirements in 10 CFR Part 2 applicable to construction permits. The permit is valid for 10 to 20 years and can be renewed for an additional 10 to 20 years. The Commission is currently reviewing three early site permit applications and to date the Commission has met all schedules for the three applications it has received.[4]

Third, the Commission review and design certification of Westinghouse's AP1000 nuclear power plant was issued on time.

Fourth, the Commission has stated that in order to meet estimated work activities, 350 new employees have been added in FY 2006. This new hiring of

[2] The process and requirements are codified in 10 CFR part 54 (*http://www.nrc.gov/reading-rm/doc-collections/cfr/part054/index.html.*

[3] Reactor license renewal schedules are available on the Commission's Web site at: *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html*

[4] Reactor license renewal schedules are available on the Commission's Web site at: *http://www.nrc.gov/reactors/new-licensing/esp.html.*

staff provides some additional confidence that the Commission may be able to meet schedules for licensing reviews.

In addition to this research, the Department interviewed the Commission staff to better understand ITAAC review periods, and where delays related to ITAAC issues would result in a covered delay. The Commission's staff indicated that a 90 day review period would be a reasonable estimate for an average time period. Commission staff also noted the expectation that at the time a complete ITAAC is submitted, the Commission's field team would have already begun conducting ongoing inspections of the item under review and would have collected data that will make the final review efficient. Based on these interviews, the Department developed average delay estimates. Commission staff indicated that even though it is difficult to predict the implementation of an untested regulatory process, the Department's conclusions were generally reasonable based on the Commission's planning for the review process. The Department assumed that the longer the delay the greater the likelihood that the delay would affect full power operation and result in a covered cost.

Pre-operational Hearings. Lacking definitive data, the Department estimated that pre-operational hearings resulting in a Commission stay of construction or initial fuel load and causing a delay in full power operation are comparable to delays from untimely ITAAC review. Since the risk factors are similar, the Department evaluated the probability of delays due to both of these factors combined.

Covered Costs for Delays From Litigation

The Department reviewed historical information on litigation brought against the Commission, instances where a court ordered a stay or injunction, and the part 52 licensing process in general. First, the Department considered the likelihood of a delay occurring from litigation in which there was an adverse ruling against the Commission or there was a court order enjoining reactor construction or operation. Next, the Department estimated the expected length of a delay in full power operation in such a case.

The Department researched the history of judicial stays of Commission operating license authorizations. The Department's research uncovered three cases since 1973 in which the issuance of an operating license was stayed. The first case involved the Perry Nuclear Power Plant in Ohio in which the stay was for 40 days.[5] The second case involved the Limerick Nuclear Power Plant, which was stayed for 6 days.[6] The third case involved the Diablo Canyon Nuclear Power Plant, which was stayed for 75 days.[7] To the Commission staff's best knowledge, this information is correct and there are no other examples of judicial stays regarding the issuance of a new nuclear power plant operating license.[8] Given that about 123 operating licenses have been issued by the Commission, the Department estimates that the probability of a stay relative to the number of operating licenses issued is less than 3 percent. The Department recognizes, however, that for proposed new facilities, there may be specific facts and circumstances that could affect this possibility.

The Department also analyzed the history of judicial stays on new operating licenses as compared broadly to the history of all court cases in which the Commission was a party or there was an adverse decision for the Commission. The Department's research found, from 1973 through early 2006, the Commission was a party in 206 court cases involving regulatory or licensing matters. Of these 206 cases, the Department found approximately 39 cases in which the court ruled against the Commission. Of the 39 cases, only three cases resulted in a stay or injunction of operations (described above). While this suggests a very high success rate for litigation involving the Commission, the Department also recognizes that there may be some unforeseen factors that could affect the litigation risk given the new review process, and new technologies involved.

The Commission's more recent experience in court cases has been more successful. For the period starting in 1990, or around the time the Energy Policy Act of 1992 was enacted, the Commission was directed to streamline the nuclear reactor licensing process to alleviate long delays and obstacles in the process. The Department believes the Commission's more recent litigation history may be more indicative of future litigation. This is consistent with the Department's expectation that litigation risks that would be covered under a Standby Support Contract are reduced because coverage is initiated after issuance of the combined license, when decisions on early site permits or design certifications may already have been settled and are final. The Department recognizes that this more recent experience directly applies to license renewals rather than new construction; however, it indicates that the Commission has strengthened its review process. Since 1990, the Commission has been a party in 44 court cases. Of those 44 cases, only 2 cases were decided against the Commission and no cases resulted in a stay or injunction.

Another factor in estimating the cost of litigation is how long a delay caused by a stay or injunction would remain in effect. As noted earlier, the data available to analyze this is very limited in nature, only 3 cases, and only one of the cases is relevant to the analysis. The State of Ohio requested a stay against the Perry Nuclear Power Plant, challenging the adequacy of the evacuation plan and its formulation without adequate State participation. The Court of Appeals granted the State's request for a stay on the operating license of the plant that lasted for 45 days. While the stay itself was for 45 days, the Department used a more conservative estimate of 10 months for the effect of the stay—which covered the time of the stay as well as certain other activities necessary before the reactor could begin operations. The Department believes that a delay covered by a Standby Support Contract would occur in a similar manner. The Department recognizes that in specific cases, however, greater delays would be possible, *e.g.*, where a State or other entity provides early indication of its intent to challenge the operation of a reactor, or where a delay did not result in a stay but had such potential. In view of the absence of a statistically significant number of relevant judicial stay cases, the Department cannot conclusively predict the length of delay.

The four hypothetical examples are intended to provide the public with some indication of possible costs, under a specific set of assumptions and conditions, with a specified coverage level, debt financing structure, and interest rates. The examples also reflect specific assumptions regarding the non-financial risks of the Standby Support Program, which were described earlier: (1) delays from Commission regulatory review (i.e., untimely review of ITAAC or conduct of pre-operational hearings); (2) delays from NRC-related litigation; and (3) delays from external events (non-NRC). Both the financial and non-financial risk factors will likely differ for each project, so the costs below may not reflect the subsidy cost associated with a particular Standby Support contract. For the examples provided

[5] *State of Ohio* v. *NRC*, 812 F.2d 288 (6th Cir. 1986).

[6] *Limerick Ecology Action* v. *NRC*, No. 85–3431 (3d Cir. 1985) (unpublished order).

[7] *San Luis Obispo Mothers for Peace* v. *NRC*, No. 84–1410 (D.C. Cir) (unpublished order).

[8] Commission Response to Congress, July 2005.

below, dollar amounts are stated in millions.

Repayment options	Debt structure	Face value of debt	Maximum coverage	Interest rate (percent)	Hypothetical subsidy cost
Level Debt Payments (Prin. + Int)	50:50 D/E	$1,250	$500	7.0	$14
	80:20 D/E	2,250	500	8.0	21
Level Principal Payments	50:50 D/E	1,250	500	7.0	17
	80:20 D/E	2,250	500	8.0	27

While the Department has not prepared nor presented hypothetical subsidy costs for the $250 million Standby Support Contracts, the Department believes that the subsidy costs would likely be roughly half of the subsidy costs compared to a $500 million Standby Support Contract for the same project. The actual subsidy costs for any particular Standby Support Contract will vary based on the specific risks associated with the project and timing of such contract.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4779, February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: Eliminate drafting errors and needless ambiguity, write regulations to minimize litigation, provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(b) requires Federal agencies to make every reasonable effort to ensure that a regulation, among other things: Clearly specifies the preemptive effect, if any, adequately defines key terms, and addresses other important issues affecting the clarity and general draftsmanship under guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department has completed the required review and determined that, to the extent permitted by law; this final rule meets the relevant standards of Executive Order 12988.

C. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions.

Today's regulatory action has been determined not to be a "policy that has federalism implications," that is, it does not have substantial direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibility among the various levels of government under Executive Order 13132 (64 FR 43255, August 10, 1999). Accordingly, no "federalism summary impact statement" was prepared or subjected to review under the Executive Order by the Director of the Office of Management and Budget.

D. Review Under Executive Order 13175

Under Executive Order 13175 (65 FR 67249, November 6, 2000) on "Consultation and Coordination with Indian Tribal Governments," the Department may not issue a discretionary rule that has "tribal implications" and imposes substantial direct compliance costs on Indian tribal governments. The Department has determined that this final rule does not have such effects and concluded that Executive Order 13175 does not apply to this rule.

E. Reviews Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation which a general notice of proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). Given that no general notice of proposed rulemaking is required, no regulatory flexibility analysis is required.

F. Review Under the Paperwork Reduction Act

Section 950.10(b) contains information collection requirements pertaining to eligibility; section 950.12(a) contains information collection requirements pertaining to fulfillment of conditions precedent to a Standby Support Contract; and section 950.23 contains information collection requirements pertaining to submission of claims for payment of covered costs under a Standby Support Contract. As indicated in the DATES section of this notice, these provisions will not become effective until the Office of Management and Budget (OMB) has approved them pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.* The Department has issued a notice seeking public comment under the Paperwork Reduction Act on the information collection requirements in these sections of today's rule. (71 FR 41788, July 24, 2006) After considering any public comments received in response to that notice, the Department will submit the proposed collection of information to OMB for approval pursuant to 44 U.S.C. 3507. An agency may not conduct, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. After OMB approves the information collection requirements, the Department will publish a notice in the **Federal Register** that announces the effective date and displays the OMB control number for these sections of the rule.

G. Review Under the National Environmental Policy Act

The Department has concluded that promulgation of these regulations fall into the class of actions that does not individually or cumulatively have a significant impact on the human environment as set forth in the Department regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the rule is covered under the categorical exclusion in paragraph A6 of Appendix A to subpart D, 10 CFR part 1021, which applies to the

establishment of procedural rulemakings. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

H. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by states, tribal, or local governments, on the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of state, tribal, or local governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. The Department has determined that the rule published today does not contain any Federal mandates affecting states, tribal, or local governments, so these requirements do not apply.

I. Review Under Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use), 66 FR 28355 (May 22, 2001) requires preparation and submission to OMB of a Statement of Energy Effects for significant regulatory actions under Executive Order 12866 that are likely to have a significant adverse effect on the supply, distribution, or use of energy. The Department has determined that the rule published today does not have a significant adverse effect on the supply, distribution, or use of energy and thus the requirement to prepare a Statement of Energy Effects does not apply.

J. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a "Family Policymaking Assessment" for any rule that may affect family well-being. This rule has no impact on the autonomy or integrity of the family as an institution. Accordingly, The Department has concluded that it is not necessary to prepare a Family Policymaking Assessment.

K. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most dissemination of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). The Department has reviewed today's final rule under the OMB and Department of Energy guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

L. Congressional Notification

As required by 5 U.S.C. 801, the Department will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this rulemaking.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 950

Government contracts, Nuclear safety.

Issued in Washington, DC on August 4, 2006.

Dennis R. Spurgeon,

Assistant Secretary, Office of Nuclear Energy.

■ Accordingly, the interim final rule published at 71 FR 28200 on May 15, 2006 which added a new part 950 to Title 10 of the Code of Federal Regulations, is adopted as a final rule with the following changes.

■ 1. Part 950 is revised to read as follows:

PART 950—STANDBY SUPPORT FOR CERTAIN NUCLEAR PLANT DELAYS

Subpart A General Provisions

Sec.

950.1 Purpose.
950.2 Scope and applicability.
950.3 Definitions.

Subpart B—Standby Support Contract Process

950.10 Conditional agreement.
950.11 Terms and conditions of the Conditional Agreement.
950.12 Standby Support Contract Conditions.
950.13 Standby Support Contract: General provisions.
950.14 Standby Support Contract: Covered events, exclusions, covered delay, and covered cost provisions.

Subpart C—Claims Administration Process

950.20 General provisions.
950.21 Notification of covered event.
950.22 Covered event determination.
950.23 Claims process for payment of covered costs.
950.24 Claims determination for covered costs.
950.25 Calculation of covered costs.
950.26 Adjustments to claim for payment of covered costs.
950.27 Conditions for payment of covered costs.
950.28 Payment of covered costs.

Subpart D—Dispute Resolution Process

950.30 General.
950.31 Covered event dispute resolution.
950.32 Final determination on covered events.
950.33 Covered costs dispute resolution.
950.34 Final claim determination.
950.35 Payment of final claim determination.
950.36 Other contract matters in dispute.
950.37 Final agreement or final decision.

Subpart E—Audit and Investigations and Other Provisions

950.40 General.
950.41 Monitoring/Auditing.
950.42 Disclosure.

Authority: 42 U.S.C. 2201, 42 U.S.C. 7101 *et seq.*, and 42 U.S.C. 16014

Subpart A—General Provisions

§ 950.1 Purpose.

The purpose of this part is to facilitate the construction and full power operation of new advanced nuclear facilities by providing risk insurance for certain delays attributed to the Nuclear Regulatory Commission regulatory process or to litigation.

§ 950.2 Scope and applicability.

This part sets forth the policies and procedures for the award and administration of Standby Support Contracts between the Department and sponsors of new advanced nuclear facilities.

§ 950.3 Definitions.

For the purposes of this part:

Act means the Energy Policy Act of 2005.

Advanced nuclear facility means any nuclear facility the reactor design for which is approved after December 31, 1993, by the Nuclear Regulatory Commission (and such design or a substantially similar design of comparable capacity was not approved on or before that date).

Available indemnification means $500 million with respect to the initial two reactors and $250 million with respect to the subsequent four reactors.

Claims administrator means the official in the Department of Energy responsible for the administration of the Standby Support Contracts, including the responsibility to approve or disapprove claims submitted by a sponsor for payment of covered costs under the Standby Support Contract.

Combined license means a combined construction and operating license (COL) for an advanced nuclear facility issued by the Commission.

Commencement of construction means the point in time when a sponsor initiates the pouring of safety-related concrete for the reactor building.

Commission means the Nuclear Regulatory Commission (NRC).

Conditional Agreement means a contractual agreement between the Department and a sponsor under which the Department will execute a Standby Support Contract with the sponsor if and only if the sponsor is one of the first six sponsors to satisfy the conditions precedent to execution of a Standby Support Contract, and if funding and other applicable contractual, statutory and regulatory requirements are satisfied.

Construction means the construction activities related to the advanced nuclear facility encompassed in the time period after commencement of construction and before the initiation of fuel load for the advanced nuclear facility.

Covered cost means:

(1) Principal or interest on any debt obligation financing an advanced nuclear facility (but excluding charges due to a borrower's failure to meet a debt obligation unrelated to the delay); and

(2) Incremental costs that are incurred as a result of covered delay.

Covered delay means a delay in the attainment of full power operation of an advanced nuclear facility caused by a covered event, as defined by this section.

Covered event means an event that may result in a covered delay due to:

(1) The failure of the Commission to comply with schedules for review and approval of inspections, tests, analyses and acceptance criteria established under the combined license;

(2) The conduct of pre-operational hearings by the Commission for the advanced nuclear facility; or

(3) Litigation that delays the commencement of full power operations of the advanced nuclear facility.

Department means the United States Department of Energy.

Full power operation means the point at which the sponsor first synchronizes the advanced nuclear facility to the electrical grid.

Grant account means the account established by the Secretary that receives appropriations or non-Federal funds in an amount sufficient to cover the amount of incremental costs for which indemnification is available under a Standby Support Contract.

Incremental costs means the incremental difference between:

(1) The fair market price of power purchased to meet the contractual supply agreements that would have been met by the advanced nuclear facility but for a covered delay; and

(2) The contractual price of power from the advanced nuclear facility subject to the delay.

Initial two reactors means the first two reactors covered by Standby Support Contracts that receive a combined license and commence construction.

Litigation means adjudication in Federal, State, local or tribal courts, including appeals of Commission decisions related to the combined license process to such courts, but excluding administrative litigation that occurs at the Commission related to the combined license process.

Loan cost means the net present value of the estimated cash flows of:

(1) Payments by the government to cover defaults and delinquencies, interest subsidies, or other payments; and

(2) Payments to the government including origination and other fees, penalties and recoveries, as outlined under the Federal Credit Reform Act of 1990.

Pre-operational hearing means any Commission hearing that is provided for in 10 CFR part 52, after issuance of the combined license.

Program account means the account established by the Secretary that receives appropriations or loan guarantee fees in an amount sufficient to cover the loan costs.

Program administrator means the Department official authorized by the Secretary to represent the Department in the administration and management of the Standby Support Program, including negotiating with and entering into a Conditional Agreement or a Standby Support Contract with a sponsor.

Related party means the sponsor's parent company, a subsidiary of the sponsor, or a subsidiary of the parent company of the sponsor.

Secretary means the Secretary of Energy or a designee.

Sponsor means a person whose application for a combined license for an advanced nuclear facility has been docketed by the Commission.

Standby Support Contract means the contract that, when entered into by a sponsor and the Program Administrator pursuant to section 638 of the Energy Policy Act of 2005 after satisfaction of the conditions in § 950.12 and any other applicable contractual, statutory and regulatory requirements, establishes the obligation of the Department to compensate covered costs in the event of a covered delay subject to the terms and conditions specified in the Standby Support Contract.

Standby Support Program means the program established by section 638 of the Act as administered by the Department of Energy.

Subsequent four reactors means the next four reactors covered by Standby Support Contracts, after the initial two reactors, which receive a combined license and commence construction.

System-level construction schedule means an electronic critical path method schedule identifying the dates and durations of plant systems installation (but excluding details of components or parts installation), sequences and interrelationships, and milestone dates from commencement of construction through full power operation, using software acceptable to the Department.

Subpart B—Standby Support Contract Process

§ 950.10 Conditional agreement.

(a) *Purpose.* The Department and a sponsor may enter into a Conditional Agreement. The Department will enter into a Standby Support Contract with the first six sponsors to satisfy the specified conditions precedent for a Standby Support Contract if and only if all funding and other contractual, statutory and regulatory requirements have been satisfied.

(b) *Eligibility.* A sponsor is eligible to enter into a Conditional Agreement with the Program Administrator after the sponsor has submitted to the Department the following information but before the sponsor receives approval of the combined license application from the Commission:

(1) An electronic copy of the combined license application docketed by the Commission pursuant to 10 CFR part 52, and if applicable, an electronic copy of the design certification or early site permit, or environmental report referenced or included with the sponsor's combined license application;

(2) A summary schedule identifying the projected dates of construction, testing, and full power operation;

(3) A detailed business plan that includes intended financing for the

project including the credit structure and all sources and uses of funds for the project, the most recent private credit rating or other similar credit analysis for project related covered financing, and the projected cash flows for all debt obligations of the advanced nuclear facility which would be covered under the Standby Support Contract;

(4) The sponsor's estimate of the amount and timing of the Standby Support payments for debt service under covered delays; and

(5) The estimated dollar amount to be allocated to the sponsor's covered costs for principal or interest on the debt obligation of the advanced nuclear facility and for incremental costs, including whether these amounts would be different if the advanced nuclear facility is one of the initial two reactors or one of the subsequent four reactors.

(c) The Program Administrator shall enter into a Conditional Agreement with a sponsor upon a determination by the Department that the sponsor is eligible for a Conditional Agreement, the information provided by the sponsor under paragraph (b) of this section is accurate and complete, and the Conditional Agreement is consistent with applicable laws and regulations.

§ 950.11 Terms and conditions of the Conditional Agreement.

(a) *General.* Each Conditional Agreement shall include a provision specifying that the Program Administrator and the sponsor will enter into a Standby Support Contract provided that the sponsor is one of the first six sponsors to fulfill the conditions precedent specified in § 950.12, subject to certain funding requirements and limitations specified in § 950.12 and any other applicable contractual, statutory and regulatory requirements.

(b) *Allocation of Coverage.* Each Conditional Agreement shall include a provision specifying the amount of coverage to be allocated under the Standby Support Contract to cover principal or interest costs and to cover incremental costs, including a provision on whether the allocation shall be different if the advanced nuclear facility is one of the initial two reactors or one of the subsequent four reactors, subject to paragraphs (c) and (d) of this section. A sponsor may elect to allocate 100 percent of the coverage to either the Program Account or the Grant Account.

(c) *Funding.* Each Conditional Agreement shall contain a provision that the Program Account or Grant Account shall be funded in advance of execution of the Standby Support Contract and in the following manner, subject to the conditions of paragraphs (d) and (e) of this section. Under no circumstances will the amount of the coverage for payments of principal or interest under a Standby Support Contract exceed 80 percent of the total of the financing guaranteed under that Contract.

(1) The Program Account shall receive funds appropriated to the Department, loan guarantee fees, or a combination of appropriated funds and loan guarantee fees that are in an amount equal to the loan costs associated with the amount of principal or interest covered by the available indemnification. Loan costs may not be paid from the proceeds of debt guaranteed or funded by the Federal government. The parties shall specify in the Conditional Agreement the anticipated amount or anticipated percentage of the total funding in the Program Account to be contributed by appropriated funds to the Department, by the sponsor, by a non-federal source, or by a combination of these funding sources. Covered costs paid through the Program Account are backed by the full faith and credit of the United States.

(2) The Grant Account shall receive funds appropriated to the Department, funds from a sponsor, funds from a non-Federal source, or a combination of appropriated funds and funds from the sponsor or other non-Federal source, in an amount equal to the incremental costs. The parties shall specify in the Conditional Agreement the anticipated amount or anticipated percentage of the total funding in the Grant Account to be contributed by appropriated funds to the Department, by the sponsor, by a non-Federal source, or by a combination of these funding sources.

(d) *Reconciliation.* Each Conditional Agreement shall include a provision that the sponsor shall provide no later than ninety (90) days prior to execution of a Standby Support Contract sufficient information for the Program Administrator to recalculate the loan costs and the incremental costs associated with the advanced nuclear facility, taking into account whether the sponsor's advanced nuclear facility is one of the initial two reactors or the subsequent four reactors.

(e) *Limitations.* Each Conditional Agreement shall contain a provision that limits the Department's contribution of Federal funding to the Program Account or the Grant Account to only those amounts, if any, that are appropriated to the Department in advance of the Standby Support Contract for the purpose of funding the Program Account or Grant Account. In the event the amount of appropriated funds to the Department for deposit in the Program Account or Grant Account is not sufficient to result in an amount equal to the full amount of the loan costs or incremental costs resulting from the allocation of coverage under the Conditional Agreement pursuant to 950.11(b), the sponsor shall no later than sixty (60) days prior to execution of the Standby Support Contract:

(1) Notify the Department that it shall not execute a Standby Support Contract; or

(2) Notify the Department that it shall provide the anticipated contributions to the Program Account or Grant Account as specified in the Conditional Agreement pursuant to 950.11(c)(1). The sponsor shall have the option to provide additional funds to the Program Account or Grant Account up to the amount equal to the full amount of loan costs or incremental costs. In the event the sponsor does not provide sufficient additional funds to fund the Program Account or the Grant Account in an amount equal to the full amount of loan costs or incremental costs, then the amounts of coverage available under the Standby Support Contract shall be reduced to reflect the amounts deposited in the Program Account or Grant Account. If the sponsor elects less than the full amount of coverage available under the law, then the sponsor shall not have recourse against, and the Department is not liable for, any claims for an amount of covered costs in excess of that reduced amount of coverage or the amount deposited in the Grant Account upon execution of the Standby Support Contract, notwithstanding any other provision of law.

(f) *Termination of Conditional Agreements.* Each Conditional Agreement shall include a provision that the Conditional Agreement remains in effect until such time as:

(1) The sponsor enters into a Standby Support Contract with the Program Administrator;

(2) The sponsor has commenced construction on an advanced nuclear facility and has not entered into a Standby Support Contract with the Program Administrator within thirty (30) days after commencement of construction;

(3) The sponsor notifies the Program Administrator in writing that it wishes to terminate the Conditional Agreement, thereby extinguishing any rights or obligations it may have under the Conditional Agreement;

(4) The Program Administrator has entered into Standby Support Contracts that cover three different reactor designs, and the Conditional Agreement is for an advanced nuclear facility of a

different reactor design than those covered under existing Standby Support Contracts; or

(5) The Program Administrator has entered into six Standby Support Contracts.

§ 950.12 Standby Support Contract Conditions.

(a) *Conditions Precedent.* If Program Administrator has not entered into six Standby Support Contracts, the Program Administrator shall enter into a Standby Support Contract with the sponsor, consistent with applicable statutes and regulations and subject to the conditions set forth in paragraphs (b) and (c) of this section, upon a determination by the Department that all the conditions precedent to a Standby Support Contract have been fulfilled, including that the sponsor has:

(1) A Conditional Agreement with the Department, consistent with this subpart;

(2) A combined license issued by the Commission;

(3) Documentation that it possesses all Federal, State, or local permits required by law to commence construction;

(4) Documentation that it has commenced construction of the advanced nuclear facility;

(5) Documented coverage of insurance required for the project by the Commission and lenders;

(6) Paid any required fees into the Program Account and the Grant Account, as set forth in the Conditional Agreement and paragraph (b) of this section;

(7) Provided to the Program Administrator, no later than ninety (90) days prior to execution of the contract, the sponsor's detailed schedule for completing the inspections, tests, analyses and acceptance criteria in the combined license and informing the Commission that the acceptance criteria have been met; and the sponsor's proposed schedule for review of such inspections, tests, analyses and acceptance criteria by the Commission, consistent with § 950.14(a) of this part and which the Department will evaluate and approve; and

(8) Provided to the Program Administrator, no later than ninety (90) days prior to execution of the contract, a detailed systems-level construction schedule that includes a schedule identifying projected dates of construction, testing and full power operation of the advanced nuclear facility.

(9) Provided to the Program Administrator, no later than ninety (90) days prior to the execution of the contract, a detailed and up-to-date plan of financing for the project including the credit structure and all sources and uses of funds for the project, and the projected cash flows for all debt obligations of the advanced nuclear facility.

(b) *Funding.* No later than thirty (30) days prior to execution of the contract, and consistent with section 638(b)(2)(C), funds in amounts determined pursuant to § 950.11(e) have been made available and shall be deposited in the Program Account or the Grant Account respectively.

(c) *Limitations.* The Department shall not enter into a Standby Support Contract, if:

(1) *Program Account.* The contract provides coverage of principal or interest costs for which the loan costs exceed the amount of funds deposited in the Program Account; or

(2) *Grant Account.* The contract provides coverage of incremental costs that exceed the amount of funds deposited in the Grant Account.

(d) *Cancellation by Abandonment.*

(1) If the Program Administrator cancels a Standby Support Contract for abandonment pursuant to 950.13(f)(1), the Program Administrator may re-execute a Standby Support Contract with a sponsor other than a sponsor or that sponsor's assignee with whom the Department had a cancelled contract, provided that such replacement Standby Support Contract is executed in accordance with the terms and conditions set forth in this part, and shall be deemed to be one of the subsequent four reactors under this part.

(2) Not more than two Standby Support Contracts may be re-executed in situations involving abandonment and cancellation by the Program Administrator.

§ 950.13 Standby Support Contract: General provisions.

(a) *Purpose.* Each Standby Support Contract shall include a provision setting forth an agreement between the parties in which the Department shall provide compensation for covered costs incurred by a sponsor for covered events that result in a covered delay of full power operation of an advanced nuclear facility.

(b) *Covered facility.* Each Standby Support Contract shall include a provision of coverage only for an advanced nuclear facility which is not a federal entity. Each Standby Support Contract shall also include a provision to specify the advanced nuclear facility to be covered, along with the reactor design, and the location of the advanced nuclear facility.

(c) *Sponsor contribution.* Each Standby Support Contract shall include a provision to specify the amount that a sponsor has contributed to funding each type of account.

(d) *Maximum compensation.* Each Standby Support Contract shall include a provision to specify that the Program Administrator shall not pay compensation under the contract:

(1) In an aggregate amount that exceeds the amount of coverage up to $500 million each for the initial two reactors or up to $250 million each for the subsequent four reactors;

(2) In an amount for principal or interest costs for which the loan costs exceed the amount deposited in the Program Account; and

(3) In an amount for incremental costs that exceed the amount deposited in the Grant Account.

(e) *Term.* Each Standby Support Contract shall include a provision to specify the date at which the contract commences as well as the term of the contract. The contract shall enter into force on the date it has been signed by both the sponsor and the Program Administrator. Subject to the cancellation provisions set forth in paragraph (f) of this section, the contract shall terminate when all claims have been paid up to the full amounts to be covered under the Standby Support Contract, or all disputes involving claims under the contract have been resolved in accordance with subpart D of this part.

(f) *Cancellation provisions.* Each Standby Support Contract shall provide for cancellation in the following circumstances:

(1) If the sponsor abandons construction, and the abandonment is not caused by a covered event or force majeure, the Program Administrator may cancel the Standby Support Contract by giving written notice thereof to the sponsor and the parties have no further rights or obligations under the contract.

(2) If the sponsor does not require continuing coverage under the contract, the sponsor may cancel the Standby Support Contract by giving written notice thereof to the Program Administrator and the parties have no further rights or obligations under the contract.

(3) For such other cause as agreed to by the parties.

(g) *Termination by sponsor.* Each Standby Support Contract shall include a provision that prohibits a sponsor or any related party from executing another Standby Support Contract, if the sponsor elects to terminate its original existing Standby Support Contract,

unless the sponsor has cancelled or terminated construction of the reactor covered by its original existing Standby Support Contract.

(h) *Assignment.* Each Standby Support Contract shall include a provision on assignment of a sponsor's rights and obligations under the contract and assignment of payment of covered costs. The Program Administrator shall permit the assignment of payment of covered costs with prior written notice to the Department. The Program Administrator shall permit assignment of rights and obligations under the contract with the Department's prior approval. The sponsor may not assign its rights and obligations under the contract without the prior written approval of the Program Administrator and any attempt to do so is null and void.

(i) *Claims administration.* Each Standby Support Contract shall include a provision to specify a mechanism for administering claims pursuant to the procedures set forth in subpart C of this part.

(j) *Dispute resolution.* Consistent with the Administrative Dispute Resolution Act, each Standby Support Contract shall include a provision to specify a mechanism for resolving disputes pursuant to the procedures set forth in subpart D of this part.

(k) *Re-estimation.* Consistent with the Federal Credit Reform Act (FCRA) of 1990, the sponsor shall provide all needed documentation as required in § 950.12 to allow the Department to annually re-estimate the loan cost needed in the financing account as that term is used in 2 U.S.C. 661a(7) and funded by the Program Account. "The sponsor is neither responsible for any increase in loan costs, nor entitled to recoup fees for any decrease in loan costs, resulting from the re-estimation conducted pursuant to FCRA.

§ 950.14 Standby Support Contract: Covered events, exclusions, covered delay and covered cost provisions.

(a) *Covered events.* Subject to the exclusions set forth in paragraph (b) of this section, each Standby Support Contract shall include a provision setting forth the type of events that are covered events under the contract. The type of events shall include:

(1) The Commission's failure to review the sponsor's inspections, tests, analyses and acceptance criteria in accordance with the Commission's rules, guidance, audit procedures, or formal opinions, in the case where the Commission has in place any rules, guidance, audit procedures or formal opinions setting schedules for its review of inspections, tests, analyses, and acceptance criteria under a combined license or the sponsor's combined license;

(2) The Commission's failure to review the sponsor's inspections, tests, analyses, and acceptance criteria on the schedule for such review proposed by the sponsor, subject to the Department's review and approval of such schedule, including review of any informal guidance or opinion of the Commission that has been provided to the sponsor or the Department, in the case where the Commission has not provided any rules, guidance, audit procedures or formal Commission opinions setting schedules for review of inspections, tests, analyses and acceptance criteria under a combined license, or under the sponsor's combined license;

(3) The conduct of pre-operational Commission hearings, that are provided for in 10 CFR part 52, after issuance of the combined license; and

(4) Litigation in State, Federal, local, or tribal courts, including appeals of Commission decisions related to an application for a combined license to such courts., and excluding administrative litigation that occurs at the Commission related to the combined license.

(b) *Exclusions.* Each Standby Support Contract shall include a provision setting forth the exclusions from covered costs under the contract, and for which any associated delay in the attainment of full power operations is not a covered delay. The exclusions are:

(1) The failure of the sponsor to take any action required by law, regulation, or ordinance, including but not limited to the following types of events:

(i) The sponsor's failure to comply with environmental laws or regulations such as those related to pollution abatement or human health and the environment;

(ii) The sponsor's re-performance of any inspections, tests, analyses or re-demonstration that acceptance criteria have been met due to Commission non-acceptance of the sponsor's submitted results of inspections, tests, analyses, and demonstration of acceptance criteria;

(iii) Delays attributable to the sponsor's actions to redress any deficiencies in inspections, tests, analyses or acceptance criteria as a result of a Commission disapproval of fuel loading; or

(2) Events within the control of the sponsor, including but not limited to delays attributable to the following types of events:

(i) Project planning and construction problems;

(ii) Labor-management disputes;

(iii) The sponsor's failure to perform inspections, tests, analyses and to demonstrate acceptance criteria are met or failure to inform the Commission of the successful completion of inspections, tests, analyses and demonstration of meeting acceptance criteria in accordance with its schedule; or

(iv) The lack of adequate funding for construction and testing of the advanced nuclear facility.

(3) Normal business risks, including but not limited to the following types of events:

(i) Delays attributable to force majeure events such as a strike or the failure of power or other utility services supplied to the location, or natural events such as severe weather, earthquake, landslide, mudslide, volcanic eruption, other earth movement, or flood;

(ii) Government action meaning the seizure or destruction of property by order of governmental authority;

(iii) War or military action;

(iv) Acts or decisions, including the failure to act or decide, of any government body (excluding those acts or decisions or failure to act or decide by the Commission that are covered events);

(v) Supplier or subcontractor delays in performance;

(vi) Litigation, whether initiated by the sponsor or another party, that is not a covered event under paragraph (a) of this section; or

(vii) Failure to timely obtain regulatory permits or approvals that are not covered events under paragraph (a) of this section.

(c) *Covered delay.* Each Standby Support Contract shall include a provision for the payment of covered costs, in accordance with the procedures in subpart C of this part for the payment of covered costs, if a covered event(s) is determined to be the cause of delay in attainment of full power operation, provided that:

(1) Under Standby Support Contracts for the subsequent four reactors, covered delay may occur only after the initial 180-day period of delay, and

(2) The sponsor has used due diligence to mitigate, shorten, and end, the covered delay and associated costs covered by the Standby Support Contract.

(d) *Covered costs.* Each Standby Support Contract shall include a provision to specify the type of costs for which the Department shall provide payment to a sponsor for covered delay in accordance with the procedures set forth in subparts C and D of this part. The types of costs shall be limited to

either or both, dependent upon the terms of the contract:

(1) The principal or interest on which the loan costs for the Program Account was calculated; and

(2) The incremental costs on which funding for the Grant Account was calculated.

(e) *ITAAC Schedule.* Each Standby Support Contract shall provide for adjustments to the ITAAC review schedule when the parties deem necessary, in the case where the Commission has not provided any rules, guidance, audit procedures or formal Commission opinions setting schedules for review of inspections, tests, analyses and acceptance criteria under a combined license, upon review and approval by the Department and the sponsor. Adjustments to the ITAAC review schedule must be in writing, expressly approved by the Department and the sponsor, and remain in effective for determining covered events unless and until a subsequently issued ITAAC review schedule is approved by the parties.

Subpart C—Claims Administration Process

§ 950.20 General provisions.

The parties shall include provisions in the Standby Support Contract to specify the procedures and conditions set forth in this subpart for the submission of claims and the payment of covered costs under the Standby Support Contract. A sponsor is required to establish that there is a covered event, a covered delay and a covered cost; the Department is required to establish an exclusion in accordance with § 950.14(b).

§ 950.21 Notification of covered event.

(a) A sponsor shall submit in writing to the Claims Administrator a notification that a covered event has occurred that has delayed the schedule for construction or testing and that may cause covered delay. The sponsor shall submit the notification to the Claims Administrator no later than thirty (30) days of the end of the covered event and contain the following information:

(1) A description and explanation of the covered event, including supporting documentation of the event;

(2) The duration of the delay in the schedule for construction, testing and full power operation, and the schedule for inspections, tests, analyses and acceptance criteria, if applicable;

(3) The sponsor's projection of the duration of covered delay;

(4) A revised schedule for construction, testing and full power operation, including the dates of system level construction or testing that had been conducted prior to the event; and

(5) A revised inspections, tests, analyses, and acceptance criteria schedule, if applicable, including the dates of Commission review of inspections, tests, analyses, and acceptance criteria that had been conducted prior to the event.

(b) An authorized representative of the sponsor shall sign the notification of a covered event, certify the notification is made in good faith and the covered event is not an exclusion as specified in § 950.14(b), and represent that the supporting information is accurate and complete to the sponsor's knowledge and belief.

§ 950.22 Covered event determination.

(a) *Completeness review.* Upon notification of a covered event from the sponsor, the Claims Administrator shall review the notification for completeness within thirty (30) days of receipt. If the notification is not complete, the Claims Administrator shall return the notification within thirty (30) days of receipt and specify the incomplete information for submission by the sponsor to the Claims Administrator in time for a determination by the Claims Administrator in accordance with paragraph (c) of this section.

(b) *Covered Event Determination.* The Claims Administrator shall review the notification and supporting information to determine whether there is agreement by the Claims Administrator with the sponsor's representation of the event as a covered event (Covered Event Determination) based on a review of the contract conditions for covered events and exclusions.

(1) If the Claims Administrator believes the event is an exclusion as set forth in § 950.14(b), the Claims Administrator shall request within 30 days of receipt of the notification of a covered event information in the sponsor's possession that is relevant to the exclusion. The sponsor shall provide the requested information to the Administrator within 20 days of receipt of the Administrator's request.

(2) The sponsor's failure to provide the requested information in a complete or timely manner constitutes a basis for the Claims Administrator to disagree with the sponsor's covered event notification as provided in paragraph (c) of this section, and to deny a claim for covered costs related to the exclusion as provided in § 950.24 of this part.

(c) *Timing.* The Claims Administrator shall notify the sponsor within sixty (60) days of receipt of the notification whether the Administrator agrees with the sponsor's representation, disagrees with the representation, requires further information, or is an exclusion. If the sponsor disagrees with the Covered Event Determination, the parties shall resolve the dispute in accordance with the procedures set forth in subpart D of this part.

§ 950.23 Claims process for payment of covered costs.

(a) *General.* No more than 120 days of when a sponsor was scheduled to attain full power operation and expects it will incur covered costs, the sponsor may make a claim upon the Department for the payment of its covered costs under the Standby Support Contract. The sponsor shall file a Certification of Covered Costs and thereafter such Supplementary Certifications of Covered Costs as may be necessary to receive payment under the Standby Support Contract for covered costs.

(b) *Certification of Covered Costs.* The Certification of Covered Costs shall include the following:

(1) A Claim Report, including the information specified in paragraph (c) of this section;

(2) A certification by the sponsor that:

(i) The covered costs listed on the Claim Report filed pursuant to this section are losses to be incurred by the sponsor;

(ii) The claims for the covered costs were processed in accordance with appropriate business practices and the procedures specified in this subpart; and

(iii) The sponsor has used due diligence to mitigate, shorten, and end, the covered delay and associated costs covered by the Standby Support Contract.

(c) *Claim Report.* For purposes of this part, a "Claim Report" is a report of information about a sponsor's underlying claims that, in the aggregate, constitute the sponsor's covered costs. The Claim Report shall include, but is not limited to:

(1) Detailed information substantiating the duration of the covered delay;

(2) Detailed information about the covered costs associated with covered delay, including as applicable:

(i) The amount of payment for principal or interest during the covered delay, including the relevant dates of payment, amounts of payment and any other information deemed relevant by the Department, and the name of the holder of the debt, if the debt obligation is held by a Federal agency; or

(ii) The underlying payment during the covered delay related to the incremental cost of purchasing power to

meet contractual agreements, including any documentation deemed relevant by the Department to calculate the fair market price of power.

(d) *Supplementary Certification of Covered Cost.* If the total amount of the covered costs due to a sponsor under the Standby Support Contract has not been determined at the time the Certification of Covered Costs has been filed, the sponsor shall file monthly, or on a schedule otherwise determined by the Claims Administrator, Supplementary Certifications of Covered Costs updating the amount of the covered costs owed to the sponsor. Supplementary Certifications of Covered Costs shall include a Claim Report and a certification as described in this section.

(e) *Supplementary information.* In addition to the information required in paragraphs (b) and (c) of this section, the Claims Administrator may request such additional supporting documentation as required to ascertain the allowable covered costs sustained by a sponsor.

§ 950.24 Claims determination for covered costs.

(a) No later than thirty (30) days from the sponsor's submission of a Certification of Covered Costs, the Claims Administrator shall issue a Claim Determination identifying those claimed costs deemed to be allowable based on an evaluation of:

(1) The duration of covered delay, taking into account contributory or concurrent delays resulting from exclusions from coverage as established by the Claims Administrator in accordance with § 950.22;

(2) The covered costs associated with covered delay, including an assessment of the sponsor's due diligence in mitigating or ending covered costs, as set forth in § 950.23;

(3) Any adjustments to the covered costs, as set forth in § 950.26; and

(4) Other information as necessary and appropriate.

(b) The Claim Determination shall state the Claims Administrator's determination that the claim shall be paid in full, paid in an adjusted amount as deemed allowable by the Claims Administrator, or rejected in full.

(c) Should the Claims Administrator conclude that the sponsor has not supplied the required information in the Certification of Covered Costs or any supporting documentation sufficient to allow reasonable verification of the duration of the covered delay or covered costs, the Claims Administrator shall so inform the sponsor and specify the nature of additional documentation requested, in time for the sponsor to supply supplemental documentation and for the Claims Administrator to issue the Claim Determination.

(d) Should the Claims Administrator find that any claimed covered costs are not allowable or otherwise should be considered excluded costs under the Standby Support Contract, the Claims Administrator shall identify such costs and state the reason(s) for that decision in writing. A determination by the Claims Administrator that an event is an exclusion or that the sponsor has not provided complete or timely information relevant to the exclusion as specified in § 950.22 shall provide a basis for the Claims Administrator to find covered costs are not allowable. If the parties cannot agree on the covered costs, they shall resolve the dispute in accordance with the requirements in subpart D of this part.

§ 950.25 Calculation of covered costs.

(a) The Claims Administrator shall calculate the allowable amount of the covered costs claimed in the Certification of Covered Costs as follows:

(1) *Costs covered through Program Account.* The principal or interest on any debt obligation financing the advanced nuclear facility for the duration of covered delay to the extent the debt obligation was included in the calculation of the loan cost; and

(2) *Costs covered by Grant Account.* The incremental costs calculated for the duration of the covered delay. In calculating the incremental cost of power, the Claims Administrator shall consider:

(i) *Fair Market Price.* The fair market price may be determined by the lower of the two options: The actual cost of the short-term supply contract for replacement power, purchased by the sponsor, during the period of delay, or for each day of replacement power by its day-ahead weighted average index price in $/MWh at the hub geographically nearest to the advanced nuclear facility as posted on the previous day by the Intercontinental Exchange (ICE) or an alternate electronic marketplace deemed reliable by the Department. The daily MWh assumed to be covered is no more than its nameplate capacity multiplied by 24 hours; multiplied by the capacity-weighted U.S. average capacity factor in the previous calendar year, including in the calculation any and all commercial nuclear power units that operated in the United States for any part of the previous calendar year; and multiplied by the average of the ratios of the net generation to the grid for calculating payments to the Nuclear Waste Fund to the nameplate capacity for each nuclear unit included. In addition, the Claims Administrator may consider "fair market price" from other published indices or prices at regional trading hubs and bilateral contracts for similar delivered firm power products and the costs incurred, including acquisition costs, to move the power to the contract-specified point of delivery, as well as the provisions of the covered contract regarding replacement power costs for delivery default; and

(ii) *Contractual price of power.* The contractual price of power shall be determined as the daily weighted average price in equivalent $/MWh under a contractual supply agreement(s) for delivery of firm power that the sponsor entered into prior to any covered event. The daily MWh assumed to be covered is no more than the advanced nuclear facility's nameplate capacity multiplied by 24 hours; multiplied by the capacity-weighted U.S. average capacity factor in the previous calendar year, including in the calculation any and all commercial nuclear power units that operated in the United States for any part of the previous calendar year; and multiplied by the average of the ratios of the net generation to the grid for calculating payments to the Nuclear Waste Fund to the nameplate capacity for each nuclear unit included.

§ 950.26 Adjustments to claim for payment of covered costs.

(a) *Aggregate amount of covered costs.* The sponsor's aggregate amount of covered costs shall be reduced by any amounts that are determined to be either excluded or not covered.

(b) *Amount of Department share of covered costs.* The Department share of covered costs shall be adjusted as follows:

(1) *No excess recoveries.* The share of covered costs paid by the Department to a sponsor shall not be greater than the limitations set forth in § 950.27(d).

(2) *Reduction of amount payable.* The share of covered costs paid by the Department shall be reduced by the appropriate amount consistent with the following:

(i) *Excluded claims.* The Department shall ensure that no payment shall be made for costs resulting from events that are not covered under the contract as specified in § 950.14; and

(ii) *Sponsor due diligence.* Each sponsor shall ensure and demonstrate that it uses due diligence to mitigate, shorten, and to end the covered delay and associated costs covered by the Standby Support Contract.

§ 950.27 Conditions for payment of covered costs.

(a) *General.* The Department shall pay the covered costs associated with a Standby Support Contract in accordance with the Claim Determination issued by the Claims Administrator under § 950.24 or the Final Claim Determination under § 950.34, provided that:

(1) Neither the sponsor's claim for covered costs nor any other document submitted to support the underlying claim is fraudulent, collusive, made in bad faith, dishonest or otherwise designed to circumvent the purposes of the Act and regulations;

(2) The losses submitted for payment are within the scope of coverage issued by the Department under the terms and conditions of the Standby Support Contract as specified in subpart B of this part; and

(3) The procedures specified in this subpart have been followed and all conditions for payment have been met.

(b) *Adjustments to Payments.* In the event of fraud or miscalculation, the Department may subsequently adjust, including an adjustment obligating the sponsor to repay any payment made under paragraph (a) of this section.

(c) *Suspension of payment for covered costs.* If the Department paid or is paying covered costs under paragraph (a) of this section, and subsequently makes a determination that a sponsor has failed to meet any of the requirements for payment specified in paragraph (a) of this section for a particular covered cost, the Department may suspend payment of covered costs pending investigation and audit of the sponsor's covered costs.

(d) *Amount payable.* The Department's share of compensation for the initial two reactors is 100 percent of the covered costs of covered delay but not more than the coverage in the contract or $500 million per contract, whichever is less; and for the subsequent four reactors, not more than 50 percent of the covered costs of the covered delay but not more than the coverage in the contract or $250 million per contract, whichever is less. The Department's share of compensation for the subsequent four reactors is further limited in that the payment is for covered costs of a covered delay that occurs after the initial 180-day period of covered delay.

§ 950.28 Payment of covered costs.

(a) *General.* The Department shall pay to a sponsor covered costs in accordance with this subpart and the terms of the Standby Support Contract. Payment shall be made in such installments and on such conditions as the Department determines appropriate. Any overpayments by the Department of the covered costs shall be offset from future payments to the sponsor or returned by the sponsor to the Department within forty-five (45) days. If there is a dispute, then the Department shall pay the undisputed costs and defer payment of the disputed portion upon resolution of the dispute in accordance with the procedures in subpart D of this part. If the covered costs include principal or interest owed on a loan made or guaranteed by a Federal agency, the Department shall instead pay that Federal agency the covered costs, rather than the sponsor.

(b) *Timing of Payment.* The sponsor may receive payment of covered costs when:

(1) The Department has approved payment of the covered cost as specified in this subpart; and

(2) The sponsor has incurred and is obligated to pay the costs for which payment is requested.

(c) *Payment process.* The covered costs shall be paid to the sponsor designated on the Certification of Covered Costs required by § 950.23, or to the sponsor's assignee as permitted by § 950.13(h). A sponsor that requests payment of the covered costs must receive payment through electronic funds transfer.

Subpart D—Dispute Resolution Process

§ 950.30 General.

The parties, i.e., the sponsor and the Department, shall include provisions in the Standby Support Contract that specify the procedures set forth in this subpart for the resolution of disputes under a Standby Support Contract. Sections 950.31 and 950.32 address disputes involving covered events; §§ 950.33 and 950.34 address disputes involving covered costs; and §§ 950.36 and 950.37 address disputes involving other contract matters.

§ 950.31 Covered event dispute resolution.

(a) If a sponsor disagrees with the Covered Event Determination rendered in accordance with § 950.22 and cannot resolve the dispute informally with the Claims Administrator, then the disagreement is subject to resolution as follows:

(1) A sponsor shall, within thirty (30) days of receipt of the Covered Event Determination, deliver to the Claims Administrator written notice of a sponsor's rebuttal which sets forth reasons for its disagreement, including any expert opinion obtained by the sponsor.

(2) After submission of the sponsor's rebuttal to the Claims Administrator, the parties shall have fifteen (15) days during which time they must informally and in good faith participate in mediation to attempt to resolve the disagreement before instituting the process under paragraph (b) of this section. If the parties reach agreement through mediation, the agreement shall constitute a Final Determination on Covered Events.

(3) The parties shall jointly select the mediator(s). The parties shall share equally the cost of the mediation.

(b) If the parties cannot resolve the disagreement through mediation under the timeframe established under paragraph (a)(2) of this section and the sponsor elects to continue pursuing the claim, the sponsor shall within ten (10) days submit any remaining issues in controversy to the Civilian Board of Contract Appeals (Civilian Board) or its successor, for resolution by an Administrative Judge of the Civilian Board utilizing the Civilian Board's Summary Binding Decision procedure. The parties shall abide by the procedures of the Civilian Board for Summary Binding Decision. The parties agree that the decision of the Civilian Board constitutes a Final Determination on Covered Events.

§ 950.32 Final determination on covered events.

(a) If the parties reach a Final Determination on Covered Events through mediation, or Summary Binding Decision as set forth in this subpart, the Final Determination on Covered Events is a final settlement of the issue, made by the sponsor and the Program Administrator. The sponsor, and the Department, may rely on, and neither may challenge, the Final Determination on Covered Events in any future Certification of Covered Costs related to the covered event that was the subject of that Initial Determination.

(b) The parties agree that no appeal shall be taken or further review sought, and that the Final Determination on Covered Events is final, conclusive, non-appealable and may not be set aside, except for fraud.

§ 950.33 Covered costs dispute resolution.

(a) If a sponsor disagrees with the Claim Determination rendered in accordance with § 950.24 and cannot resolve the dispute informally with the Claims Administrator, then the parties agree that any dispute must be resolved as follows:

(1) A sponsor shall, within thirty (30) days of receipt of the Claim Determination, deliver to the Claims Administrator in writing notice of and reasons for its disagreement (Sponsor's Rebuttal), including any expert opinion obtained by the sponsor.

(2) After submission of the sponsor's rebuttal to the Claims Administrator, the parties have fifteen (15) days to informally and in good faith participate in mediation to resolve the disagreement before instituting the process under paragraph (b) of this section. If the parties reach agreement through mediation, the agreement shall constitute a Final Claim Determination.

(3) The parties shall jointly select the mediator(s). The parties shall share equally the cost of the mediator(s).

(b) If the parties cannot resolve the disagreement through mediation under the timeframe established under paragraph (a)(2) of this section, any remaining issues in controversy shall be submitted by the sponsor within ten (10) days to the Civilian Board or its successor, for resolution by an Administrative Judge of the Civilian Board utilizing the Board's Summary Binding Decision procedure. The parties shall abide by the procedures of the Civilian Board for Summary Binding Decision. The parties agree that the decision of the Civilian Board shall constitute a Final Claim Determination.

§ 950.34 Final claim determination.

(a) If the parties reach a Final Claim Determination through mediation, or Summary Binding Decision as set forth in this subpart, the Final Claim Determination is a final settlement of the issue, made by the sponsor and the Program Administrator.

(b) The parties agree that no appeal shall be taken or further review sought and that the Final Claim Determination is final, conclusive, non-appealable, and may not be set aside, except for fraud.

§ 950.35 Payment of final claim determination.

Once a Final Claim Determination is reached by the methods set forth in this subpart, the parties intend that such a Final Claim Determination shall constitute a final settlement of the claim and the sponsor may immediately present to the Department a Final Claim Determination for payment.

§ 950.36 Other contract matters in dispute.

(a) If the parties disagree over terms or conditions of the Standby Support Contract other than disagreements related to covered events or covered costs, then the parties shall engage in informal dispute resolution as follows:

(1) The parties shall engage in good faith efforts to resolve the dispute after written notification by one party to the other that there is a contract matter in dispute.

(2) If the parties cannot reach a resolution of the matter in disagreement within thirty (30) days of the written notification of the matter in dispute, then the parties shall have fifteen (15) days during which time they must informally and in good faith participate in mediation to attempt to resolve the disagreement before instituting the process under paragraph (b) of this section. If the parties reach agreement through mediation, the agreement shall constitute a Final Agreement on the matter in dispute.

(3) The parties shall jointly select the mediator(s). The parties shall share equally the cost of the mediation.

(b) If the parties cannot resolve the disagreement through mediation under the timeframe established in paragraph (a)(2) of this section and either party elects to continue pursuing the disagreement, that party shall within ten (10) days submit any remaining issues in controversy to the Civilian Board or its successor, for resolution by an Administrative Judge of the Civilian Board utilizing the Civilian Board's Summary Binding Decision procedure. The parties shall abide by the procedures of the Civilian Board for Summary Binding Decision. The parties shall agree that the decision of the Civilian Board constitutes a Final Decision on the matter in dispute.

§ 950.37 Final agreement or final decision.

(a) If the parties reach a Final Agreement on a contract matter in dispute through mediation, or a Final Decision on a contract matter in dispute through a Summary Binding Decision as set forth in this subpart, the Final Agreement or Final Decision is a final settlement of the contract matter in dispute, made by the sponsor and the Program Administrator.

(b) The parties agree that no appeal shall be taken or further review sought, and that the Final Agreement or Final Decision is final, conclusive, non-appealable and may not be set aside, except for fraud.

Subpart E—Audit and Investigations and Other Provisions

§ 950.40 General.

The parties shall include a provision in the Standby Support Contract that specifies the procedures in this subpart for the monitoring, auditing and disclosure of information under a Standby Support Contract.

§ 950.41 Monitoring/Auditing.

The Department has the right to audit any and all costs associated with the Standby Support Contracts. Auditors who are employees of the United States government, who are designated by the Secretary of Energy or by the Comptroller General of the United States, shall have access to, and the right to examine, at the sponsor's site or elsewhere, any pertinent documents and records of a sponsor at reasonable times under reasonable circumstances. The Secretary may direct the sponsor to submit to an audit by a public accountant or equivalent acceptable to the Secretary.

§ 950.42 Disclosure.

Information received from a sponsor by the Department may be available to the public subject to the provision of 5 U.S.C. 552, 18 U.S.C. 1905 and 10 CFR part 1004; provided that:

(a) Subject to the requirements of law, information such as trade secrets, commercial and financial information that a sponsor submits to the Department in writing shall not be disclosed without prior notice to the sponsor in accordance with Department regulations concerning the public disclosure of information. Any submitter asserting that the information is privileged or confidential should appropriately identify and mark such information.

(b) Upon a showing satisfactory to the Program Administrator that any information or portion thereof obtained under this regulation would, if made public, divulge trade secrets or other proprietary information, the Department may not disclose such information.

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August 11, 2006

Part IV

National Indian Gaming Commission

25 CFR Part 547
Technical Standards for "Electronic, Computer, or Other Technologic Aids" Used in the Play of Class II Games; Proposed Rule

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 547

RIN 3141–AA29

Technical Standards for "Electronic, Computer, or Other Technologic Aids" Used in the Play of Class II Games

AGENCY: National Indian Gaming Commission (NIGC or "Commission").

ACTION: Proposed rule.

SUMMARY: The proposed rule would add a new part to the Commission's regulations establishing technical standards for Class II games—bingo, lotto, other games similar to bingo, pull tabs, or "instant bingo"—that are played primarily through "electronic, computer, or other technologic aids." The proposed rule would also establish a process for assuring the integrity of such games and aids before their placement in a Class II tribal gaming operation. No such standards currently exist. The Commission proposes this action in order to assist tribal gaming regulatory authorities and operators in ensuring the integrity and security of Class II games and gaming revenue.

DATES: Submit comments on or before September 30, 2006.

ADDRESSES: Mail comments to "Comments on Technical Standards," National Indian Gaming Commission, 1441 L Street, NW., Washington, DC 20005, Attn: Michael Gross, Senior Attorney. Comments may be transmitted by facsimile to 202–632–0045, but the original also must be mailed or submitted to the above address. Comments may be sent electronically, instead of by mail or fax, to *techstds@nigc.gov*. Please indicate "Class II technical regulations" in the subject line.

FOR FURTHER INFORMATION CONTACT: Michael Gross, Senior Attorney, Office of General Counsel, telephone: 202.632.7003. This is not a toll free call.

SUPPLEMENTARY INFORMATION:

Background

The Indian Gaming Regulatory Act, 25 U.S.C. 2701–21 ("IGRA"), enacted by the Congress in 1988, establishes the National Indian Gaming Commission ("NIGC" or "Commission") and sets out a comprehensive framework for the regulation of gaming on Indian lands. The Act establishes three classes of Indian gaming.

- "Class I gaming" means social games played solely for prizes of minimal value or traditional forms of Indian gaming played in connection with tribal ceremonies or celebrations. 25 U.S.C. 2703(6). Indian tribes regulate Class I gaming exclusively.
- "Class II gaming" means the game of chance commonly known as bingo, whether or not electronic, computer, or other technologic aids are used in connection therewith, including, if played in the same location, pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, as well as various non-house banked card games. 25 U.S.C. 2703(7)(A). Specifically excluded from Class II gaming are banking card games such as blackjack, electronic or electromechanical facsimiles of any game of chance, and slot machines of any kind. 25 U.S.C. 2703(7)(B). Indian tribes and the NIGC share regulatory authority over Class II gaming. Indian tribes can engage in Class II gaming without any state involvement.
- "Class III gaming" includes all forms of gaming that are not Class I gaming or Class II gaming. 25 U.S.C. 2703(8). Class III gaming thus includes all other games of chance, including lotteries and most forms of casino gaming, such as slot machines, roulette, and banking card games like blackjack. Class III gaming may be conducted lawfully only if the tribe and the state in which the tribe is located enter into a tribal-state compact for such gaming. Alternatively, a tribe may operate Class III gaming under gaming procedures issued by the Secretary of the Interior. Because of the compact requirement, states, Indian tribes, and the NIGC possess regulatory authority over Class III gaming. In addition, the United States Department of Justice and United States Attorneys possess exclusive criminal, and certain civil, jurisdiction over Class III gaming on Indian lands.

The Commission has determined that it is in the best interests of Indian gaming to adopt technical standards that govern the implementation of electronic, computer, and other technologic aids used in the play of Class II games because no such standards currently exist. The technical standards seek to provide a means for tribal gaming regulatory authorities and tribal operators to ensure that the integrity of Class II games played with the use of electronic, computer, or other technologic aids is maintained; that the games and aids are secure; and that the games and aids are fully auditable, i.e. that they provide a means for the gaming authority and gaming operation to account for all gaming revenue.

Development of the Proposed Rule Through Consultation With Indian Tribes

In recognition of tribal sovereignty and the fundamental importance of standards to the operation and regulation of gaming on Indian lands under IGRA, the Commission developed a policy and process for consultation with Indian tribes that would provide opportunity for early and meaningful tribal input regarding formulation of these proposed regulations.

In particular, while initially advising tribes of the Commission's intention to develop standards, the Commission also actively consulted with tribes regarding formulation of the Commission's first-ever official Government-to-Government Tribal Consultation Policy. After several months of consultation with tribes, the Commission's official Tribal Consultation Policy was adopted and published in the **Federal Register** on March 31, 2004 (69 FR 16973). The Commission purposely established this policy in order to have consultation policy guidelines in place for meaningful pre-rulemaking tribal consultation on these standards and other planned Commission rulemaking initiatives.

The Commission's official Tribal Consultation Policy expressly calls for the Commission, to the extent practicable and permitted by law, to engage in regular, timely, and meaningful government-to-government consultation with Indian Tribes when formulating proposed new or revised administrative regulations that may substantially affect the operation or regulation of gaming on Indian lands. To fulfill this policy commitment, the Commission devised a three-part plan to afford tribes a reasonable and practicable opportunity to consult with the Commission and to provide early input in formulation of regulations, before they were published as proposed new rules in the **Federal Register** and the actual rule-making process began.

First, the Commission endeavored to consult in person at least twice with each gaming tribe between May 2003 and March 2006 regarding development of these, and other, proposed regulations. During this time period, the Commission sent out over 500 separate invitations to individual tribes to consult with the Commission and provide input. Many tribes accepted and participated in separate government-to-government consultation meetings with the Commission regarding the proposed regulations and other matters. While some tribes declined the Commission's invitations, between May 2003 and

March 2006 the Commission conducted over 300 separate government-to-government consultation meetings with individual tribes and their leaders or representatives.

Second, the Commission established a joint Federal-Tribal Advisory Committee on March 31, 2004, composed of both Commission and tribal representatives to assist the Commission in formulating these regulations. In January 2004, the Commission requested all gaming tribes across the country to nominate tribal representatives to serve on this Advisory Committee. From the tribal nominations received, the Commission selected the following seven tribal representatives on March 31, 2004: Norm Des Rosiers, Gaming Commissioner, Viejas Band of Kumeyaay Indians; Joseph Carlini, Gaming Commission Executive Director, Agua Caliente Band of Cahuilla Indians; Kenneth Ermatinger, Gaming Commission Executive Director, Sault Ste. Marie Tribe of Chippewa Indians of Michigan; Jamie Hummingbird, Gaming Commission Director, Cherokee Nation, Oklahoma; Mark Garrow, Gaming Commission Inspections Manager, St. Regis Mohawk Tribe; Melvin Daniels, General Manager, Muckleshoot Indian Bingo, Muckleshoot Indian Tribe; Charles Lombardo, Senior Vice-President for Gaming Operations, Seminole Tribe of Florida.

To date, the Advisory Committee has held six (6) meetings: May 13, 2004 in Washington, DC; August 2–3, 2004, Washington, DC; September 13–14, 2004, Cherokee, North Carolina; December 1–3, 2004, Oklahoma City, Oklahoma; January 12–13, 2005, Palm Springs, California; and March 11, 2005, Chicago, Illinois. During these committee meetings, all of which were open to the public, the committee discussed the various characteristics of Class II and Class III games of chance, their play, and related gaming technology and methods. In addition, the committee discussed, reviewed, critiqued and commented on 2 different, successive preliminary working drafts of the proposed Class II technical standards prepared by the Commission representatives on the Committee. The seven tribal committee representatives provided early tribal input and valuable insight, advice, and assistance to the Commission in developing each of the respective working drafts, as well as the current proposed regulations.

The Commission's establishment of the joint Federal-Tribal advisory committee was the subject of a legal challenge while the Commission was preparing the proposed rule for publication. On March 10, 2005, nearly one year after the Commission established the committee, the Confederated Salish and Kootenai Tribes of the Flathead Nation and the Santa Rosa Rancheria Indian Community filed suit against the Commission alleging, among other things, that several of the committee members were not eligible to participate on the committee. Following a hearing in Federal court, at which the request for temporary restraining order was denied, the Commission determined that it should proceed to publish the proposed rule for comment while the legal standing of the committee was further litigated. The Commission also sought clarification from those tribes nominating the committee members concerning the member's role as an official representative of the tribe. As a result of this clarification, and, out of an abundance of caution, the Commission regretfully requested that two members of the Committee step down.

The third component of the Commission's effort to consult with tribes during the pre-rulemaking formulation phase of these proposed regulations was to make the various preliminary working drafts of the proposed regulations available to all tribes and their leaders for review and comment, independent of the joint federal-tribal Advisory Committee. In particular, while these proposed regulations were being formulated, the first and second preliminary working drafts were mailed to each tribe and its leaders, inviting written comment. The drafts were also posted on the Commission's website for review and comment by all. Many tribes and members of the public submitted written comments on these respective working drafts. The tribal comments were shared with the members of the Advisory Committee for their review and carefully considered by the Commission in formulating these proposed regulations.

In addition, the Gaming Standards Association, a casino-industry group comprised of game manufacturers and operators, and the National Indian Gaming Association, the largest Indian gaming trade group, assembled a meeting on December 16, 2004, in Las Vegas, Nevada, so that interested members of both organizations could review the technical standards and provide suggestions to the Commission. The Commission was invited, and it sent a staff member to listen to the discussion and to answer questions, if necessary.

Beyond all of this, the Commission attended and addressed several different assemblies of tribal leaders and tribal gaming operators and regulators at meetings and conferences organized by state and regional tribal gaming associations, the National Indian Gaming Association, and the National Congress of American Indians between January 2003 and March 2005. At these meetings and conferences, the Commission advised tribal leaders of its intention and plan to develop these regulations and provided periodic updates regarding the progress and status of the regulations development. The Commission also made itself available at these meetings to answer any questions from tribal leaders regarding the proposed regulations or their formulation.

Through each of these various means, the Commission actively endeavored to provide all tribes with a reasonable and practical opportunity over the past 26 months to meet and consult with the Commission on a government-to-government basis and provide early and meaningful tribal input regarding the formulation and implementation of these proposed regulations.

Purpose and Scope

The proposed Part 547 applies to Class II games played primarily through electronic, computer, or other technologic aids, or modifications of such games and aids. It does not apply to live session bingo. Class II games played through such technologic aids are widely used in Indian gaming operations, yet no uniform standards exist to govern their implementation. The proposed rule seeks to remedy that absence and establish technical standards for such games and aids.

Again, the technical standards seek to provide a means for tribal gaming regulatory authorities and tribal operators to ensure that the integrity of Class II games played with the use of electronic, computer, or other technologic aids, is maintained; that the games and aids are secure; and that the games and aids are fully auditable. In so doing, the technical standards are modeled, when appropriate, on similar standards from experienced gaming jurisdictions not only in North America but around the world. The requirements for game accounting meters, for example, are modeled on Nevada's requirements.

There are, however, unique aspects of Class II gaming for which few models now exist, and none existed at the time the Commission began this project. Bingo, as IGRA defines it, is a multiple-player game in which players compete against one another to be the first to cover a predetermined pattern of

numbers or other designations. In order to meet IGRA's statutory requirements, electronic bingo implementations must allow multiple players in different locations, whether in one facility or in more than one, to play a common game. Manufacturers, therefore, have implemented bingo on client-server architectures. A common arrangement, but by no means the only one possible, is to have client machines on the casino floor as electronic player stations. These display bingo cards, allow the players to cover numbers when drawn, and pay any prizes won. The server, usually located off the floor, draws random numbers and passes them, along data communications lines, to the client machines for game play. Such client-server arrangements are not common in other gaming jurisdictions, and they produce regulatory challenges with which most other gaming jurisdictions have not fully grappled.

Chief among these challenges is securing games from unauthorized changes or tampering. In a stand-alone Class III slot machine, for example, the game software is typically located within the game cabinet itself, and there are many, well-established technical means for securing the software. In client-server implementations, by contrast, game software may be downloaded from the server to clients, or game software may exist simultaneously on clients and servers, with the clients acting as terminals receiving game information transmitted across data communication lines from the server. In either case, the well-established means of securing Class III game software may not be adequate.

The proposed rule therefore implements minimum standards for mechanisms that can be used to verify the authenticity of game software, whether located on servers or clients or both, as well as minimum standards for when verification must occur and when, and by whom, games may be downloaded or changed. The proposed rule also provides general, minimum technical standards for servers, for clients, and standards common to both clients and servers, and it provides minimum standards for software storage media, money and credit handling, and data communications, all of which may require different treatment when using clients and servers rather than stand-alone games.

That said, the proposed rule provides only minimum standards. Tribes and tribal gaming regulatory authorities may add any additional requirements, or more stringent requirements, needed to suit their particular circumstances. In addition, the proposed rule makes no attempt to foreclose the implementation of new technologies.

In order to ensure compliance with the technical standards, the proposed rule borrows again from the established practices of tribal, state, and provincial gaming jurisdictions across North America. The proposed rule establishes, as a necessary prerequisite to a game and aid being offered to the public for play in a Class II gaming operation, a process of game submission by the manufacturer; review and analysis by a qualified, independent testing laboratory; and approval by the tribal gaming regulatory authority.

Under the proposed rule, a tribe's gaming regulatory authority will require all Class II games and aids, or modifications of such games and aids, to be submitted by the manufacturer to a testing laboratory for review and analysis. That submission includes a working prototype of the game and aid, all pertinent software, and the complete documentation and description of all functions and components. In turn, the laboratory will certify that the game or aids do or do not meet the requirements of the proposed rule, as well as any additional requirements adopted by the tribe's gaming regulatory authority. The laboratory will provide a written certification and report of its analysis and conclusions to the tribal gaming regulatory authority for its approval or disapproval of the game or aid. The tribal gaming regulatory authority will retain the certification and report as long as the game remains available to the public for play on the casino floor. This will allow the commission to perform its regulatory oversight role.

Finally, the Commission is cognizant of existing standards under the Minimum Internal Control Standards (MICS), 25 CFR part 542, some of which address equipment or technical issues. The proposed rule and the MICS therefore have small areas of overlap. The Commission does not intend by the proposed rule to alter or repeal part 542, and relevant parts of the proposed rule so state.

Regulatory Matters

Regulatory Flexibility Act

This proposed 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.* Indian tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions and does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The Commission believes that the requirement for examination and testing by an independent testing lab will add only limited additional expense to Indian casinos operating Class II games and aids. The Commission has been informed that operations already do this as a matter of course. Likewise, the Commission does not anticipate significant additional costs for redesign and repurchase of Class II games and aids. Many manufacturers who sell Class II games and equipment are already building to similar standards for the machines they sell in Class III and non-Indian casino markets. Moreover, feedback from manufacturers to date indicates industry support for these standards.

Unfunded Mandates Reform Act

For these reasons as well, the Commission has determined that this proposed rule does not impose an unfunded mandate on state, local, or tribal governments or on the private sector of more than $100 million per year. Thus, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.* The Commission has determined that this proposed rule may have a unique effect on tribal governments, as this rule applies to tribal governments, whenever they undertake the ownership, operation, regulation, or licensing of gaming facilities on Indian lands as defined by the Indian Gaming Regulatory Act. Thus, in accordance with section 203 of the Unfunded Mandates Reform Act, the Commission implemented a small government agency plan that provides tribal governments with adequate notice, opportunity for meaningful consultation, and information, advice, and education on compliance.

Again, the Commission's plan included the formation of a tribal advisory committee and request for input from tribal leaders through

government-to-government consultations and through written comments to draft regulations that are provided to the tribes. Section 204(b) of the Unfunded Mandates Reform Act exempts from the Federal Advisory Committee Act (5 U.S.C. App.) meetings with tribal elected officials (or their designees) for the purpose of exchanging views, information, and advice concerning the implementation of intergovernmental responsibilities or administration. In selecting Committee members, consideration was placed on the applicant's experience in this area, as well as the size of the tribe the nominee represented, geographic location of the gaming operation, and the size and type of gaming conducted. The Commission attempted to assemble a committee that incorporated diversity and was representative of tribal gaming interests. The Commission will meet with the Advisory Committee to discuss the public comments that are received as a result of the publication of this proposed rule and make recommendations regarding the final rule. The Commission also plans to continue its policy of providing technical assistance, through its field offices, to tribes to assist in complying with issues raised by the proposed rule.

Takings

In accordance with Executive Order 12630, the Commission has determined that this proposed rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

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

Paperwork Reduction Act

This proposed rule requires information collection under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, and is subject to review by the Office of Management and Budget. The title, description, and respondent categories are discussed below, together with an estimate of the annual information collection burden.

With respect to the following collection of information, the Commission invites comments on: (1) Whether the proposed collection of information is necessary for proper performance of its functions, including whether the information would have practical utility; (2) 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; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Process for Certification of Electronic, Computer, or other Technologic Aids used in the play of Class II games, proposed 25 CFR 547.4.

Summary of information and description of need: This provision in the proposed rule establishes a process for assuring that electronic, computer, or other technologic aids used with the play of Class II games have been reviewed and evaluated by a qualified, independent testing laboratory prior to their approval by a tribal gaming regulatory authority and their placement on the floor in a Class II tribal gaming operation. The process helps to ensure the proper functioning of the equipment and the integrity, fairness, and auditability of games played.

The process requires a tribe's gaming regulatory authority to require that all Class II games played primarily through electronic, computer, or other technologic aids, or modifications of such games and aids, be submitted by the manufacturer to a qualified, independent testing laboratory for review and analysis. That submission includes a working prototype of the game and aid, all pertinent software, and complete documentation and descriptions of all functions and components. In turn, the laboratory will certify that the game or aids do or do not meet the requirements of the proposed rule and any additional requirements adopted by the tribe's gaming regulatory authority. The laboratory will provide a written certification and report of its analysis and conclusions to the tribal gaming regulatory authority for its approval or disapproval of the game or aid.

This process is necessary to ensure the fairness and integrity of Class II gaming. Technical standards such as those in the proposed rule are a fundamental part of Class III gaming and of non-Indian casino gaming throughout North America. No uniform standards exist for Class II gaming, however. The implementation of such standards will assist tribal gaming regulators in ensuring that games are implemented fairly, that all technologic aids are secure and function properly, and that the games and aids allow the tribe and the operator to properly account for gaming revenue.

Respondents: The respondents are independent testing laboratories and developers and manufacturers of Class II games and technologic aids. The Commission estimates that there are 20 such manufacturers and 5 such laboratories. The frequency of responses to the information collection requirement will vary.

During the first 6 to 12 months after adoption of the proposed rule, all existing games or aids in Class II operations that fall within the rule must be submitted and reviewed if they are to continue in Class II operations. Following that period, the frequency of responses will be a function of the Class II market and the need or desire for new games and aids. Thus, the Commission estimates that the frequency of responses will range over an initial period of frequent submissions, settling down into infrequent and occasional submissions during periods when there are a few games, aids, or modifications brought to market, punctuated by fairly steady periods of submissions when new games and aids are introduced. The Commission estimates that submission will number approximately 150 during the first year after adoption and approximately 75 per year thereafter.

Information Collection Burden: The preparation and submission of documentation supporting submissions by developers and manufacturers (as opposed to the game or aid hardware and software per se) is an information collection burden under the Paperwork Reduction Act, as is the preparation of certifications and reports of analyses by the laboratories. The amount of documentation or size of a laboratory certification and report is a function of the complexity of the game, equipment, or software submitted for review. Minor modifications of software or hardware that a manufacturer has already submitted and that a laboratory has previously examined is a matter of little time both for manufacturer and laboratory, while the submission and review of an entirely new game platform is time consuming.

The practice of submission and review set out in the proposed rule, however, is not new. It is already part of the regulatory requirements in tribal, state, and provincial gaming jurisdictions throughout North America and the world. Manufacturers already have significant compliance personnel and infrastructure in place, and the very existence of private, independent laboratories is due to these requirements.

Accordingly, the Commission estimates that gathering and preparing documentation for a single submission requires, on average, eight hours of an employee's time for a manufacturer. The Commission also estimates that following examination and analysis, writing a report and certification requires, on average, 12.5 hours of an employee's time for a laboratory. The Commission estimates that the information collection requirements in the proposed rule will be a 1200-hour burden on manufacturers during the first year after adoption and a 600-hour burden thereafter. The Commission estimates that the information collection requirements in the proposed rule will be a 1875-hour burden on laboratories during the first year after adoption and a 940-hour burden thereafter. The following table summarizes:

Provision	Respondents	Number of respondents	Collections, 1st year	Hours per collection	Total hours	Collections, year 2 forward	Hours per collection	Total
25 CFR 546.4	Laboratories	5	150	12.5	1875	75	12.5	937.5
Same	Manufacturers	20	150	8	1200	75	8	600

Comments: Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3507(d), the Commission has submitted a copy of this proposed rule to OMB for its review and approval of this information collection. Interested persons are requested to send comment regarding the burden, estimates, or any other aspect of the information collection, including suggestions for reducing the burden (1) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for National Indian Gaming Commission, 725 17th St. NW., Washington DC, 20503, and (2) to Michael Gross, Senior Attorney, National Indian Gaming Commission, 1441 L Street NW., Washington DC 20005.

National Environmental Policy Act

The Commission has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et. seq*).

List of Subjects in 25 CFR Part 547

Gambling, Indian-lands, Indian-tribal government, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Commission proposes to add new 25 CFR part 547 to read as follows:

PART 547—MINIMUM TECHNICAL STANDARDS FOR GAMING EQUIPMENT USED WITH THE PLAY OF CLASS II GAMES

Sec.

547.1 What is the purpose of this part?
547.2 How do these regulations affect state jurisdiction?
547.3 What are the definitions for this part?
547.4 How do I comply with this part?
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Authority: 25 U.S.C. 2706(b).

§ 547.1 What is the purpose of this part?

The Indian Gaming Regulatory Act, 25 U.S.C. 2703(7)(A)(i) permits the use of electronic, computer, or other technologic aids in connection with the play of Class II games. This part establishes the minimum technical standards governing the use of such aids.

§ 547.2 How do these regulations affect state jurisdiction?

Nothing in this part shall be construed to grant to a state jurisdiction in Class II gaming or to extend a state's jurisdiction in Class III gaming.

§ 547.3 What are the definitions for this part?

For the purposes of this part, the following definitions apply:

Application, A computer program, or group of programs, that operates on a computer system, including game programs that run on a server or client.

Attract Mode, The period of time on an electronic player station between one play finishing and the next play commencing, or another mode being entered, and displaying features of the game or games available for play.

Audit Mode, The mode where it is possible to view Electronic Player Station meters, statistics, etc. and perform non-player related functions.

Cancel Credit, An action at an Electronic Player Station where some or all of the monetary entitlements of the player are removed and paid to a player after overt action taken by an attendant.

Cashless Account, A file, record, or other database item maintained on a computer system that contains account identification information and a current amount held within the account.

Cashless Transaction, A moement of money to or from a cashless account—often to or from an Electronic Player Station.

Cashless Wagering System, A system that securely maintains records of cashless accounts and caters for a wide range of account transactions, including open, close, PIN registration / modification / resetting, account identification / verification, deposits,

withdrawals, and transfers to and from Electronic Player Stations.

Cashout Request, The mode where the Electronic Player Station dispenses coins, tokens, bills, vouchers, or their equivalents after the patron has pressed collect to redeem credits under a certain value.

CD–ROM, A compact disk which contains fixed data or programs that can only be read by the equipment in which it is inserted.

Chairman, The Chairman of the National Indian Gaming Commission pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.*

Client, An computer, often an Electronic Player Station, that is controlled through local or wide area network by a master computer known as a server.

Coin Validator, Equipment used to validate coins or tokens placed in an electronic player station.

Commission, The National Indian Gaming Commission.

Communication Protocol, A means or methodology for passing data and other messages between two or more computer components. Typical protocols enable means for communications to continue without loss or corruption of data in the case of errors over the medium with which the data is sent.

Coupon, A voucher or ticket which enables transfer of promotional credits to an Electronic Player Station, whether cashable or playable only.

CPU, The central processing unit of a computer.

Critical Memory, Memory locations storing data specified in § 547.11(a) for an Electronic Player Station.

Critical Memory Clear, The process a service technician goes through to reset the memory of an Electronic Player Station; which configures the Electronic Player Station into the 'as new' state.

Cycling, Calling the random number generator in order to advance its state rather than to obtain an output.

Data-link Layer, The lowest level of logical, as opposed to physical, communication between two or more computer devices.

Disable (Client), Action taken either by the client or via instruction from the server or other network computer system to disable play and acceptance and payment of coins, tokens, cash, vouchers, or credits, but still permitting maintenance or auditing functions.

Discretionary access controls, The ability to be able to restrict access to computing objects such as files, peripherals, programs on the basis of the privileges associated with a user account Disruption, Any form of mis-operation, component failure, or interference to the Class II gaming equipment.

Download Package, Approved data sent from a Download Server to a client or other component of the technologic aids used in the play of Class II games for such purposes as changing of the device software, loading or selecting a new paytable, changing configuration parameters such as tokenization, changing peripherals software or configuration, or requesting specific information from the device.

Download Server, A computer device that delivers Download Packages or causes Download Packages to be actuated in a secure manner to technologic aids used in the play of Class II games.

Electromagnetic Interference, The physical characteristic of an electronic device to emit electronic noise either into free air, onto the mains power lines, or communication cables.

Electrostatic Discharge, Electrostatic Discharge (see Electrostatic interference).

Electrostatic Interference, The physical property of being able to create electronic interference to a device by either discharging static electricity onto the surface of the unit or via a mains power or communication cable.

Enable (client), An action taken to place the client, generally an Electronic Player Station, in a state where it can conduct gaming and money movement transactions.

Entropy source, A hardware device or software algorithm designed to produce outputs derived from measures of "truly" random events, such as thermal noise.

EPROM, Electrically Programmable Read Only Memory—a storage area which may be filled with data and information, which once written is not modifiable, and which is retained even if there is no power applied to the machine.

Extensible Protocol, A communications protocol which contains a mechanism that can be used to negotiate extensions to the protocol—sometimes called options.

Fault, An event that when detected by an Electronic Player Station causes a discontinuance of game play or other machine functions.

Fault Mode, A mode where the Electronic Player Station has disabled itself, preventing game play or other functions, as a result of a fault condition occurring on the Electronic Player Station.

Flash Memory, A computer chip with a read-only memory that retains its data when the power is turned off and that can be electronically erased and reprogrammed without being removed from the circuit board.

Flash ROM, A flash memory device which contains fixed data or programs that can be read but not written to by the gaming equipment in which it is inserted.

Game Software, The operational program(s) which control the play, display and results of Class II games and played on gaming equipment.

Gaming Equipment, All electrical and mechanical physical components making up the equipment on which Class II games are played.

Hardware, See Gaming Equipment

Hopper, A device used to store and dispense coins.

Idle Mode, The period of time after the completion of the previous game, or before the very first game after a memory reset, until the player begins to select options for the next game.

Initial seeding, Initializing the RNG state

Logic Area, A locked area of gaming equipment that houses electronic components that have the potential to significantly influence the operation of the Electronic Player Station

MAC Filter, An access point that can be configured with filters that accept or reject data on the basis of the sender's Media Access Control (MAC) address. All devices that participate in 802.11a, 802.11b and 802.11g Wireless networks have a unique (MAC) address. The MAC address is present in every frame transmitted over the Wireless network.

Magnetic Interference, A magnetic field which has the potential to affect the operation of an electronic device.

Master Meter, A meter whose value is reset only when a memory reset is performed. This meter represents the total of all updates since the last memory reset.

Meter, A non-volatile variable storing Electronic Player Station audit, accounting, and game play information.

Modification, A new version of existing hardware or software, often consisting of relatively minor or discreet changes, used with the play of Class II games.

Non-cashable credit, Credits given by an operator to a patron as part of a promotion, placed on an electronic player station through a voucher or electronic transfer, and capable of activating play but not being cashed out.

Non-writable storage media, A storage device which contains fixed data or programs that can be read, but not written to, by the gaming equipment in which it is inserted.

Number of RNG states, The number of settings that the RNG state can take on

before returning to the initial state. Also called RNG cycle.

Par Sheet, An information sheet supplied by the equipment or game manufacturer detailing the mathematics and probabilities of a game.

Paytable, The set of prizes available to players for achieving certain outcomes or patterns in the game on offer.

Play of a game, A sequence of actions in the Electronic Player Station initiated by a player through a wagering of credits and terminated when all credits wagered have been lost or all winnings have been transferred to the Electronic Player Station's total wins meter and the player's credit meter.

Printed Circuit Board, The piece of board used to connect together electronic components in a certain manner using tracks and holes to route the signals.

Programmable Logic Device, An electronically configurable integrated circuit, usually used for hardware control purposes.

Progressive Jackpot, An incremental prize that increases by a defined amount, each time a game is played on one of a group of interconnected electronic player stations.

RAM, Random Access Memory.

Random, Passing recognized statistical tests for randomness.

Random Number Generator (RNG), A software module, hardware device or combination of these designed to produce outputs that are random.

Removable/Rewritable storage media, Program or data storage devices that can be removed from the Class II gaming equipment and written to, or rewritten by the gaming equipment or by other equipment designed for that purpose.

Re-seeding, Modifying the state of an RNG using external inputs

Residual Credits, Credits remaining which are less than the value of one coin or token.

RNG algorithm, The coded instructions which step an RNG's state through its cycle and calculate the next output.

RNG cycle, The number of settings that the RNG state can take on before returning to the initial state.

RNG state, RNGs (other than entropy sources) produce outputs by an algorithm which modifies one or more variables through a long sequence. These variables constitute the RNG state.

ROM, Read Only Memory.

Scaling algorithm, The coded instructions which map an random number generator output onto a range desired by a caller.

Server, A master computer station which controls multiple clients via a local or wide area network.

Setup Mode, The initial stage of configuration mode where a technician can enter Electronic Player Station related data.

SSID, Service Set Identifier. An alphanumeric string maintained by the Wireless Access Point that identifies the name of the specific Wireless network. An end station uses the SSID to distinguish between multiple wireless networks and to determine what authentication method and credentials it should use to gain a connection.

System Account, A user account available on the server, usually secured by a username and password, that provides access to the operating system and resident software.

Test/Diagnostics Mode, A mode on an electronic player station that allows various tests to be performed on its hardware and software.

Testing Laboratory, An organization recognized by the Commission as suitable for evaluation of submitted gaming equipment and software for compliance with this part and part 546 of this chapter.

Touch Screen, A video monitor with a special surface that can activate the Electronic Player Station by the touching of the screen's surface.

Voucher Payment System, A system that securely maintains records of payment vouchers generated by Electronic Player Stations, validates and records successful or failed payments of vouchers by Electronic Player Stations, kiosks or cashier stations, and controls the purging of expired vouchers.

WEP, Wired Equivalent Privacy. An early security standard intended to protect wireless traffic from unauthorized access and modification. WEP has fundamental design flaws and will not protect a Wireless network. Automatic tools that compromise WEP security on a busy network within a few hours are available.

Wireless Access Point, A device that sends and receives wireless radio signals to and from wireless devices, rebroadcasting these signals to and from the Local Area Network to which the Wireless Access Point is connected.

Wireless communication network, A system of multiple computer devices which communicate with each other by broadcasting their messages through the air without using a physical medium such as a wire or cable.

WPA, Wi-Fi Protected Access. A security standard that overcomes some of the known problems with WEP. WPA uses stronger encryption and provides for user authentication. However, like WEP, WPA will not protect a wireless network. Other security standards (e.g. WPA2) are available and under development by various standards bodies.

§ 547.4 How do I comply with this part?

(a) Effective date. In order that manufacturers and operators have time to bring games and aids into compliance, this part shall be effective 6 months following publication of the final rule in the **Federal Register**. Upon application by a tribal gaming regulatory authority, the Chairman may extend the effective date for one or more additional periods of 6 months for good cause shown.

(b) Submission, testing, and approval. Except as provided in paragraph (d) of this section, no tribe shall offer for play or use in a tribal gaming operation any gaming equipment, game software, or modification of gaming equipment or game software unless:

(1) The gaming equipment, game software, or modification has been submitted to a testing laboratory recognized by the Commission pursuant to § 546.9(f) of this chapter.

(2) The submission conforms to the requirements of paragraph (c) of this section.

(3) The testing laboratory tests the submission to the standards established by this part, and to any additional standards adopted by the tribal gaming regulatory authority, and provides a formal written report to the party making the submission, setting forth and certifying to its findings and conclusions. And

(4) Following receipt of the laboratory's report, the tribal gaming regulatory authority makes a finding that the gaming equipment, game software, or modification conforms to the standards established by this part, and to any additional standards adopted by the tribal gaming regulatory authority. The tribal gaming regulatory authority shall retain a copy of the laboratory's report so long as the gaming equipment, game software, or modification that is the subject of the report remains available to the public for play in its gaming operation.

(c) Submission requirements. Submissions to testing laboratories required by § 547.4(b) shall include the following:

(1) A complete, comprehensive, and technically accurate description and explanation in both technical and lay language of the manner in which equipment operates. Documentation of client—server implementations shall identify:

(i) The amount of time that the storage of the game records and significant event required to be kept by § 547.6(d)

through (e) may be maintained without causing a degradation in performance;

(ii) The maximum number of enrollable client machines; and

(iii) The number of client machines constituting a high or maximum load and whose collective operation will produce a degradation in system performance.

(2) All source code:

(i) Complete and able to be compiled, with resultant object code identical to that submitted for evaluation;

(ii) If applicable, a resolution of differences in compiled software versions by the addition of 'date' and 'time' stamps or other such compiler variations;

(iii) If redundant sections of code exist, documentation of the areas of code that are redundant; and

(iv) If code is made redundant via a dynamically settable parameter, documentation of each such parameter, the means of setting or resetting it, and all default states.

(3) The necessary compilers and development environment to enable the software to be independently compiled and tested.

(4) A copy of all executable software, including data and graphic information, and a copy of all source code for programs submitted on electronically readable, unalterable media including, if requested, a method of:

(i) Examining the source code;

(ii) Conducting computer-aided searches within the source code;

(iii) Comparing two different versions of the source code and examining the differences between the two versions; and

(iv) Verifying that the executable software that is to be used for testing has been compiled from the source code versions submitted.

(5) Prototype equipment including all hardware and software components, and if the submitted equipment is a client-server configuration:

(i) A server fully loaded and configured (production mode) with the application to be used in production; and

(ii) At least two clients or Electronic Player Stations, fully loaded and configured (production mode) with the application to be used in production;

(iii) The communications equipment to link the server and clients; and

(iv) If the equipment is to link to external systems such as a casino monitoring system, the hardware and software that enable the interface.

(6) A Formal Application Configuration (FAC) document meeting the requirements of § 547.17(a) and an FAC verification tool meeting the requirements of § 547.17(b) through (g).

(7) A par sheet or mathematical analysis of each game for each paytable submitted.

(8) A copy of all graphical images displayed on the equipment or used in the game, including rules, instructions, and paytables. All artwork supplied shall be identified by a part number and the name or logo of the manufacturer. Successive versions of artwork shall be numbered sequentially.

(9) Any other information, documentation, software, or equipment deemed necessary by the testing laboratory.

(d) *Emergency hardware and software changes.* (1) Notwithstanding the requirements of paragraph (b) of this section, a tribal gaming regulatory authority may permit modified hardware or game software to be made available for play without prior laboratory review if, in its discretion, the modified hardware or game software is:

(i) Necessary to correct a problem affecting the fairness, security, or integrity of a game; or

(ii) Unrelated to game play.

(2) If a tribal gaming regulatory authority authorizes modified game software or hardware to be made available for play or use without prior laboratory review, the tribal gaming regulatory authority shall require the hardware or software manufacturer to:

(i) Immediately advise other users of the same hardware or software of the importance and availability of the update;

(ii) Immediately submit, pursuant to the requirements of paragraph (c) of this section, the new hardware or software to a test laboratory for testing and verification;

(iii) Provide the tribal gaming regulatory authority a temporary Formal Application Configuration meeting the requirements of § 547.17 for any new software.

§ 547.5 What are the rules of interpretation and of general application for this part?

(a) *Minimum standards.* A tribal gaming regulatory authority may establish and implement additional technical standards that are as stringent as, or more stringent than those set out in this part.

(b) *Only applicable standards apply.* Gaming equipment and software used with play of Class II games shall meet all applicable requirements of this part. For example, if an Electronic Player Station lacks a hopper or the ability to print or accept vouchers, then the standards that govern those things do not apply.

(c) *Fairness.* No gaming equipment or software used with the play of Class II games shall cheat, mislead, or disadvantage users.

(d) *Approved equipment and software only.* All gaming equipment and software used with the play of Class II games shall be identical in all respects to a prototype reviewed and tested by a recognized gaming laboratory and approved for use by the tribal gaming regulatory authority pursuant to § 547.4(b) or (d). Unapproved software shall not be loaded onto or stored on any program storage medium used with the play of Class II games.

(e) *Proper functioning.* All gaming equipment and software used with the play of Class II games shall perform according to the manufacturer's design and operating specifications.

§ 547.6 What are the minimum technical standards applicable to servers?

This section provides standards applicable to all servers used with play of Class II games.

(a) *General requirements.* (1) Servers shall authenticate all communications as coming from an enrolled client machine.

(2) Servers shall only process gaming transactions from games approved by the tribal gaming regulatory authority.

(3) Servers shall be able to enroll and un-enroll client machines for gaming.

(4) Servers shall be able to enable and disable specific client machines for gaming.

(5) Servers shall ensure that only enrolled, enabled client machines participate in gaming.

(6) The default condition for new client machines shall be un-enrolled and disabled.

(b) *Physical security.* Servers shall be housed in a secure, dedicated room or in a secure locked cabinet. Access shall be restricted to persons authorized by the tribal gaming regulatory authority. Servers located on the casino floor shall also meet the applicable requirements of § 547.7.

(c) *Logical/Software security.* Nothing in this section shall be construed to alter, repeal or limit the applicability of § 542.16(a) of this chapter. Servers used in the play of Class II games shall also meet the following requirements:

(1) Servers shall use operating systems that have discretionary access controls and shall be configured so that access controls are used to prevent unauthorized access to the operating system, programs, data, and peripherals.

(2) Servers shall be configured so that audit trails are maintained for login/authentication successes and failures. The following information shall be recorded, if supported:

(i) Date and time of the login attempt;

(ii) Username supplied; and
(iii) Success or failure.
(3) Logins using system accounts (*e.g.* administrator, root, etc.) shall be restricted to the console. Notwithstanding this, logins using system accounts may be made away from the console for the purpose of remote support, provided that such remote access meets the requirements of paragraph (c)(9) of this section.
(4) Generic user accounts are prohibited.
(5) Accounts shall be restricted to authorized personnel, as specified by the tribal gaming regulatory authority.
(6) Account passwords shall only be transmitted in encrypted or hashed form meeting the requirements of § 547.23(b) through (c).
(7) Application passwords shall be stored in an encrypted or hashed form meeting the requirements of § 547.23(b) through (c).
(8) Only software essential to the operation of the server shall be loaded onto the server.
(9) Remote access to enable dynamic debugging may be permitted by the tribal gaming regulatory authority pursuant to § 542.16(e) of this chapter. To support this facility, servers shall:
(i) Provide a mechanism to enable and disable remote access, which shall be disabled by default; and
(ii) Log all successful and unsuccessful attempts at remote access. Nothing in this requirement shall be construed to alter, repeal, or limit the applicability of § 542.16(e)(1) of this chapter.
(d) *Game record information.* The server shall store the following records for each game played:
(1) Client ID;
(2) Game start time and date;
(3) Game identifier (version);
(4) Game end time;
(5) Total amount bet by all participants in game;
(6) Total amount won by all participants in game; and
(7) Final game result, including progressive prizes awarded and, for bingo, game number and numbers or designations drawn, in the order drawn.
(e) *Significant events.* The server shall store the following significant events:
(1) Server shutdown;
(2) Server startup;
(3) Gaming application startup;
(4) Gaming application shutdown;
(5) Client enrolled;
(6) Client un-enrolled;
(7) Client enabled;
(8) Client disabled;
(9) Client tamper detection;
(10) Client signature check and result;
(11) Client application restart;
(12) Client application download;
(13) Server parameter change;
(14) Client parameter change;
(15) Game created;
(16) Game enable;
(17) Game disable;
(18) Game deleted;
(19) Any instance of an aborted game.;
(20) Large (jackpot) win;
(21) Large win (jackpot) approved/rejected;
(22) Progressive parameter change;
(23) Progressive created;
(24) Progressive enabled;
(25) Progressive disabled;
(26) Progressive deleted;
(27) Progressive win;
(28) Progressive win approved/rejected;
(29) Client doors open;
(30) Client doors closed;
(31) Client hopper refill;
(32) Client hand-pay;
(33) Data-link level connection between client and server broken. This requirement does not refer to temporary perturbations of communications where "temporary" means a disruption of less than 10 seconds; and
(34) Data-link level connection between client and server is established.
(f) *Storage requirements.* Game records, significant events, and remote access logs shall be maintained for a period of one year from the date the games are played.
(g) *Alternate storage requirements.* Game records, significant events, and remote access logs may be kept in an archived manner, on the server or elsewhere, provided that the information reconciles across all forms of replicated storage and that the information can be produced within 24 hours upon request. In any event, game records and significant events for the previous 72 hours shall be immediately accessible.
(h) *Servers acting as progressive controllers.* This paragraph (h) applies to progressive controllers, or servers acting as progressive controllers, used with the play of Class II games.
(1) Modification of progressive jackpot parameters shall be secure. Such parameters include, at a minimum:
(i) Increment value;
(ii) Secondary pool increment(s);
(iii) Reset amount(s);
(iv) Maximum value(s); and
(v) Identity of participating Electronic Player Stations.
(2) No parameters shall be modified for an active progressive jackpot unless the jackpot has been won, or as otherwise authorized by the tribal gaming regulatory authority.
(3) If the tribal gaming regulatory authority authorizes modification before a progressive jackpot is won, the server or controller shall:
(i) Halt the operation of the progressive jackpot(s);
(ii) Allow the parameter modifications; and then
(iii) Restart the progressive jackpot(s).
(4) No progressive jackpot shall be returned to its reset amount before it is won except as authorized by the tribal gaming regulatory authority. In any event, no progressive jackpot shall be reset before it is won unless the accumulated jackpot amount is transferred to another active progressive jackpot.
(5) The server or other progressive controller shall provide a means of creating a progressive balancing report for each progressive it controls. At a minimum, that report shall provide balancing of the changes in coin-in meters for all participating Electronic Player Stations versus current progressive jackpot amount(s), plus progressive jackpots won. In addition, the report shall account for, and not be made inaccurate by, unusual events such as:
(i) Electronic Player Station critical memory clears;
(ii) Modification, alteration, or deletion of progressive jackpots.
(iii) Offline equipment; or
(iv) Multiple site jackpots.

§ 547.7 What are the minimum technical hardware standards applicable to client machines used as Electronic Player Stations?

This section provides minimum hardware standards for all client machines or servers located on the casino floor and used as Electronic Player Stations for the play of Class II games.
(a) *FCC certification.* Electronic Player Stations shall have obtained the relevant FCC certification(s), or the USA equivalent, required for equipment of its type prior to approval by the tribal gaming regulatory authority.
(b) *UL certification.* Electronic Player Stations shall have obtained the relevant UL certification(s), or the USA equivalent, required for equipment of its type prior to approval by the tribal gaming regulatory authority.
(c) *Power interconnections.* There shall be no mains ground interconnections via data cabling between devices powered from different wall outlets. RS–422, which is designed to operate with a floating ground, may be used provided that any shield or signal grounds are not connected to the mains ground.
(d) *Power supplies.* (1) Electronic Player Stations shall employ power

supply filtering sufficient to permit continued operation at voltages ±10% of 110v.

(2) Electronic Player Stations shall employ power supply filter sufficient to ensure that none of the following damage or inhibit their operation or affect the outcome or integrity of any game, progressive award, or voucher, coupon, or cashless trans

(i) Surges or dips of ±20% of 110v of the supply voltage;

(ii) Repeated switching on and off of the AC power supply; or

(iii) Jiggling the AC cord at the wall outlet.

(3) Electronic Player Stations may handle the power variations listed in paragraph (d)(2)(i) through (iii) of this section by intentionally shutting down or going into sleep mode.

(4) All ratings of fuses, if any, shall be clearly stated on or in close proximity to the fuse holder, and switches on the power supply shall show On/Off positions.

(e) *Printed Circuit Boards.* (1) Printed circuit boards that are specially manufactured or proprietary and not off-the-shelf shall display a unique identifier such as a serial number and revision number, which shall be updated to reflect new revisions or modifications of the board.

(2) Switches or jumpers on all circuit boards that have the potential to affect the outcome or integrity of any game, progressive award, or voucher, coupon, or cashless transaction shall be capable of being sealed.

(f) *Labeling.* External key-switches, locks (other than for doors), switches, and buttons shall be securely labeled, using stickers or otherwise, according to their function or the series of events they initiate.

(g) *Electrostatic Discharge.* (1) Electronic Player Stations shall be constructed so that static discharges of ±15–25 kV for air discharges and of ±7.5–10 kV for contact discharges may cause a temporary disruption but shall not otherwise damage or inhibit operation or affect the outcome or integrity of any game, progressive award, or voucher, coupon, or cashless transaction.

(*2*) Electronic Player Stations accessible to the public shall be constructed so that they exhibit total immunity to human body electrostatic discharges on all areas exposed to contact, i.e., static discharges of ±15 kV for air discharges and ±7.5 kV for contact discharges shall not damage or inhibit operation or affect the outcome or integrity of any game, progressive award, or voucher, coupon, or cashless transaction.

(h) *Radio Frequency Interference.* Electronic Player Stations shall be constructed so that commonly used electromagnetic emitting devices such as mobile phones or walkie talkies, even if such devices are placed upon, or immediately outside of, the cabinet, shall not damage or inhibit operation or affect the outcome or integrity of any game, progressive award, or voucher, coupon, or cashless transaction.

(i) *Magnetic Interference.* Electronic Player Stations shall be constructed so that the application of magnetic interference of up to 10 Gauss at a distance of 5 cm from any surface shall not damage or inhibit operation or affect the outcome or integrity of any game, progressive award, or voucher, coupon, or cashless transaction.

(j) *Cabinet and housing construction and security, generally.* (1) Cabinets and housings shall be of a robust construction designed to resist determined illegal entry and to protect internal components.

(2) Cabinets and housings shall be reasonably resistant to the extremes of the casino operating environment, such as liquid spills, smoke, and heat, such that these conditions are not capable of affecting the outcome or integrity of any game, progressive award, or voucher, coupon, or cashless transaction.

(3) All doors, hinges, locks, seals and holes, gaps, or slots in the cabinet or housing exterior shall be of a robust construction designed to resist determined illegal entry and to protect internal components.

(4) All protuberances and attachments such as buttons, identification plates, and labels shall be sufficiently robust to avoid unauthorized removal.

(k) *Construction and security of locked areas within cabinets, logic areas.* (1) All components other than those with which the player interacts directly, such as buttons and entry slots for bills, vouchers, and coins, shall be located within the cabinet, which shall be locked, or in a separate locked area within the cabinet. Bill and coin validators shall be located within the cabinet.

(2) Except for logic areas and locked areas that only provide access to lighting, locked areas within a cabinet shall be equipped with door access detection devices that meet the requirements of paragraph (m) of this section.

(3) Locked areas within a cabinet shall be of a robust construction designed to resist determined illegal entry and to protect internal components.

(l) *Security of locked areas within cabinets.* (1) The following components shall be housed in a separate, independently locked area within the cabinet:

(i) CPU's and any other electronic components involved in the operation, calculation, or determination of game play and game results, voucher or coupon issuance or redemption, progressive parameters, or cashless transactions;

(ii) All electronics involved in the calculation of game display and components housing display program storage media;

(iii) All program media involved in the operation, calculation, or determination of game play and game results, voucher or coupon issuance or redemption, progressive parameters, or cashless transactions;

(iv) Communication controller electronics and components housing the communication program storage media;

(v) Interfaces and drivers for metering systems; and

(vi) Interfaces to peripherals with money-handling or credit transfer capabilities.

(2) When there are multiple locked areas within a cabinet, access to one shall not be possible from another except by use of a key.

(m) *Door access detection.* All locked areas, including the main cabinet door but excluding logic areas, shall be equipped with a sensor or other means to detect an open door. In addition:

(1) The door open sensor, and its components or cables, shall be secure against attempts to disable them or interfere with their normal mode of operation.

(2) It shall not be possible to disable a door open sensor, or access components within, without first properly opening the door.

(3) A door open sensor that is disconnected, tampered with, or fails shall be interpreted as an open door.

(n) *Touch screens.* Shall be:

(1) Resistant to scratching;

(2) Accurate, and, once calibrated, shall maintain that accuracy for the manufacturer's recommended maintenance period;

(3) Capable of re-calibration without access to the machine cabinet other than through the main door.

(o) *Tower lights.* Electronic Player Stations shall have a light or lights mounted on the top of its cabinet that automatically illuminates when various conditions occur such as errors, alerts, hand-pay jackpots, and call attendant requests from players. Required tower light states are left to the discretion of the tribal gaming regulatory authority.

(p) *Audible alarms.* An audible alarm is not required if a tower light is available to signal errors, alerts, hand-pay jackpots *etc.*

(q) *Bill validators.* Nothing in this subsection is intended to alter, repeal, or limit the applicability of §§ 542.7(g)(1)(i), 542.21(e), 542.31(e), or 542.41(e) of this chapter.

(1) Bill validators shall be of a robust construction designed to resist determined illegal entry, vandalism, and fraud and to be reasonably resistant to the extremes of the casino operating environments, such as liquid spills, smoke, and heat. In any event, bill validators shall be constructed so that physical tampering with the validator leaves evidence of such tampering.

(2) Bill validators shall be able to detect the entry of valid bills, vouchers, coupons, or other equivalents and to provide a method to enable the client software to interpret and act upon valid or invalid input.

(3) In so doing, bill acceptors shall:

(i) Be electronically based and incorporate multiple, sophisticated detection methods to validate bills;

(ii) Accept only valid bills, vouchers, coupons or equivalents;

(iii) Reject and return all invalid bills, vouchers, and coupons or equivalents to the player; and

(iv) Register the proper number of credits on the credit meter.

(4) All accepted bills shall be deposited into a secure container or stacker that:

(i) Sits within its own locked area within the main cabinet; and

(ii) Is itself locked with a key that opens no other lock.

(5) Bill validators or clients have sensors to indicate stacker full, stacker door open/closed, stacker removed, or bill jam.

(6) Bill validators shall provide a means through which the client may detect potential cheating such as counterfeit bills or bill yo yos.

(7) Bill validators shall employ a reliable means of transmitting credit values to the client. Pulse stream interface or serial communication without error detection and correction are not reliable communication methods.

(8) Ball validators shall be disabled when the cable connecting it to the client machine is disabled.

(9) A bill validator's tolerance level for accepting bills of varying quality and the alteration of a bill validator's checking procedures shall not occur without access to the Electronic Player Station and under conditions specified by the tribal gaming regulatory authority. In any event, it shall not be possible to disable validation features.

(10) Access to bill validators shall only occur under conditions specified by the tribal gaming regulatory authority and shall cause the Electronic Player Station to enter disabled mode. In any event, access in the field shall be limited to:

(i) Access required to clear a bill jam, which shall not provide access to the bill stacker unless that is the location of the jam;

(ii) Selection of bill, coupons, vouchers, or their equivalents, and their limits;

(iii) Changing approved EPROMs or downloading approved software;

(iv) Maintenance, adjustment, and repair per approved factory procedures; or

(v) Options that set the direction or orientation of acceptance.

(11) Bill validators shall be designed to minimize the possibility of a loss of credits if a power outage occurs during acceptance. In no event shall there be during acceptance a window of time longer than one second in which a power outage causes a loss of credits.

(12) Bill validators shall have a means of self verification, which it shall perform at each power up.

(13) If a bill validator only accepts bills fed in a certain direction or orientation, this shall be clearly indicated by sufficient instruction such as a label with a graphical picture.

(14) Bill validators shall not accept bills, vouchers, or their equivalents if any part of the validator is missing, including the stacker.

(r) *Coin slots, validators.* (1) Coin slots and coin validators shall be of a robust construction designed to resist determined illegal entry, vandalism, and fraud and to be reasonably resistant to the extremes of the casino operating environment such as liquid spills, smoke, and heat. In any event, coin slots and coin validators shall be constructed so that physical tampering leaves evidence of such tampering.

(2) Coin validators shall be able to detect the insertion of valid coins and tokens and to provide a method to enable the client to interpret and act upon valid or invalid input.

(3) In so doing, coin acceptors shall be electronically based and incorporate sophisticated detection methods, accepting only valid coins and tokens and rejecting and returning all others to the player.

(4) Coin validators shall provide a means through which client may detect potential cheating such as counterfeits or coin yo yos.

(5) Access to coin validators that use flash memory or are otherwise reprogrammable in the field shall be permitted only under conditions specified by the tribal gaming regulatory authority.

(s) *Coin diverter chutes.* (1) Coin chutes and diverter mechanisms shall be constructed to ensure that coins inserted into the client machine are deposited into the hopper, the cash box or the coin tray without jams or spillage onto the internal floor of the machine. Coin chutes and diverters shall be constructed so that physical tampering leaves evidence of such tampering.

(2) Means shall be provided to enable the client to determine a coin's direction of travel so as to detect yo-yo-ing.

(3) There shall be sufficient closed loop control to enable client to determine:

(i) If a coin is traveling to a cash box or to a hopper;

(ii) If a coin diverter has failed; and

(iii) If an internal coin jam has occurred.

(t) *Hoppers.* (1) Coin hoppers shall be located behind the locked main door or within another locked area.

(2) Coin hoppers shall have or provide a means to enable the client to identify and act upon the following conditions:

(i) Hopper full;

(ii) Hopper empty;

(iii) Hopper jam;

(iv) Extra coin(s) paid/runaway hopper.

(u) Printers. (1) Printers shall be located within the main cabinet but not in the logic area or the cash box area.

(2) Printers shall have mechanisms to allow software to interpret and act upon the following conditions:

(i) Out of paper/paper low;

(ii) Printer jam/failure; and

(iii) Disconnected.

(v) External mechanisms affecting play. There shall be no external mechanisms such as DIP switches or jumpers that can affect the outcome of a play unless capable of being sealed by the tribal gaming regulatory authority.

§ 547.10 What are the minimum technical software standards applicable to client machines used as Electronic Player Stations?

This section provides general software standards for clients used as Electronic Player Stations for the play of Class II games.

(a) Door monitoring. Electronic Player Station shall be able to detect access to the following:

(1) The main cabinet door;

(2) Belly door(s), if different than the main cabinet door;

(3) Drop box door(s);

(4) Bill acceptor doors; and

(5) Communication boards, if accessible without opening a door.

(b) Hopper monitoring. The Electronic Player Station software shall be able to identify the following events, at a minimum:

(1) Hopper full;
(2) Hopper empty;
(3) Hopper jam; and
(4) Extra coin(s) paid/runaway hopper.

(c) Information displays. (1) During the play of any game, the Electronic Player Station shall display all game results so that the player may see and comprehend them. This display shall also include:
(i) The amount wagered; and
(ii) The credit meter balance.
(2) Between plays of any game and the start of the next play, or the player selects a new game option such as wager amount or card selection, whichever is earlier, and when there are credits on the credit meter, the Electronic Player Station shall display:
(i) The total credits wagered and all prizes and total credits won for the last play;
(ii) The final results for the last game played, including alternate displays of results, if any; and
(iii) The default number of credits that will be wagered on the next play.
(3) Prior to the play of any game, when the player has selected or changed game options such as wager amount or bingo card, the Electronic Player Station shall remove the results of the previous game or otherwise distinguish them from the new selections.
(4) Following cash out payable from the hopper and until the start of the next play, the Electronic Player Station shall display the metered value of coins or tokens paid in dollars and cents or in credits, if the coin denomination is an exact multiple of the credit tokenization value.
(5) Following cash out payable as a cancel credit and until the start of the next play, the Electronic Player Station shall display the metered value of the credits cancelled in dollars and cents or in credits, if the amount of the cancel credit is an exact multiple of the credit tokenization value.
(6) Attract modes may be displayed if there are credits on the credit meter, provided that there is a means for the player to interrupt and return to the previous display.
(7) Help screens may be displayed during game play provided that there is a means for the player to interrupt and return to the previous display.

(d) Touch screen calibration and implementation. (1) The Electronic Player Station shall have software re-calibrating capability unless the touch screen is designed never to require re-calibrating.
(2) If opening the main Electronic Player Station door affects touch screen calibration, there shall be a means to determine the accuracy of calibration when the door is closed again.
(3) Touch screen button icons shall be sufficiently separated to reduce chances of selection errors due to calibration or parallax errors.
(4) There shall be no hidden or undocumented buttons or touch points anywhere on the screen except as provided for in the game rules.

(e) Game initiation and play. (1) Every game played on an Electronic Player Station shall follow and not deviate from a constant set of rules. Any change in rules constitutes a different game. Allowing variations in the size of a wager is not a change in rules.
(2) No game shall commence, and no money or credit shall be accepted, on an Electronic Player Station in the presence of any fault condition or open door, or while the Electronic Player Station is in test, audit, or lock-up mode.
(3) Credits wagered shall only come from the credit meter, which shall be decremented at the start of play.
(4) The player shall initiate play of a game on an Electronic Player Station by pressing a button or similar input device. No Electronic Player Station shall automatically initiate game play.
(5) The value of prizes awarded as a result of any game shall be paid in full and not truncated or rounded.

(f) Audit mode. (1) Each Electronic Player Station shall have an audit mode, which shall provide access to the following information, at a minimum:
(i) All meters required by § 547.12;
(ii) Last game recall information required by § 547.14;
(iii) Terminal identification;
(iv) Software version or game identification; and
(v) Any other game statistics maintained solely by the Electronic Player Station and not transferred to and maintained by the server or casino monitoring system.
(2) Audit mode shall be accessible by a secure method, such as a key-switch, entry of a card into a card reader and verification by PIN, or from within the interior of the Electronic Player Station cabinet.
(3) Meters shall be accessible by an authorized person at any time, except during a payout from a hopper, during a cancel credit, or during play (except where play is interrupted by a fault condition).
(4) The Electronic Player Station shall disable all credit acceptance while in audit mode, except during coin, bill, or other credit acceptance testing.

(g) Test or diagnostic mode. (1) Test mode on an Electronic Player Station may be entered via an appropriate instruction during Audit Mode or automatically upon opening the main cabinet door.
(2) The Electronic Player Station shall clearly indicate when it is in test mode.
(3) Test games run in test mode, if implemented, shall:
(i) Not increment any meters other than a temporary on-screen credit meter;
(ii) Only be available after entering a specific test game mode within door open mode; and
(iii) Be clearly indicated as such and not as normal game play.
(4) The Electronic Player Station shall disable all credit acceptance while in test mode, except during coin, bill, or other credit acceptance testing.
(5) Exiting test mode shall terminate all tests, unless further input is required, which shall be clearly indicated by Electronic Player Station software.

(h) Multi-game machines. Electronic Player Stations that offer multiple games for play shall:
(1) Present a game selection screen that displays:
(i) The available games;
(ii) The means of selecting among them; and
(iii) The full amount of the player's credit balance;
(2) Identify the game selected or being played;
(3) Not compel the play of a game after its selection; and
(4) Not start a new game before the current play is complete and all relevant meters have been updated.

(i) Separate storage, machine specific information. Electronic Player Station software shall be designed so that machine specific information such machine address or other configurable parameters is stored within in a separate device (EPROM, Flash or file for disk machines) as game and system software.

(j) *Program interruption and resumption.* (1) Electronic Player Station software shall be designed so that upon any loss of power it is able to return to the state it was in prior to the interruption.
(i) If in a test mode at interruption, the Electronic Player Station shall, on power up, complete any test that incorporates credits entering or leaving the machine (*e.g.* a hopper test) prior to resumption of normal operation.
(ii) If in a fault condition at interruption, the Electronic Player Station shall, on power up, display the applicable fault message and remain locked-up, unless:
(A) The power down is part of an error reset procedure; or
(B) The Electronic Player Station checks for the fault condition on power up and detects no fault.

(2) Electronic Player Station software shall be designed so that upon any loss of power, it shall, at a minimum:

(i) Turn off and brake the hopper;

(ii) Maintain the integrity of data stored in critical memory; and

(iii) Complete its power-down routine.

(3) Electronic Player Station software shall be designed so that upon program resumption after a loss of power, it:

(i) Successfully completes any program resumption routine, including self tests, before beginning any communications to an external device;

(ii) Tests itself for possible corruption due to failure of the program storage media using a minimum 16-bit Cyclic Redundancy Check (CRC) check;

(iii) Checks the integrity of critical memory;

(iv) Tests any power down routine for correct completion and displays an appropriate message if incorrect completion detected; and

(v) Detects any change in the software since loss of power. If a change has been detected, the Electronic Player Station shall lock-up and display an appropriate message until it is reset by an authorized person.

(4) Electronic Player Station software shall be designed so that when disabled in a non-fault condition during play, for example by the server, but without loss of power, it finishes the current play and allows the player to cash out.

(k) *Simultaneous inputs.* The simultaneous or sequential activation of various inputs (such as buttons on the button panel), whether or not intentional, shall not adversely affect the integrity of any game.

§ 547.11 What are the technical standards applicable to critical memory?

This section provides specific standards for the contents and maintenance of critical memory, which stores data essential for the play of Class II games.

(a) *Critical memory, location and contents.* Critical memory may be stored on a server or on a client used as an Electronic Player Station and shall maintain all of the following data:

(1) Auditing meters;

(2) Current credits;

(3) Electronic Player Station and game configuration data;

(4) Last game recall information required by § 547.14;

(5) Game recall information for the current game, if incomplete;

(6) Software state (the last normal state the Electronic Player Station software was in before interruption);

(7) RNG seed(s);

(8) Encryption keys;

(9) Progressive jackpot parameters and current values, if maintained within the client or server;

(10) The five most recent cashless transactions; and

(11) The five last ticket transactions (redeem or print).

(b) *Maintenance.* (1) Critical memory shall be implemented with a level of redundancy such that failure of a single component will not mean the loss of any data.

(2) In the event of a disruption during updates, there shall be a means of defining which of the multiple available copies of data in critical memory is correct.

(3) Software shall ensure that updates to meters in critical memory are successful and that any error(s) in one logical copy of the meters is not propagated through to other copies.

(4) Critical memory shall be maintained using a methodology that enables errors to be identified and acted upon.

(c) *Validity checks, detection of corrupt memory.* (1) The validity of critical memory in an Electronic Player Station shall be checked after:

(i) Every restart;

(ii) Each of the following transactions:

(A) Bill input;

(B) Jackpot win;

(C) Progressive jackpot win;

(D) Door closed; and

(E) Any reconfiguration, download, or change of game paytable or denomination requiring operator intervention or action:

(iii) Every cashless transfer;

(iv) Every voucher print/redeem; and

(v) Before and after a game play.

(2) Notwithstanding the requirements of paragraph (c)(1) of this section, critical memory may be partitioned, and each partition may be verified independently when relevant data is to be changed.

(3) Following any restart, the Electronic Player Station shall check the validity of critical memory and then perform a comparison check of all logical copies of critical memory.

(d) *Recoverable critical memory failures.* (1) If upon any validity check failure at least one logical copy of critical memory is good, the software may recover critical memory data and continue game play provided:

(i) All logical copies of critical memory are recreated using the good logical copy as a source; and

(ii) The Electronic Player Station software verifies that the recreation of critical memory was successful.

(2) If verification of recreated critical memory identifies a permanent physical memory failure, the error shall be handled as an unrecoverable critical memory failure pursuant to paragraph (e) of this section.

(e) *Unrecoverable critical memory failures.* (1) If upon any validity check all logical copies of critical memory are corrupt, or if any verification identifies a permanent physical memory failure, the software shall flag a critical memory storage error.

(2) Critical memory storage errors shall not be cleared automatically and shall require a full critical memory storage clear.

(3) If the Electronic Player Station is so designed that after an unrecoverable memory failure it is possible to view all logical copies of meters, including the customer's credit meter, the Electronic Player Station shall highlight which are expected to be valid and which corrupt.

(4) A processor installed from another Electronic Player Station, or a processor that has never been used, shall be considered an unrecoverable critical memory failure.

(f) *Critical memory resets or clears.* (1) All methods of clearing meters or other critical memory data shall:

(i) Require access to the logic area of the Electronic Player Station or other secure means authorized by the tribal gaming regulatory authority; and

(ii) Initialize all bits in critical memory to their default states.

(2) The default display after a critical memory reset, or upon entering game play mode, shall not be a winning pattern or game.

(3) Any configuration setting entered during setup mode immediately following a critical memory reset shall not be able to be changed after the machine leaves setup mode.

(g) *Non-critical memory.* Electronic Player Stations shall check non-critical memory upon power up.

§ 547.12 What are the minimum technical standards for meters?

This section provides standards for meters on Electronic Player Stations used in the play of Class II games. Nothing in this section requires the use of electromechanical meters. Nothing prohibits the use of electromechanical meters, provided that they meet the requirements of this section.

(a) *Meter width.* (1) Accounting meters shall be at least eight decimal digits or 32 bits wide.

(2) Count meters shall be at least six decimal digits or 24 bits wide.

(3) Credit meters shall have sufficient digits or bits to display the maximum prize attainable for the game, including cashless transfers or other external payments to the credit meter, but not hand-pay jackpots.

(b) *Rollover.* Meter rollover to zero shall not corrupt data.

(c) *Meters displayed on the game screen.* (1) Meters displayed on the game screen shall be displayed in a format which is clearly visible to the player and easily distinguished from the rest of the game.

(2) A display may alternate between dollars and cents and credits, provided that both values are clearly visible and easily distinguished from one another. Such a display shall not alternate during play or during the incrementation of the win meter or credit meter following a win.

(d) *Credit meter display and function.* (1) The credit meter shall be prominently displayed at all times in all modes except:

(i) Audit, configuration, and test modes; and

(ii) Temporarily, during alternate displays of game results.

(2) When wagered, credits shall be immediately deducted from the credit meter.

(3) Every prize won shall be added to the player's credit meter, except for hand-pays, cancel credits, progressives, or non-cash prizes. Progressives may be added to the credit meter if:

(i) The credit meter is maintained in dollars and cents, or

(ii) The progressive meter is incremented in number of credits, or

(iii) The prize in dollars and cents is converted to credits on transfer to the player's credit meter in a manner that does not mislead the player or cause accounting imbalances; and

(iv) The Electronic Player Station can accommodate payments that are not direct multiples of the game's denomination, pursuant to § 547.15(j); and

(v) The progressive prize is less than $1,200, or other amount specified by the tribal gaming regulatory authority.

(4) If the credit meter displays credits while maintaining a balance that includes odd cents, then the credit meter shall display the remaining odd cents when the balance drops below one credit.

(5) Meters displayed to the player may be incremented or decremented using visual effects, but the internal storage of these meters shall be immediately updated in full.

(e) *Required meters.* (1) The following meters shall be implemented in Electronic Player Stations, as applicable:

Title	Description	Type
(i) Coin In	The total value of all wagers, whether from the insertion of coin or tokens, currency, deduction from a credit meter or any other means.	Accounting.
(ii) Coin Out	The total value of all amounts directly paid by the machine as a result of winning wagers, whether made from the hopper, to a credit meter, or any other means.	Accounting.
(iii) Coins Dropped	The total value of coins or tokens diverted to the drop	Accounting.
(iv) Jackpot	The total value of jackpots paid by an attendant and not capable of being paid by the machine itself. This does not include progressive amounts. This meter is only to include awards resulting from a specifically identified amount listed in the manufacturer's par sheet.	Accounting.
(v) Canceled Credits	The total value paid by an attendant resulting from a player initiated cash-out that exceeds the physical or configured capability of the machine to make the proper payout amount.	Accounting.
(vi) Physical Coin In	The total value of coins or tokens inserted into the Electronic Player Station	Accounting.
(vii) Physical Coin Out	The total value of coins or tokens paid out by the hopper	Accounting.
(viii) Bill In	The total value of the currency accepted	Accounting.
(ix) Bill Out	The total value of currency dispensed, if the Electronic Player Station has a currency dispenser.	Accounting.
(x) Bill in Count	The total number of each bill denomination accepted	Count/Accounting.
(xi) Voucher In	The total value of all wagering vouchers and payout receipts accepted by the machine	Accounting.
(xii) Voucher Out	The total value of all wagering vouchers and payout receipts issued by the machine	Accounting.
(xiii) Cashless In	The total value of cashable credits electronically transferred to the Electronic Player Station from a cashless wagering system.	Accounting.
(xiv) Cashless Out	The total value of cashable credits electronically transferred from the Electronic Player Station to a cashless wagering system.	Accounting.
(xv) Games Played	The cumulative number of games played since the last critical memory clear	Count.
(xvi) Cabinet Door Open.	The number of times the front cabinet door has been opened	Count.
(xvii) Drop Door Open	The number of times the drop door or the bill acceptor door has been opened	Count.
(xviii) Attendant Paid Progressive Payout.	The total value of credits paid by an attendant as a result of progressive awards that are not capable of being paid by the machine itself.	Accounting.
(xix) Machine Paid Progressive Payout.	The total value of credits paid as a result of progressive awards paid directly by the machine	Accounting.
(xx) Games Won	The cumulative number of all games won	Count.
(xxi) Games Lost	The cumulative number of all games lost	Count.

(2) When an Electronic Player Station offers multiple paytables for play, the following meters shall be implemented, for each paytable, and the meter information shall be available both at the Electronic Player Station and the server:

Title	Description	Type
(i) Coin In	The total value of all wagers for this paytable	Accounting.
(ii) Machine Paid Paytable.	The total value of all amounts for this paytable directly paid by the machine as a result of paytable winning wagers.	Accounting.
(iii) Machine Paid Progressive.	The total value of credits for this paytable paid directly to the machine as a result of progressive awards.	Accounting.
(iv) Attendant Paid Paytable.	The total value of all amounts for this paytable paid by an attendant as a result of paytable winning wagers.	Accounting.

Title	Description	Type
(v) Attendant Paid Progressive.	The total value of credits for this paytable paid by an attendant as a result of progressive awards.	Accounting.
(vi) Games Won	The cumulative number of games won for this paytable	Count.
(vii) Games Lost	The cumulative number of games lost for this paytable	Count.

(3) If an Electronic Player Station supports promotional coupons or non-cashable credits, the following meters shall be implemented:

Title	Description	Type
(i) Non-Cashable Promotion In.	The total value of non-cashable credits placed on the Electronic Player Station by insertion of a promotional coupon or electronically transferred to the Electronic Player Station from a promotional account by means of an external connection between the machine and a cashless wagering system.	Accounting.
(ii) Cashable Promotion In.	The total value of cashable credits placed on the Electronic Player Station by insertion of a promotional coupon or electronically transferred to the electronic player station from a promotional account by means of an external connection between the machine and a cashless wagering system.	Accounting.
(iii) Non-Cashable Promotion Out.	The total value of non-cashable credits redeemed by an Electronic Player Station issuing a promotional coupon or electronically transferred from the electronic player station to a promotional account by means of an external connection between the machine and a cashless wagering system.	Accounting.
(iv) Cashable Promotion Out.	The total value of cashable credits redeemed by an Electronic Player Station issuing a promotional coupon or electronically transferred from the electronic player station to a promotional account by means of an external connection between the machine and a cashless wagering system.	Accounting.

(f) *Meter updates.* (1) Meters shall be updated upon the occurrence of the metered event.

(2) Updating multiple meters shall occur before display on the Electronic Player Station or response to a meters request from a casino monitoring system.

§ 547.13 What are the minimum standards for Electronic Player Station events?

This section provides standards for events such as faults, deactivation, door open or other changes of states, and lockup on Electronic Player Stations used in the play of Class II games.

(a) *Faults, generally.*

(1) The following faults are to be treated as events:

Fault	Definition and action to be taken
(i) Coin Yo-Yo	Inserted coin detected moving in the incorrect direction. (A) A single coin yo-yo may be treated as an information only event. (B) Consecutive coin yo-yos are to lead to an Electronic Player Station fault condition.
(ii) Coin-in Jam	Coin detected not moving—*e.g.* sensors are continually blocked.
(iii) Coin to Cashbox or Diverter Fault.	Multiple coins detected going to the cashbox instead of the hopper, or vice-versa.
(iv) Hopper Empty	Coins not passing a hopper output sensor within a specified time.
(v) Hopper Jam	The hopper output sensor(s) are blocked.
(vi) Extra Coin Paid	Single coin passed hopper sensor after hopper payout completed.
(vii) Hopper Run-away	Multiple coins passing hopper sensor.
(viii) External Peripheral Controller Fault/Disconnect.	Any peripheral controller fault or communications failure.
(ix) Printer Paper Low	The printer paper will soon be exhausted. (A) Lock up the Electronic Player Station upon completion of a predetermined number of tickets calculated to ensure "Paper Out" is not possible. If a paper-out sensor is also provided then "Paper Low" results only in a message. (B) Note that if an Electronic Player Station has a printer it shall have a Paper Low or Paper Out sensor, or both.
(x) Printer Paper Out	The printer paper has been exhausted. The Electronic Player Station shall lock-up until the paper out state is cleared.
(xi) Printer Jammed	The printer paper is not feeding correctly.
(xii) Low CMOS RAM Back-up Battery.	Back-up RAM Battery has reached a voltage where back-up will become unreliable soon. (A) A message stating that the repairer shall be called shall be displayed. (B) The Electronic Player Station shall lock-up.
(xiii) Critical RAM Errors, Mismatch	Some critical RAM error has occurred: When a non-correctable RAM error has occurred, the data on the Electronic Player Station can no longer be considered reliable. Accordingly, any communication to external devices shall cease immediately, and an appropriate message shall be displayed.
(xiv) EEPROM Error	An EEPROM error has occurred. —As for Critical RAM errors—
(xv) Program storage medium fault	The software has failed its own internal security check. Any communication to external devices shall cease immediately. An appropriate message shall be displayed, if possible.

Fault	Definition and action to be taken
	No modifications to critical meters in RAM shall be possible. The Electronic Player Station shall lock-up until corrected.
(xvi) Progressive communications lost.	Communications with the device or system that is controlling the progressive(s) has failed.
(xvii) Progressive levels mismatch ..	An Electronic Player Station or server has a different number of progressive levels configured than the device or systems that is controlling the progressive(s).
(xviii) Game meter/progressive meter mismatch.	There is a difference in progressive amount between an in-machine game meter and the progressive controller.

(2) Upon the occurrence of any fault identified in paragraph (a)(1) of this section, the Electronic Player Station shall, unless otherwise specified in paragraph (a)(1) of this section:

(i) Display a message that the event has occurred;

(ii) Disable all player inputs, including coin and bill input, except the service call button, if any;

(iii) Sound an identifiable alarm for at least 1.5 seconds or illuminate the tower light;

(iv) Save any incomplete game play in its current condition; and

(v) If in hopper payout, the turn off and brake the hopper.

(3) Upon clearing any fault identified in paragraph (a)(1) of this section, the Electronic Player Station shall:

(i) Remove the event message;

(ii) Enable all player inputs;

(iii) Turn off the alarm or tower light; and

(iv) Recommence game play from the beginning of the play, or from the point at which interruption occurred, using saved data, and conclude normally.

(b) *Door open/close events.* (1) The following door open or close conditions are to be treated as events:

Event	Definition
(i) Electronic Player Station Door Open.	The main cabinet door is open.
(ii) Cash box Door Open	The cash box door is open.
(iii) Other Secure Area Accessed ...	Any other secure area has been accessed.
(iv) Electronic Player Station Door Closed.	The main cabinet door has closed.
(v) Cash box Door Closed	The cash box door has closed.
(vi) Other Secure Area Secured	Previously accessed secure area has been secured.

(2) The Electronic Player Station shall perform the following on any door open event:

(i) Save any software state prior to door opening;

(ii) Save any game play in its current incomplete condition;

(iii) Indicate that a door is open;

(iv) Disable all credit input, but credit input may be enabled for the duration of any credit input test or hopper test;

(v) Disable all game play;

(vi) Disable and brake hopper if the hopper is running, but the hopper may be enabled for the duration of a hopper test;

(vii) Disable all player inputs, but player inputs may be enabled in door open/test mode;

(viii) Disable cash out; and

(ix) Sound an identifiable alarm for at least 1.5 seconds or illuminate the tower light.

(3) The Electronic Player Station shall perform the following when all doors are closed:

(i) Return to the software state saved upon door open;

(ii) Indicate, for 10 seconds or until the next game play, that the doors are closed;

(iii) Enable player inputs;

(iv) Turn off alarm or tower light; and

(v) Recommence game play from the beginning of the play, or from the point at which interruption occurred, using saved data, and conclude normally.

(c) Bill validator events. (1) The following bill validator events shall be treated as faults:

(i) Bill door open open/closed

(ii) Bill container or stacker removed

(iii) Fault

(iv) Bill jam

(v) Bill Yo-Yo

(vi) Bill container or stacker full

(vii) Bill validator cable disconnected

(viii) Bill validator self-check failure

(2)(i) Upon the occurrence of any fault identified in paragraph (c)(1) of this section, the Electronic Player Station shall:

(A) Display a message or other indication that the event has occurred;

(B) Sound an identifiable alarm for at least 1.5 seconds or illuminate the tower light; and

(C) Disable bill input.

(ii) Game play may continue, except upon the occurrence of a bill jam or door open, container or stacker removed, or cable disconnected event, in which case the Electronic Player Station shall disable all player inputs and the ability to cash out.

(3) Bill validator faults may not be automatically cleared but shall require operator intervention.

(4) Upon clearing any fault identified in paragraph (a)(1) of this section, the Electronic Player Station shall, as appropriate:

(i) Remove the event message;

(ii) Turn off the alarm or tower light; and

(iii) Enable bill input, all player inputs, and cash out.

(d) Non-fault events. For the following non-fault events, the Electronic Player Station shall take the following actions:

Event	Action
(1) Electronic Player Station Power Off During Play.	(i) Game play shall be saved in its current incomplete condition (wins shall only be paid on subsequent power up).
(2) Power Off During Play	(ii) If in hopper payout, disable and brake hopper.

Event	Action
(3) Electronic Player Station Power On.	(i) Enable player inputs. (ii) Recommence game play from the beginning of the play, or from the point at which interruption occurred, using saved data, and conclude normally.
(4) Linked Progressive Award	(i) Display appropriate message. (ii) Unless the prize is transferred to the player's credit meter, lock-up until the award paid by attendant.
(5) Jackpot Win	For any prize equaling or exceeding an amount set by the tribal gaming regulatory authority, lock-up until the award paid by attendant.
(6) Maximum Hopper Pay out Exceeded.	Lock up until cancel credit and full amount paid manually.

§ 547.14 What are the minimum technical standards for last game recall?

This section provides standards for last game recall information on Electronic Player Stations used in the play of Class II games.

(a) *Game recall, generally.* (1) The Electronic Player Station shall make game recall information retrievable at all times upon the operation of an external key-switch, entry of an audit card, or other similar method.

(2) The Electronic Player Station shall be able to show the player the results of recalled games as the player originally saw them and enable the tribal gaming regulatory authority or operator to clearly identify the game sequences and results that occurred.

(3) The Electronic Player Station shall, upon return to normal game play mode, restore the display to the positions, forms and values displayed before access to the game recall information.

(b) *Game recall information.* Electronic Player Stations shall be able to display the following information for the last five games played and shall display all values, even if zero:

(1) The total number of credits at the start of play, less credits bet;

(2) The total number of credits bet;

(3) The total number of credits at the end of play;

(4) The total number of credits won as a result of the game recalled, and the value in dollars and cents for progressive prizes, if different;

(5) The total number of credits added, separated by coins or tokens, bills, vouchers and cashless transfer, since the end of the previous play and through to the end of the last play;

(6) The total number of credits redeemed, separated by coins or tokens, vouchers, and cashless transfer, since the end of the previous play and through to the end of the last play;

(7) The total value of cancelled credits, in dollars and cents, since the end of the previous play and through to the end of the last play;

(8) The value of all accounting meters as at the end of the last play;

(9) For bingo games and games similar to bingo only:

(i) The card(s) used by each player;

(ii) The number of the bingo game played;

(iii) The numbers drawn, in the order that they were drawn;

(iv) The numbers and prize patterns covered on each card;

(v) The patterns slept during the game;

(vi) All prizes won and winning patterns; and

(vii) The number of the card on which prizes were won;

(10) For pull-tabs games only:

(i) The result(s) of each pull-tab, displayed in the same pattern as on the tangible pull-tab; and

(ii) All prizes won.

(11) Any other information necessary to fully reconstruct the last five plays.

(c) *Voucher and credit transfer recall.* Notwithstanding the requirements of any other section in this part, an Electronic Player Station shall have the capacity to:

(1) Display the information specified in § 547.15(h)(3)(ii) through (vi) for the last five vouchers printed and the last five vouchers accepted; and

(2) Display a complete transaction history for the last five cashless transfers made and the last five cashless transfers accepted.

§ 547.15 What are the minimum technical standards for money and credit handling?

This section provides standards for money and credit handling by Electronic Player Stations used in the play of Class II games.

(a) *Credit acceptance, generally.* (1) The Electronic Player Station shall disable all credit acceptance in the presence of any fault or while in audit or test mode, except for coin, bill, or other credit acceptance testing.

(2) The Electronic Player Station shall register the correct number of credits on the credit meter upon any credit acceptance.

(b) *Credit acceptance, coins and tokens.* (1) The Electronic Player Station shall register the actual value or number of credits on the credit meter upon insertion of a valid coin or token.

(2) The Electronic Player Station shall accurately count each valid coin token at the highest speed in which the coins or tokens may be fed into the Electronic Player Station.

(3) The Electronic Player Station shall reject coins or tokens deemed invalid by the validator.

(4) If a hopper is present, the Electronic Player Station shall:

(i) Cause the diverter to direct coins to the cash box when the hopper is full; and

(ii) Continually monitor the hopper full detector to determine whether a change in diverter status is required. If the state of the detector changes, the diverter shall operate as soon as possible after the state change without causing a disruption of coin flow or creating a coin jam.

(c) *Credit acceptance, bills.* (1) The Electronic Player Station shall always register bills, coupons, vouchers, or their equivalents on the credit meter if they are input during game play.

(2) The Electronic Player Station shall not register credits on the credit meter until:

(i) The bill, coupon, voucher or other equivalent has passed the point where it is accepted and stacked; and

(ii) It has received a "stacked" message from the bill acceptor.

(3) The Electronic Player Station shall have a means of handling simultaneous insertion of bills (and vouchers and their equivalents) into the bill acceptor and coins (or tokens) into the coin slot, such that the proper number of credits is always registered. In complying with this requirement, the Electronic Player Station may reject and return either the bill or coin or both.

(d) *Credit acceptance, vouchers.* Nothing in this paragraph (d) is intended to alter, repeal, or limit the applicability of §§ 542.13(n), 542.21(f), 542.31(f), or 542.41(f) of this chapter.

(1) The Electronic Player Station shall be able to detect the entry of a valid voucher.

(i) If valid, the voucher serial number is transmitted to the voucher validation system.

(ii) If not valid, the voucher shall be rejected and returned to the player.

(2) The voucher payment system shall verify the authenticity of the voucher and ensure that payment is pending. If the voucher is valid:

(i) The voucher payment system will communicate a success message, including the amount to be paid, back to the Electronic Player Station.

(ii) The Electronic Player Station will determine if it can accept or handle the amount transferred.

(A) If it cannot, the Electronic Player Station shall send a reject message to the voucher payment system and return the ticket to the player.

(B) If it can accept or handle the amount transferred, the Electronic Player Station shall register credits on the credit meter, stack the voucher, and handle odd cents pursuant to paragraph (j) of this section.

(e) Credit redemption generally. Electronic Player Stations shall allow players to cash out or redeem credits at any time other than:

(1) During the play of a game;

(2) While the Electronic Player Station is in audit mode or any test mode;

(3) While any door open condition exists;

(4) While the credit meter or total wins meter is incrementing;

(5) While the Electronic Player Station is disabled; and

(6) While any fault condition exists, excluding:

(i) Ticket printer failure or printer paper error;

(ii) Progressive controller failure;

(iii) Bill acceptor full.

(f) Credit redemption, cancel credit / hand-pay jackpots. (1) A cancel credit / hand-pay shall occur:

(i) In the absence of a voucher printer and upon the occurrence of a jackpot larger than the maximum jackpot payable from the hopper, as determined by the tribal gaming regulatory authority;

(ii) In the absence of a voucher printer and upon the occurrence of a cash out request when the credits registered on the credit meter exceed the maximum amount payable from the hopper, as determined by the tribal gaming regulatory authority;

(iii) In the absence of a functioning voucher printer and hopper, upon the occurrence of any cash out request;

(iv) Upon a manual override to force a cancel credit or hand-pay when a voucher is not wanted; and

(v) When the amount on the credit meter is not a direct multiple of the coin value contained within the hopper—in this case, the Electronic Player Station may dispense all possible coins from the hopper and leave only the final odd cents or residual credit;

(vi) Upon the occurrence of a jackpot, or combination of prizes awarded in a single game, of $1,200 or more; or

(vii) Upon the any other circumstance required by the tribal gaming regulatory authority.

(2) Upon the occurrence of a cancel credit or hand-pay jackpot, the Electronic Player Station shall:

(i) Automatically lock-up and display a "call attendant" or other message describing the condition;

(ii) Remain in the lock-up state until the credits have been cancelled by manual intervention or the player exits from the cancel credit state and resumes play, except that the player shall not be able to exit upon the occurrence of a jackpot, or combination of prizes awarded in a single game, of $1,200 or more and requiring the issuance of a W–2G;

(iii) Display the cancel credit hand-pay amount in dollars and cents; and

(iv) When cancel credit or hand-pay has been completed, the credit meter shall be set to zero, the lock-up state exited, and the cancel credit meter incremented by the amount cancelled or paid.

(g) Credit redemption, coins or tokens from the hopper. (1) Once initiated, the player shall not be able to cancel, pause, or otherwise control payment from the hopper.

(2) Each coin paid from the hopper shall be registered on the physical coin out meter and be decremented from the player's credit meter.

(h) Credit redemption, vouchers. Nothing in this paragraph (h) shall alter, repeal, or limit the applicability of § 542.13(n) of this chapter. In addition, credit redemption by ticket voucher shall conform to the following:

(1) An Electronic Player Station may redeem credits by printed voucher when it communicates with a voucher payment system that validates the voucher.

(2) An Electronic Player Station that redeems credits with printed vouchers shall either:

(i) Maintain an electronic record of all information required by § 547.15(h)(3)(ii) through (vi); or

(ii) Generate two identical copies of each voucher printed, one to be provided to the player and the other to be retained within the machine for audit purposes.

(3) Valid vouchers shall contain the following:

(i) Gaming operation name, city and state, reservation, or territory;

(ii) Electronic player station number or printer station number, as applicable;

(iii) Date and time of issuance;

(iv) Alpha and numeric dollar amount;

(v) A sequence number;

(vi) A validation number, although

(A) No ticket validation number shall be repeated, even upon a total replacement of the electronic player station, and

(B) Ticket validation numbers shall have some form of checkcode or other form of information redundancy to prevent prediction of subsequent validation numbers without knowledge of the checkcode algorithm and parameters;

(vii) A second printing of validation number on the leading edge of the voucher or coupon; (viii) A bar code or other form of machine readable markings, which shall have enough redundancy and error checking to ensure that 99.9% of all misreads are flagged as errors;

(ix) Transaction type or other method of differentiating ticket types; and

(x) Expiration period or date when voucher or coupon will expire.

(i) Cashless credit transfers. (1) Transfers from a cashless account may not exceed the balance of that account.

(2) The Electronic Player Station software shall be designed to have a secure method of identifying a cashless account in order to redeem credits and transfer them to that account, even in the event a player's account card has been abnormally removed or there is a loss of power.

(j) Credit transfers not multiples of game denomination. For games not metered in dollars and cents, the Electronic Player Station shall handle credit transfers from voucher systems or cashless systems that are not multiples of the game denomination in one of the following ways:

(1) Reject the transfer and any voucher input.

(2) Redeem the odd cents by printing a voucher by cashless transfer back to the cashless system. The Electronic Player Station may redeem the odd cents immediately or after the player finishes playing, provided in the latter case that the odd cents are displayed to the player in accordance with § 547.12(d)(4).

(k) Cards used as account identifiers. Nothing in this paragraph (k) is intended to alter, repeal, or limit the applicability of § 542.13(o) of this chapter.

(1) *Multiple-use Simple Magnetic Stripe Cards.* If the card media is a simple magnetic stripe card designed for repeated, rather than single, use in the manner of a voucher, additional security protection to that of reading the

magnetic stripe is required. At a minimum, the entry of a PIN, selectable by the patron, is required when an amount of money can be withdrawn from an account.

(2) *Card Locking Mechanisms.* Except if an amount debited from a card or account is placed directly on the credit meter and no further transactions are required from the card or account, the Electronic Player Station shall activate a locking mechanism to retain a card within the reading device, and lock a card into the unit once inserted, until one of the following conditions is met:

(i) The player has requested a collect of remaining credits and all updating of meters and account records has been successfully completed.

(ii) The player has a zero credit balance and updating of all meters and account records has been completed successfully.

(iii) An invalid card condition has been cleared by an approved method.

(iv) A power or communications failure of the Electronic Player Station. In this instance, the meter and accounting information shall be updated by the cashless system before logically releasing the card.

§ 547.16 What are the minimum technical standards applicable both to clients and servers or to client-server implementations generally?

This section provides minimum software standards common both to servers and clients, wherever located, and used in the play of Class II games. It also provides minimum standards for client-server implementations used in the play of Class II games.

(a) *Client enable / disable requirements.* (1) Electronic Player Stations shall be in a disabled state following:

(i) An application start or restart;

(ii) A system start; and

(iii) A system start from a standby, sleep, or hibernating mode.

(2) Electronic Player Stations shall remain in the disabled state until they receive an "enable" command from the server.

(3) Electronic Player Stations shall not immediately enable on receipt of a server "enable" command if a door open or other disabled state is still present when the enable instruction is received from the server, but may enable itself after all alarms are cleared.

(b) *Automatic operation of programs.* Software used with play of Class II games shall automatically restart, without the need for operator intervention, when the computer on which they operate starts or restarts.

(c) *Load requirements.* (1) Under high or maximum loads:

(i) The server or client shall not provide misleading information to players.

(ii) Information stored in the client or server shall not become corrupted.

(iii) Random number generators shall continue to perform correctly.

(iv) Game outcome decisions shall not be affected except for speed degradation.

(2) The client-server system shall function correctly after it has recovered from an excessive load.

(3) Recovery from excessive load may involve a system restart.

(d) *Memory requirements.* (1) Servers and clients may implement memory in any form, including random access memory of any kind, writeable flash, memory sticks, PCMCIA memory, and writable disks.

(2) Memory data storage shall be capable of preserving its contents for at least 90 days with power removed.

(3) Memory backup power sources, which may be rechargeable or non-rechargeable, shall meet the following conditions:

(i) Shall have the ability to fully recharge within 24 hours, if rechargeable; and

(ii) Shall have a life span of at least five years.

(4) Random access memory that uses an off-chip battery backup shall provide a method for the Electronic Player Station software to:

(i) Check for battery low/battery fail conditions on every power up and, at a minimum, every 24 hours; and

(ii) Interpret and act upon a battery low/battery fail condition.

(e) *Network requirements.* (1) Network infrastructure shall ensure that only gaming-related equipment can make a data-link layer connection to server or clients. For the purposes of this subsection, "gaming-related equipment" means:

(i) Casino monitoring systems;

(ii) Cashless gaming systems;

(iii) Voucher payment systems;

(iv) Player tracking systems;

(v) Progressive jackpot systems or controllers; or

(vi) Any other gaming-related equipment approved by the tribal gaming regulatory authority.

(2) If servers or clients are also connected to non-gaming computers, data may only transfer from the servers and clients to the non-gaming equipment. This shall be implemented through:

(i) Internal controls approved by the tribal gaming regulatory authority; and

(ii) Configuration of firewall devices so that only the servers and clients can establish the connection to be used for the data transfer.

(3) The network infrastructure shall report an event each time a data-link level connection is established or broken to a client or server. These events may be raised at the server, casino monitoring system or network control terminal.

(f) *Communications protocol requirements.* The following requirements apply to the communications within the client-server domain:

(1) Extensible protocols are permitted provided that any recipient shall explicitly reject options, commands, and responses that it does not support.

(2) The communications protocol shall be designed to support delivery of all data, including after a restart of a system component. The protocol is not required to support delivery in the case of a total failure of a system before all data is sent.

(3) The protocol shall ensure the correct delivery of data to the application in the order that the data was sent and without loss or duplication.

(4) The communications protocol shall be designed and implemented so there is no noticeable degradation of data integrity at bit error rates of 1 in 10^6.

(g) *Failure/recovery requirements.* (1) Client-server domains used in the play of Class II games shall provide a level of redundancy and a means of recovery such that the occurrence of any of the following will not lead to the loss of, or prevent recovery of, data stored in critical memory, including credit balance:

(i) Catastrophic client failure or failure of primary client components such as hard disks or other primary storage devices;

(ii) Catastrophic server failure, including replacement of server hardware or primary components; and

(iii) Total power failure, unless duplicated uninterruptible power supplies (UPSs) of requisite capacity are part of the domain specifications.

§ 547.17 What are the minimum technical standards for the Formal Application Configuration document and verification tool?

This section provides minimum standards for the Formal Application Configuration (FAC) document and verification tool required for submission of equipment, software, or modifications of equipment or software used with the play of Class II games to a test laboratory and to a tribal gaming regulatory authority pursuant to § 547.4(b)(2)–(4); for verification of game software on clients and servers pursuant to

§ 547.18(a)(6) and § 547.19(b)(3); and EPROM control standards pursuant to § 542.13(g) of this chapter.

(a) *Contents of the FAC document.* (1) The Formal Application Configuration (FAC) document shall include a detailed file and directory listing of all of the following software, as applicable:

(i) .EXE, .DLL, .JAR and other executable files and their necessary components;

(ii) Scripts;

(iii) Stored database procedures;

(iv) Fixed parameter files affecting any game outcome, game mathematics, game denomination, or available prizes (excluding parameters expected to periodically change);

(v) Batch files;

(vi) Fixed data and graphic information;

(vii) Reports used to verify the correct working of the game software;

(viii) Compressed files expanded to be any of these; and

(ix) Any other software required by the tribal gaming regulatory authority.

(2) For all software listed in paragraph (a)(1) of this section, the FAC document shall include a signature or hash value calculated using an algorithm that meets the requirements of § 547.23(c). If the algorithm uses signature seeds (algorithm coefficients), each FAC record shall contain the signature result for each seed maintained by the verifying tool. Alternatively, the FAC document may contain a list of controlled directories and a signature value for each such directory as calculated by the verification tool.

(3) The FAC document shall identify all files that, if discovered to be altered or missing by the verification tool, require a shutdown of the server or client.

(4) The FAC document shall be labeled with a unique identifier indicating the software with which it is associated.

(5) The FAC document shall describe in detail the verification tool associated with it.

(b) *FAC verification tool, generally.* No particular implementation is required, unless required by the tribal gaming regulatory authority. Verification tools may include third-party program storage (ROM) verification devices; commonly available third-party signature algorithms; hashing formulas such as SHA–1, provided that they use a seed of not less than four digits as a part of the calculation; or any other implementation that meets the requirements of this section and contains or is able to access the listing of game software files, directories, and signatures presented in the FAC document for the purposes of comparison and verification.

(c) *FAG verification tool, general methodology.* The FAC verification tool shall be capable of:

(1) Searching through the directory structure of the game program storage media;

(2) Performing and reporting signature checks on files individually or on entire directories in the game software using an algorithm that:

(i) Meets the hashing requirements specified § 547.23(c);

(ii) Processes individual software components, fixed data components, and entire software suites; and

(iii) Is capable of using a seeding methodology that will allow for a random or manually selected seed as part of the signature calculation—if the algorithm requires signature seeds, these shall be manually entered or selected from an external device or randomly selected from a pool of seeds and checksums;

(3) Comparing files and directories in the game software, or their signatures, with the files and directories, or their signatures, in the FAC listing provided in the FAC document.

(4) Reporting file names, time and date stamps, and size for all files and directories;

(5) Reporting the following error conditions, which shall be logged and reported to the tribal gaming regulatory authority:

(i) Mismatching or modified files and directories;

(ii) Files or directories present in the game software but not in the FAC listing; and

(iii) Files or directories present in the FAC listing but not the game software;

(6) And any other requirements specified by the tribal gaming regulatory authority.

(d) *FAC verification tool, specific requirements.* Notwithstanding the requirements of paragraphs (b) through (c) of this section, the implementation of the verification tool shall meet the following requirements:

(1) The verification tool shall not be spoofed by a program or thread operating on the hardware and software under test; and

(2) The FAC listing in, or available to, the verification tool shall be encrypted using a methodology that satisfies the requirements of § 547.23(b).

(e) *FAC verification tool, external locations.* (1) The verification tool may reside on a medium external to the Class II client-server implementation.

(2) [Reserved]

(f) *FAC verification tool located on a server.* The verification tool may reside on a server. In such a case:

(1) The server shall contain the FAC listings for each client.

(2) The server shall initiate verification of the client by passing the FAC without signatures to the client.

(3) The client shall pass the signature results to the server for verification.

(4) Errors and warnings identified during the test shall be logged on the server or an external monitoring system and reported to the screen of the server. Failure or error on critical software files does not require that the device be immediately disabled unless the check failure occurs immediately after the software download verification required by § 547.18(a)(6).

(g) *FAC self-verification.* A server or client may self verify, i.e. use a verification located on that server or client for the purpose of checking the software it contains, provided that:

(1) One or more base devices at the beginning of a chain of security verify peer devices, and the base device(s) are themselves verified by some external means. An example of such a technique is when the Boot ROM for a PC is modified to check running versions of software before enabling this software to run; the Boot ROM could be in a removable EPROM which could be verified by an external EPROM verifier.

(2) The verification tool is itself verified by the gaming laboratory and the tribal gaming regulatory authority as secure from tampering or compromise.

(3) Self-verification is implemented only in addition to, not in lieu of, other verification tool options allowed by paragraphs (e) and (f) of this section.

(h) *Running the FAC verification tool.* The FAC verification tool shall be run to verify the authenticity of Class II game software and paytables:

(1) Following the addition, removal, or change of game software or paytables pursuant to § 547.19;

(2) Following the download of game software or paytables pursuant to § 547.18;

(3) Pursuant to EPROM control standards adopted by the tribal gaming regulatory authority in accordance with § 542.13(g) of this chapter;

(4) After recovery from any power failure or upon power up; and

(5) At any other time required by the tribal gaming regulatory authority.

(i) *Verification of non-interrogatable devices.* Program devices that cannot be interrogated, such as Smart cards, may be used provided they are able to be verified by the following FAC methodology:

(1) A challenge is sent by the peer device, such as a hashing seed, to which

the device must respond with a checksum of its entire program space using the challenge value.

(2) The challenge mechanism and means of loading the software into the device is verified by the independent testing laboratory and approved by the tribal gaming regulatory authority.

§ 547.18 What are the minimum technical standards for downloading Class II game software, paytables, peripheral software or other Download Packages in client-server implementations?

This section provides standards for the downloading of Class II games or paytables to clients or servers on the casino floor for patron play.

(a) *Downloads.* (1) Downloads of games, paytables, peripheral software or other download packages shall be conducted only as authorized by the tribal gaming regulatory authority.

(2) Downloads of download packages shall be conducted only from an approved Download Server. The Download Server may be the main game server or a separate computer device, in which case that device must meet the server standards of section § 547.6 and be separately approved by the tribal gaming regulatory authority.

(3) Downloads conducted during operational periods shall be performed in a manner which will not affect play on Electronic Player Stations that are not the subject of the download.

(4) Downloaded games shall not be played in more than one configuration on any given Electronic Player Station during any one gaming day, unless separate metering for each configuration can be maintained.

(5) Downloads shall use a secure protocol that will deliver the download data without alteration or modification, even if errors occur during communication.

(6) The software, paytables, peripheral software or other download packages shall be verified following download using a FAC verification tool and new Formal Application Configuration conforming to § 547.17.

(7) The integrity of the master meter set and critical memory shall be maintained after a download.

(8) Power loss or communications loss during a download shall result either in recommencement or continuation of download and not require operator intervention.

(9) The server shall log each download of any Download Package.

(10) Each log record shall contain as a minimum:

(i) The time and date of the initiation of the download;

(ii) The time and date of the completion of the download;

(iii) The client player station(s) to which software was downloaded;

(iv) The version(s) of download package and any embedded software downloaded. Logging of the unique FAC identifier will satisfy this requirement;

(v) The user who initiated the download;

(vi) The outcome of the FAC verification following the download (success or failure).

(11) Download logs shall be retained for a period of one year from the date of the download. These logs may be kept in an archived manner, on the server or elsewhere, provided that the information reconciles across replicated storage and that the information can be produced within 24 hours upon request. In any event, download logs for the previous 72 hours shall be immediately accessible.

(b) Interim Storage or actuation of Download Packages. If Download packages are loaded to interim storage and not to the Electronic Player Station or peripheral for immediate activation, then the interim storage shall be:

(1) A component within the logic area of the client device; or

(2) A separate device, such as a processor board, that resides within a logic area of the client device and meets the requirements of:

(i) Section 547.5;

(ii) Section 547.10(a), if residing in a separate cabinet;

(iii) Section 547.11;

(iv) Section 547.1(d);

(v) Section 547.16(g); and

(vi) Section 547.17.

(c) Actuation of Download Packages. (1) Actuation of Download Packages shall be conducted only as authorized by the tribal gaming regulatory authority.

(2) Actuation of Download Package shall not be permitted if an error or tilt condition exists on the destination device or Electronic Player Station.

(3) If the actuation process involves transfer of data from interim storage to the Electronic Player Station, the communications method must meet the requirements of paragraph (a)(5) of this section, and cryptographic protection is not necessary if the data transfer is contained within one logic area.

(4) The server shall permanently log each instance of package actuation as required by paragraphs (a)(9) and (10) of this section.

(d) Download of peripheral software. Peripherals, such as bill acceptors, may have their software, firmware or configuration updated by the client device provided:

(1) The Download Package containing the peripheral software has been previously approved by the tribal gaming regulatory authority.

(2) The process of transfer the peripheral software is secure and meets the specification of the communication protocol to the peripheral.

§ 547.19 What are the minimum technical standards for changing available Class II game software or paytables in client-server implementations?

This section provides standards for adding, removing, or swapping to different Class II games and paytables on client-server implementations by a method other than the download of software. Downloadable software is the subject of § 547.18. The actions described in this section may be initiated by command at the client station, external command initiated by the server, or actuation of a Download Package previously downloaded that performs approved reconfiguration commands or other methods approved by the tribal gaming authority.

(a) *Adding or changing games or paytables, authorization.* Game software and paytables shall be added to, or changed on, a client-server implementation and made available to patrons for play only as authorized by the tribal gaming regulatory authority.

(b) *Adding or changing games or paytables, process.* (1) All Electronic Player Stations that are to have game software or paytables added or changed shall be disabled for play before the addition or change occurs.

(2) An updated Formal Application Configuration meeting the requirements of § 547.17 shall be installed or otherwise made available for use by the FAC verification tool to verify the changed game software or paytables.

(3) The added or changed game software or paytables shall be verified on the server or Electronic Player Station, as applicable, using a FAC verification tool and new Formal Application Configuration that conforms with § 547.17 prior to re-enabling the Electronic Player Stations or clients for play.

(c) *Display following change.* Immediately following reenabling, the Electronic Player Station shall;

(1) Reset the win meter to zero;

(2) Reset any player options selected (*e.g.* bet amount, lines played, etc.) to the minimum available value and apply this value or values to appropriate on-screen displays; and

(3) Change, if necessary, the display of the game screen to a non-winning result or combination.

(d) *Deleting paytables, authorization.* (1) Paytables shall only be deleted from a client—server implementation as

authorized by the tribal gaming regulatory authority.

(2) The remaining game software and paytables shall be verified on the server, Electronic Player Stations, or clients, as applicable, using a FAC verification tool and new Formal Application Configuration that conforms with § 547.17.

(e) *Deleting games, authorization and requirements.* (1) Games shall be deleted from a client—server implementation only as authorized by the tribal gaming regulatory authority.

(2) In any event, games shall be deleted only if:

(i) There are no incomplete instances of the game outstanding; and

(ii) All Electronic Player Stations that are to have game software or paytables deleted shall be disabled for play before the deletion occurs.

(3) The remaining game software and paytables shall be verified on the server, Electronic Player Stations, or clients, as applicable, using a FAC verification tool and new Formal Application Configuration that conforms with § 547.17.

(f) *Audit trail.* An automatic audit trail of all game software and pay table changes shall be maintained and shall include, at a minimum:

(1) The identity of the person making the change(s), if the client-server implementation requires identification or log-in for the person(s) making changes;

(2) The time and date of the change(s);

(3) The type of change(s), (e.g. addition, change, or deletion of game / pay table); and

(4) Application parameters or variables.

§ 547.20 What are the minimum technical standards for game program storage media?

This section provides minimum standards for removable, (re-)writable, and non-writable storage for programs used with the play of Class II game software.

(a) *Removable program storage media.* (1) All removable program storage media such as ROMs, EPROMs, Flash ROMs, CD-ROMs, DVDs etc. shall be clearly marked with sufficient information to identify the software and version or revision level contained.

(2) All removable program storage media shall maintain an internal checksum or signature of its contents. Verification of this checksum or signature is to be performed after every restart and, if the verification fails, the Electronic Player Station shall enter a fatal error state.

(b) *Non-writeable program storage media.* (1) All EPROMs and Programmable Logic Devices (PLDs) that have erasure windows shall be fitted with covers over their erasure windows.

(2) All unused areas of EPROMs shall be written with the inverse of the erased state, e.g., zero bits (00 hex) for most EPROMs, random data, or repeats of the program data.

(3) Flash memory storage devices intended to have the same logical function as ROM, i.e. not to be dynamically written, shall be write protected or otherwise protected from unauthorized modification.

(4) Re-writeable CD-ROMs shall not be used.

(5) The write cycle shall be closed or finished for all CD-ROMs such that it is not possible to write any further data to the CD.

(6) Write protected hard disks are permitted if the means of enabling the write protect is easily viewable and can be sealed in place.

(c) *(Re-)Writeable program storage media.* (1) (Re-)writable program storage, such as hard disks, Flash memory, writable CD-ROMs, and writable DVDs, may be used provided that the verification requirements of § 547.19(b) and § 547.18(a)(6) are met.

(2) Program storage is structured so there is an obvious separation of fixed data (e.g. program, fixed parameters, DLLs) and variable data.

(d) *Identification of program storage media.* All discrete program storage media (e.g. EPROM, CD-ROM) shall be uniquely identified, displaying:

(1) Manufacturer;

(2) Game name;

(3) Game development number or variation;

(4) Version number;

(5) Jurisdiction;

(6) Type and size of media; and

(7) Location in Electronic Player Station, if critical (e.g. socket position 3 on PCB).

§ 547.21 What are the minimum technical standards for random number generation?

This section provides minimum standards for random number generators (RNGs) used with the play of Class II games and for cryptography.

(a) *Properties.* All RNGs shall produce output having the following cryptographic properties:

(1) Statistical randomness;

(2) Unpredictability; and

(3) Non-repeatability.

(b) *Statistical Randomness.* (1) Numbers produced by an RNG shall be statistically random individually and in the permutations and combination used in the application under the rules of the game. For example, if a Bingo game with 75 balls has a progressive winning pattern of the five numbers on the bottom of the card and the winning of this prize is defined to be the five numbers are matched in the first five balls drawn, the likelihood of each of the 75C5 combinations are to be verified to be statistically equal.

(2) Numbers produced by an RNG shall pass the statistical tests for randomness to a 99% confidence level, which may include:

(i) Chi-square test;

(ii) Equi-distribution (frequency) test;

(iii) Gap test;

(iv) Poker test;

(v) Coupon collector's test;

(vi) Permutation test;

(vii) Run test (patterns of occurrences shall not be recurrent); (viii) Spectral test;

(ix) Serial correlation test potency and degree of serial correlation (outcomes shall be independent from the previous game); and

(x) Test on subsequences.

(c) *Unpredictability.* (1) It shall not be feasible to predict future outputs of an RNG, even if the algorithm and the past sequence of outputs are known.

(2) Unpredictability shall be ensured by re-seeding or by continuously cycling the RNG, and by providing a sufficient number of RNG states for the applications supported.

(i) Re-seeding may be used where the re-seeding input is at least as statistically random as, and independent of, the output of the RNG being re-seeded.

(ii) The number of RNG states shall be larger than the number of possible outcomes in the application for which the RNG is used by at least a factor of 10^8.

(d) *Non-repeatability.* The RNG shall not reproduce the same output stream that it has produced before, nor shall any two instances of an RNG produce the same stream as each other. This property shall be ensured by initial seeding that comes from:

(1) A source of "true" randomness, such as a hardware random noise generator; or

(2) A combination of timestamps, parameters unique to a server or Electronic Player Station, previous RNG outputs, etc.

(e) *General requirements.* (1) Game software that calls an RNG to simulate an event of chance shall immediately use the output returned in accordance with the game rules.

(2) RNG outputs shall not be arbitrarily discarded or selected.

(3) Where a sequence of outputs is required, the whole of the sequence shall be used in accordance with the game rules.

(f) *Scaling algorithms and scaled numbers.* An RNG that provides output scaled to given ranges shall:

(1) Meet the requirements of paragraphs (a) through (d) of this section and be independent and uniform over the range;

(2) Provide numbers scaled to the ranges required by game rules, and notwithstanding the requirements of paragraph (e)(2) of this section, may discard numbers that do not map uniformly onto the required range but shall use the first number in sequence which does map correctly to the range;

(3) Be capable of producing every possible outcome of a game according to its rules; and

(4) Use an unbiased algorithm. A scaling algorithm is considered to unbiased if the measured bias is no greater than 1 in 100 million.

(g) *RNGs used for cryptography.* (1) RNGs used for cryptography shall:

(i) Be separate from RNGs used for other purposes;

(ii) Be accessible only by the components that implement the security functionality;

(iii) Not weaken security by providing a point of attack on the security protocols that it supports;

(iv) Have a number of states at least as great as the encryption strength—for example, an RNG using 128 bit encryption shall have at least 2^{128} states;

(v) Make use of an entropy source in its initial and ongoing seeding, unless a security protocol requires that a recipient's (pseudo) RNG supplied with correct key information reproduces the same sequence as the sender's RNG; and

(vi) Be re-seeded at a rate that makes cryptoanalytic attack impractical.

(2) RNG components used for cryptography shall notify callers in the event of a malfunction.

(3) Security system components reliant on RNG outputs shall cease to operate when a fault is detected in the operation of the RNG and security can no longer be assured.

§ 547.22 What are the minimum technical standards for data communications?

This section provides minimum standards for data communications with gaming equipment, or components, used with the play of Class II games. This section also provides minimum standards for communications between the Class II gaming equipment and any equipment external to it.

(a) *Electrical requirements.* (1) Communication interfaces on Electronic Player Stations shall have at least 3 Kv of line isolation to achieve mains power static discharge immunity from lightning and other static discharges.

(2) When subjected to electrostatic discharges, Electronic Player Stations shall not interfere with the operation of any other attached equipment via local data communications cabling.

(3) When subject to disruption of the mains power, Electronic Player Stations shall not interfere with the operation of any other attached gaming device via local data communications cabling.

(4) Electronic Player Stations and successive devices in any communications chain shall be powered from different sources.

(5) There shall be no mains ground interconnections via data cabling between Electronic Player Stations powered from different supply circuits unless adequate line isolation is in place. Note that RS–232–C may be used only if the two communicating devices are powered from the same supply circuit and the cable length between the two devices is less than 15 feet.

(b) *Functional requirements, generally.* (1) Data communications shall be designed to allow transfer of game play financial information and event data to a casino operating system on a regulator schedule or on demand.

(2) After gaming equipment has been de-activated, activating the gaming equipment requires manual intervention by the gaming operator, except that:

(i) An Electronic Player Station may automatically re-activate upon restoration of communications following a communications failure, unless it determines that lock-up state should apply due to some other cause; and

(ii) If gaming equipment is automatically de-activated at the end of the venue's current session (e.g., an automatic deactivation date/time calendar exists), it is permissible for the casino monitoring system to automatically re-activate the gaming equipment when the next permitted session commences.

(3) When more than one Electronic Player Station or client communicates using the same transmission medium, the communications port shall operate at a communication speed within a 1% tolerance of the required communications speed, unless the specific communications protocol allows a greater tolerance.

(c) *Protocol requirements.* (1) All communications shall be made via a protocol-based communications scheme unless otherwise authorized by the tribal gaming regulatory authority.

(2) Communications protocols shall include:

(i) Error control;

(ii) Flow control; and

(iii) Link control (remote connection).

(3) For serial communication links, data communications shall make use of suitable error detection algorithms. At a minimum, Cyclic Redundancy Checks (CRCs) shall be used for this purpose. The use of only parity or simple checksum byte is not acceptable.

(4) Data communications shall be able to withstand varying error rates.

(d) *Communications failures and recovery.* (1) During any communications failure and recovery, no data shall be lost, duplicated, modified or re-ordered.

(2) Failures and re-establishment of communications shall be logged as events by the Electronic Player Station or server.

(3) On program resumption, e.g., after a power restart of the equipment, any communications to an external device shall not begin until the program resumption routine, including self-tests, is completed successfully.

(4) When a non-correctable critical storage error has occurred, the data on the Electronic Player Station can no longer be considered reliable. Accordingly, any communication to external devices shall cease immediately and an appropriate message shall be displayed.

(e) *Wireless communications.* Wireless communications may be used within and to Class II gaming equipment provided the following requirements are met:

(1) Wireless access points must be installed so the general public cannot physically access them.

(2) External switches that reset device configuration to a default state must be disabled unless that default state meets the requirements of this paragraph (e).

(3) Open or unencrypted Wi-Fi communications are prohibited.

(4) 802.11i in combination with 802.1X and Radius authentication servers is an acceptable method for securing wireless communications. The device/user authentication mechanism must employ digital certificates, two-factor methods or similarly strong techniques. Use of simple passwords is not acceptable.

(5) WPA and WEP are not acceptable methods for securing wireless communications.

(6) VPNs shall be used for end-to-end communication, and any wireless portion of the connection must meet the requirements of this paragraph (e).

(7) The portions of the network that contain wireless access points must be separated from the rest of the network by firewalls.

(8) Wireless access points must have MAC filtering capabilities. MAC filters on Wireless Access Points must be

enabled (only devices using registered MAC addresses can connect).

(9) The SSID in 802.11 networks must be changed to be different to the default factory setting.

(10) The SSID in 802.11 networks must not be broadcast in response to broadcast probe requests.

(11) Peer-to-peer networking (a.k.a. ad-hoc mode) shall be disabled on all wireless devices, except for the purpose of communicating with peripheral devices in a small-radius personal area network.

(12) The Beacon Interval in 802.11 networks must be increased to the maximum value of 67 seconds.

(13) Access through SNMP must be restricted:

(i) SNMP must be disabled unless it is in active use through a network management system.

(ii) SNMP and SNMP v2 are not acceptable.

(iii) If SNMP v3 is proposed, the configuration must change read and write community strings away from default values (typically "public" and "private" respectively).

(14) DHCP must be disabled, which means statically configuring IP addresses into end devices.

(15) Username and passwords must be changed from factory default.

(16) Insecure usernames and passwords (e.g. anonymous/anonymous) must be deleted from any Wireless Access Point.

(17) Wireless communications may not be used to circumvent restrictions limiting gambling to the casino floor or other designated areas. Implementation, therefore, of wireless communications may require the tribal gaming regulatory authority to implement requirements for blocking capabilities in various locations.

§ 547.23 What are the minimum technical standards for encryption?

This section provides minimum standards for encryption and hashing in client-server implementations used with the play of Class II games.

(a) *Encryption generally.* (1) Communications across public areas shall be encrypted.

(2) Communications across publicly accessible networks shall be encrypted. These include Ethernet networks or any networks that use routers, all wireless communications, communications across wide area networks.

(3) Proprietary or closed loop networks need not be encrypted but shall be physically secure such that intrusion is detectable.

(4) Notwithstanding paragraphs (a)(1) through (3) of this section, communications containing any of the following need not be encrypted but must be protected against illicit alteration, unless contained within a single logic area:

(i) Software uploads and downloads;

(ii) Game outcome information; and

(iii) Progressive jackpot meters, parameters, configuration, and win messages.

Note that message authentication codes based upon hashing algorithms that meet the requirements of paragraph (c) of this section are sufficient to meet this requirement.

(5) Notwithstanding paragraphs (a)(1) through (3) of this section, communications containing any of the following shall be protected from eavesdropping *i.e.* encrypted, and from illicit alteration unless the communication is contained within a single logic area:

(i) RNG seeds and outcomes;

(ii) Encryption keys, where the implementation chosen requires transmission of keys;

(iii) PINs;

(iv) Passwords;

(v) Ticket voucher transactions;

(vi) Transfers of money to/from player accounts, pursuant to § 542.13(o)(3)(iii) of this chapter;

(vii) Transfer of money between gaming equipment, pursuant to § 542.13(o)(3)(iii) of this chapter;

(viii) Player tracking information;

(6) If key data files containing pull tabs game results are maintained on a disk on the server and/or clients, the files shall be encrypted.

(b) *Encryption algorithm.* Any encryption required by this part shall use an algorithm that meets the following requirements:

(1) Encryption algorithms are to be demonstrably secure against cryptanalytic attacks. Encryption algorithms that media reports have demonstrated to be broken are not demonstrably secure. The following algorithms are demonstrably secure:

(i) SSL/TLS (Using a Public Key algorithm);

(ii) IPSec—(Potentially a "Hardware" solution);

(iii) Triple DES (Symmetric algorithm using a 112 bit key);

(iv) IDEA (Symmetric algorithm using a 128 bit key);

(v) Blowfish (Symmetric algorithm using a 448 bit key);

(vi) Twofish (Symmetric algorithm using a 128-bit, 192-bit or 256-bit key); and

(vii) AES (Symmetric algorithm using a 128-bit, 192-bit or 256-bit key).

(2) The minimum width (size) for encryption keys is 112 bits for symmetric algorithms and 1024 bits for public key algorithms.

(3) If a symmetric algorithm is chosen, a key rotation methodology ensuring encryption keys are changed no less than every 30 days shall be adopted. The key rotation process shall be automated.

(4) There shall be a secure method implemented for changing the current encryption key set. An example of an acceptable method of exchanging keys is the use of public key encryption techniques to transfer new key sets.

(5) Other proprietary encryption and authentication methods, including the use of a Virtual Private Network (VPN), are permissible provided they provide protection against eavesdropping and illicit modification equivalent to the methods described paragraphs (a) and (b) of this section.

(c) *Hashing algorithms.* Any hashing required by this part shall use an algorithm having the following characteristics:

(1) The hashing algorithm shall combine the entire contents of the files or data being processed.

(2) The hashing algorithm shall combine the bits in a complicated and cross-interactive manner.

(3) The hashing algorithm shall detect at least 99.998% of all possible altered files or data.

(4) The hashing algorithm shall be cryptographically strong, i.e. by looking at the hash result there is no practical way, in a given period of time, to derive any part of the original data.

(5) If the hashing algorithm uses seeds (algorithm coefficients), the "seed" information shall influence the behavior of the algorithm in a non-trivial way.

§ 547.24 What are the minimum standards for game artwork, glass, and rules?

This section provides standards for the display of game artwork, the displays on belly or top glass, and the display and disclosure of game rules, whether in physical or electronic form.

(a) *Rules, instructions, and pay tables, generally.* The Electronic Player Station shall at all times display, or make readily available to the player upon request, the following:

(1) Game name, rules, and options such as number of coins wagered stated clearly and unambiguously, without the capability to mislead. all prizes advertised shall be available to win;

(2) Denomination;

(3) Instructions for play on, and use of, the Electronic Player Station, including the functions of all buttons;

(4) A paytable or other explanation, sufficient to allow a player to determine the correctness of all prizes awarded, including.

(i) The range and values obtainable for any variable prize;

(ii) Whether the value of a prize depends on credits wagered;

(iii) The means of division of any pari-mutuel prizes; and

(iv) The paytable or other explanation need not, however, that subsets of winning patterns are not awarded additional pays (e.g. five in a row does not also pay three in a row or four in a row) unless there are exceptions, which shall be clearly stated.

(b) *Disclaimers.* The Electronic Player Station shall at all times display:

(1) "Malfunctions void all pays and plays"

(2) "Actual Win Determined by Bingo [or other applicable Class II game] Play. Pay Table Lines and Reels for Entertainment Only."

(c) *Stickers.* Stickers may be used on Electronic Player Stations provided that they:

(1) Do not shrink or peel with time or heat;

(2) Are not easily removed;

(3) Meet applicable part number requirements, which may be affixed to the sticker backing or surroundings when size limitations occur.

§ 547.25 What are the minimum standards for interfacing to a casino monitoring system?

The section provides general standards for a client-server implementation used with the play of Class II games to interface with a casino monitoring or accounting system. This section also provides general standards for servers acting as monitoring or accounting systems.

(a) *Monitoring or accounting system interface, generally.* (1) Client-sever implementations used with the play of Class II games shall be interfaced to an on-line monitoring system that processes security, maintenance and financial data and provides accounting data to the operator. An on-line monitoring system is required in all cases where remote monitoring is allowed.

(2) Data communications with the casino monitoring system shall meet the requirements of § 547.22.

(3) An on-line monitoring system may be located locally within a facility or remotely outside of the facility.

(4) The on-line monitoring at the minimum shall provide a statistical analysis for verification of correct performance/return to player for each Electronic Player Station.

(b) *Servers acting as monitoring or accounting systems.* The components or functions of an on-line monitoring system may be embedded within the game server. If so, the following requirements apply:

(1) The server shall not permit the alteration of any information.

(2) The server shall have a backup and archive utility to allow the operator to save data in critical memory in the event of a system failure. In the event of a catastrophe that results in a failure whereby the servers cannot be restarted, it shall be possible to reload the system to a backup point and to fully recover the contents of that backup.

§ 547.26 How does a gaming operation apply for a variance from these standards?

(a) *Tribal gaming regulatory authority approval.* (1) A tribal gaming regulatory authority may approve a variance from the requirements of this part for a gaming operation if it has determined that the variance will achieve a level of security and game integrity sufficient to accomplish the purpose of the standard it is to replace.

(2) For each enumerated standard for which the tribal gaming regulatory authority approves a variance, it shall submit to the Commission Chairman, within 30 days, a detailed report, which shall include the following:

(i) A detailed description of the variance;

(ii) An explanation of how the variance achieves a level of security sufficient to accomplish the purpose of the standard it is to replace and of any equipment or software to be implemented with the variance;

(iii) An evaluation of the variance from an independent testing laboratory recognized by the Commission pursuant to § 546.9(f) of this chapter; and

(iv) Evidence that the tribal gaming regulatory authority has approved the variance.

(3) In the event that the tribal gaming regulatory authority or the tribe chooses to submit a variance request directly to the Chairman, it may do so without the approval requirement set forth in paragraph (a)(2)(iv) of this section.

(b) *Review by the Chairman.* (1) Following receipt of the variance approval, the Chairman or his designee shall have 60 days to concur with or object to the approval of the variance.

(2) Any objection raised by the Chairman shall be in the form of a written explanation and be based upon the following criteria:

(i) There is no valid explanation of why the gaming operation should have received a variance approval from the tribal gaming regulatory authority on the enumerated standard; or

(ii) The variance as approved by the tribal gaming regulatory authority does not provide a level of security or game integrity sufficient to accomplish the purpose of the standard it is to replace.

(3) If the Chairman fails to object in writing within 60 days after the date of receipt of a complete submission, the variance shall be considered concurred with by the Chairman.

(4) The 60-day deadline may be extended, provided such extension is mutually agreed upon by the tribal gaming regulatory authority and the Chairman.

(c) *Curing Chairman's objections.* (1) Following an objection by the Chairman to the issuance of a variance, the tribal gaming regulatory authority shall have the opportunity to cure any objections noted by the Chairman.

(2) A tribal gaming regulatory authority may cure the objections raised by the Chairman by:

(i) Rescinding its initial approval of the variance; or

(ii) Rescinding its initial approval, revising the variance, approving it, and resubmitting it to the Chairman.

(3) Upon any re-submission of a variance approval, the Chairman shall have 30 days to concur with or object to the re-submitted variance.

(4) If the Commission fails to object in writing within 30 days after the date of receipt of the re-submitted variance, the re-submitted variance shall be considered concurred with by the Chairman.

(d) *Appeals.* (1) Upon receipt of objections to a re-submission of a variance, the tribal gaming regulatory authority shall be entitled to an appeal to the full Commission in accordance with the following process:

(i) Within 30 days of receiving an objection to a re-submission, the tribal gaming regulatory authority shall file its notice of appeal.

(ii) Failure to file an appeal within the time provided by this section shall result in a waiver of the opportunity for an appeal.

(iii) An appeal under this section shall specify the reasons why the tribal gaming regulatory authority believes the Chairman's objections should be reviewed, and shall include supporting documentation, if any.

(iv) The tribal gaming regulatory authority shall be provided with any comments offered by the Chairman to the Commission on the substance of the appeal, and the tribal gaming regulatory authority shall have the opportunity to respond to any such comments.

(v) Within 30 days after receipt of the appeal, the Commission shall render a decision based upon the criteria contained within paragraph (b)(2) of this section unless the tribal gaming regulatory authority elects to wave the

30-day requirement and to provide the Commission with additional time, not to exceed an additional 30 days, to render a decision.

(vi) In the absence of a decision within the time provided, the tribal gaming regulatory authority's resubmission shall be considered concurred with and become effective.

(2) The tribal gaming regulatory authority may, without resubmitting the variance, appeal the Chairman's objection to the approval of a variance to the full Commission by filing a notice of appeal within 30 days of the Chairman's objection and complying with the procedures set out in paragraph (d)(1) of this section.

(e) *Effective Date of variance.* The gaming operation shall comply with standards that achieve a level of security or game integrity sufficient to accomplish the purpose of the standard it is to replace until such time as the Chairman objects to the Tribal gaming regulatory authority's approval of a variance as provided in paragraph (b) of this section.

(f) *Discretion.* Concurrence in a variance by the Chairman or by the Commission is discretionary and variances will not be granted routinely. The gaming operation shall comply with standards at least as stringent as those set forth in this part until such time as the Chairman or the Commission concurs with the tribal gaming regulatory authority's approval of the variance.

Dated: August 1, 2006.

Philip N. Hogen,

Chairman.

Cloyce V. Choney,

Associate Commissioner.

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Part V

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 600

Fishing Capacity Reduction Program for the Longline Catcher Processor Subsector of the Bering Sea and Aleutian Islands Non-pollock Groundfish Fishery; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 060731207–6207–01; I.D. 051706F]

RIN 0648–AU42

Fishing Capacity Reduction Program for the Longline Catcher Processor Subsector of the Bering Sea and Aleutian Islands Non-pollock Groundfish Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would implement the Bering Sea and Aleutian Islands (BSAI) Catcher Processor Capacity Reduction Program (Reduction Program) for the longline catcher processor subsector of the BSAI non-pollock groundfish fishery (Reduction Fishery), in compliance with the FY 2005 Appropriations Act. This program is voluntary and permit holders of the Reduction Fishery (Subsector Members) are eligible to participate. Subsector Members must first sign and abide by not only the Capacity Reduction Agreement (Reduction Agreement) but also a Fishing Capacity Reduction Contract (Reduction Contract) with the U.S. Government. These key components of the Capacity Reduction Plan (Reduction Plan) were prepared by the Freezer Longline Conservation Cooperative (FLCC) and would be implemented by the proposed regulations. The aggregate of all Reduction Agreements and those Reduction Contracts signed by Subsector Members whose offers were accepted by 2/3 votes of the Subsector Members, will together with the FLCC's supporting documents and rationale that these offers represent the expenditure of the least money for the greatest capacity reduction, constitute the Reduction Plan to be submitted to the Secretary of Commerce for approval. Subsector Members participating in the Reduction Program will receive up to $36 million in exchange for relinquishing valid non-interim Federal License Limitation Program BSAI groundfish licenses endorsed for catcher processor fishing activity, Catcher/Processor (C/P), Pacific cod, and hook and line gear, as well as any present or future claims of eligibility for any fishing privilege based on such permit (the Groundfish Reduction Permit) and additionally, any future fishing privilege of the vessel named on the permit. Individual fishing quota (IFQ) quota shares would be excluded from relinquishment. Following submission of the Reduction Plan and approval by the Secretary, NMFS will conduct an industry referendum to determine the industry's willingness to repay a fishing capacity reduction loan to effect the Reduction Plan. A 2/3 majority vote in favor would bind all parties and complete the reduction process. NMFS will issue a 30-year loan to be repaid by those harvesters remaining in the Reduction Fishery. The intent of this proposed rule is to permanently reduce harvesting capacity in the Reduction Fishery. This should result in increased harvesting productivity for post-reduction Subsector Members and help with conservation and management of the Reduction Fishery.

DATES: Comments must be received by September 11, 2006.

ADDRESSES: Comments may be submitted by any of the following methods:

- E-mail: *0648–AU42.FreezerLongliner@noaa.gov*. Include in the subject line the following identifier: "Non-pollock FCRP proposed rule." E-mail comments, with or without attachments, are limited to 5 megabytes;
- Federal e-Rulemaking Portal: *http://www.regulations.gov*;
- Mail to: Michael A. Sturtevant, Financial Services Division, NMFS - MB5, 1315 East-West Highway, Silver Spring, MD 20910; or
- Fax to 301–713–1306.

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from the mailing address above or by calling Michael A. Sturtevant (see **FOR FURTHER INFORMATION CONTACT**).

Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule to Michael A. Sturtevant at the address specified above and also to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer) or e-mail to *David_Rosker@ob.eop.gov*, or fax to (202) 395–7825.

FOR FURTHER INFORMATION CONTACT: Michael A. Sturtevant at 301–713–2390, fax 301–713–1306, or *michael.a.sturtevant@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at *http://www.access.gpo.gov/su-docs/aces/aces140.html*.

Statutory and Regulatory Background

BSAI groundfish fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) codified at 16 U.S.C. 1801 *et seq*. NMFS implements conservation measures developed for these groundfish fisheries by the North Pacific Fishery Management Council (Council) and approved by the NMFS, through regulations at 50 CFR part 679 (Fisheries of the Exclusive Economic Zone Off Alaska), and in particular subparts A, B, C, D, and E. The Council also developed, and NMFS approved and implemented, conservation measures governing the king and Tanner crab fisheries off Alaska through regulations at 50 CFR part 680 (Shellfish Fisheries Of the Exclusive Economic Zone Off Alaska). Because the Reduction Program in this proposed rule relates to management of both the groundfish and crab fisheries, references to the fishery management plans (FMPs) and regulations governing management of these fisheries are provided here.

Concerning NMFS existing regulations, fishing capacity reduction is governed by subpart L to 50 CFR part 600 (50 CFR 600.1000 *et seq*.), which contains a framework rule promulgated pursuant to section 312 of the MSA (16 U.S.C. 1861a(b)-(e)). Also, NMFS' existing regulations contain specific fishery or program fishing capacity reduction regulations at subpart M to 50 CFR part 600 and NMFS proposes this rule as a new § 600.1105 under subpart M.

The measures contained in this proposed rule to establish the Reduction Program are authorized by Title II, Section 219 of the FY 2005 Appropriations Act (Act)(Public Law 108–447; 2004 enacted H.R. 4818, December 8, 2004), and in particular by Section 219(e) of the Act. Also, Public Law 108–199 provided the initial $500,000 subsidy cost to fund a $50 million loan and Public Law 108–447 provided an additional $250,000 subsidy cost to fund $25 million more (in addition to providing for the buyback program itself). While the Act authorizes the establishment of fishing capacity reduction programs for catcher processor subsectors within the Alaska groundfish fisheries (i.e., the longline catcher processor subsector, the

American Fisheries Act (AFA) trawl catcher processor subsector, the non-AFA trawl catcher processor subsector, and the pot catcher processor subsector) based on capacity reduction plans and contracts developed by industry and approved by NMFS, this proposed rule only addresses the longline catcher processor subsector of the Reduction Fishery. The remaining subsectors may later develop capacity reduction plans and contracts for the other three catcher processor subsectors.

The FLCC on behalf of the Reduction Fishery drafted the Reduction Agreement which NMFS seeks to incorporate into its existing fishing capacity reduction regulations by this proposed rule. The Reduction Agreement, the Reduction Contract, and application of certain other existing Federal law and regulations referred to above are the basis for the Reduction Plan. The aggregate of all Reduction Agreements and Reduction Contracts signed by Subsector Members whose offers to participate in this buyback are ranked highest by the FLCC will constitute the Reduction Plan and will be submitted to NMFS for approval.

The Reduction Agreement and the Reduction Contract are the two key components of the Reduction Plan and this proposed rule. Substantive provisions of the Reduction Agreement would be codified at 50 CFR 600.1105 along with a requirement for all members of the Reduction Fishery submitting offers to participate in the Reduction Program to execute the Reduction Contract (i.e., the requirement for an Offeror to execute a Reduction Contract will be codified and the Reduction Contract appended). Wherever the term Offeror is used in this preamble and regulation, it also includes any co-Offeror.

The Act authorized not more than $36 million in loans (reduction loan) to fund the Reduction Program. NMFS' authority to make this loan resides in sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g)(MMA)(title XI).

Reduction Program - Overview

Participation in the Reduction Program would be open to any member of the Longline Subsector. Each Subsector Member will receive a notice of the FLCC Reduction Agreement and Reduction Contract and enrollment documents by certified mail. The FLCC Reduction Program is essentially divided into four phases: (1) enrollment; (2) offer selection; (3) plan submission; and (4) implementation, after approval by referendum. Only LLP licenses and other assets (including fishing history) voluntarily submitted for removal from the Reduction Fishery shall be subject to reduction. Because there exist what are commonly referred to as "latent licenses" within the Reduction Fishery which the FLCC membership desires to remove, latent LLP licenses need not be associated with a vessel for inclusion as assets to be reduced under the Reduction Program. Fees for repayment of the loan which funds the Reduction Program will be collected from the Subsector Members who continue operations in the Reduction Fishery after implementation of the Reduction Program set forth in this proposed § 600.1105.

Reduction Program - The Capacity Reduction Agreement

Basic Agreement

On April 12, 2006, the FLCC submitted a Reduction Agreement, Reduction Contract, and Executive Summary for a Reduction Plan for the Reduction Fishery to NMFS. The Reduction Plan's express objective is to permanently reduce harvesting capacity in the Reduction Fishery by removal of Groundfish Reduction Permit, Reduction Permits, and the Reduction Fishing Interests that are specified in the Reduction Contract (which is appended to the proposed § 600.1105). The FLCC will implement the process of qualifying and enrolling Subsector Members and selecting offers from Subsector Members to remove fishing capacity by means of this buyback. Once the FLCC has completed the selection process, the highest ranking offers, the rationale for acceptance, the Reduction Agreements and Reduction Contracts (or Reduction Plan) will be submitted to NMFS for approval, on behalf of the Secretary of Commerce, in compliance with Section 219(e) of the Act.

Those Subsector Members submitting approved offers would give up all Federal fishery licenses, fishery permits, and area and species endorsements issued for any vessel named on the Groundfish Reduction Permit, as well as any present or future claims of eligibility for any fishery privilege based upon such permit. In the event of Latent Licenses, the Selected Offerors would give up all Federal fishery licenses, fishery permits, and area and species endorsements issued for the vessel that gave rise to the LLP permit still remaining in the possession of the Offeror as of the date this proposed rule is published (the Reduction Permits). Regarding the vessel named on the Groundfish Reduction Permit (the Reduction Privilege Vessel), the Offeror will accept the imposition of Federal vessel documentation restrictions that have the effect of permanently revoking the Reduction Privilege Vessel's legal ability to fish anywhere in the world as well as its legal ability to operate under foreign registry or control—including the Reduction Privilege Vessel's: fisheries trade endorsement under the Commercial Fishing Industry Vessel Anti-Reflagging Act (46 U.S.C. 12108); eligibility for the approval required under section 9(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)), for the placement of a vessel under foreign flag or registry, as well as its operation under the authority of a foreign country; and the privilege otherwise to ever fish again anywhere in the world (the "Reduction Fishing Privilege.

The Reduction Fishing Interest that would be removed would not include any: right, title and/or interest to harvest, process or otherwise utilize individual fishing quota ("IFQ") quota share in the halibut, sablefish and crab fisheries pursuant to 50 CFR parts 679 and 680.

Reduction Agreement Terms and Definitions

Capitalized terms used in the Reduction Agreement are defined in Schedule A to the Reduction Agreement; other terms are defined within the text of the Reduction Agreement. Those Reduction Agreement terms that are essential to understanding the regulatory provisions proposed for § 600.1105 are set forth in § 600.1105(b) and include "Application Form", "Capacity Reduction Agreement or Reduction Agreement", "Closing Vote", "Current Offeror", "Fishing Capacity Reduction Contract or Reduction Contract", "FLCC Counsel", "LLP License", "Offer(s)", "Rejected Offer", and "Website". Other terms important to understanding these regulations and the Reduction Contract, including "Reduction Privilege Vessel", are also set forth in § 600.1105(b).

Reduction Agreement: Major Sections

There are three major sections of the Reduction Agreement: Qualification and Enrollment of Subsector Members; Selection of Offers to Remove Fishing Capacity by the Reduction Plan; and Submission of Reduction Plan. NMFS proposes to codify these provisions as Federal regulations in a new 50 CFR 600.1105.

Qualification and Enrollment. Subsector Members may enroll in the Reduction Program at any time prior to closing the selection of offers to reduce capacity. Enrollment is accomplished by executing a Reduction Agreement and submitting specified supporting

documents evidencing an applicant's status as a Subsector Member. Each of the supporting documents will be reviewed by Tagart Consulting who will serve as the Auditor for the Reduction Program. The Auditor will review all documents for strict compliance with the regulatory provisions proposed for § 600.1105. Each Reduction Agreement becomes effective 10 days after written notice is sent by the Auditor to each holder of a LLP license endorsed for BS or AI catcher processor activity, C/P, Pacific cod and hook and line gear, informing that more than 70 percent of Subsector Members have submitted complete applications certified by the Auditor as complying with § 600.1105. For more specific information on qualification and enrollment of Subsector Members, see § 600.1105(c) of this proposed rule.

Selection of Offers to Remove Fishing Capacity by the Reduction Plan. Once more than 70 percent of the Subsector Members have effective Reduction Agreements, the offer selection process begins. An offer is a binding offer to relinquish to the United States Government the assets identified in the offer in consideration of a dollar amount certain set by the Offeror, and may not be withdrawn once entered, unless it is rejected during the selection process.

Essentially, during the offer process, Subsector Members will alternate on a weekly basis between Submission Periods (see proposed § 600.1105(d)(3)(ii)) and Ranking Periods (see proposed § 600.1105(d)(5)(ii)). During any Submission Period, a Subsector Member may offer, for inclusion in the Reduction Program, its LLP license(s) and withdrawal of the vessel(s) designated on the LLP license(s) from all fisheries. During the Ranking Period, nonoffering Subsector Members may rank the offers submitted during the prior Submission Period. At the end of each Ranking Period, the Auditor will tabulate and post on a website the results of ranking the offers up to a total offer price of $36 million. Those offers ranked within the $36 million are Selected Offers and those that are not ranked within the $36 million are Rejected Offers with the Rejected Offers being voided and no longer binding on the offering member(s).

Once the offer rankings are posted, a new Submission Period begins with the process repeated until at least ⅔ of the Nonoffering Subsector Members call for a closing vote. If ⅔ of the Nonoffering Members accept the Selected Offers proposed in the closing vote, the selection process to remove capacity by the Reduction Plan terminates. If not, the selection process resumes with a new Submission Period. For more specific information on ranking and selection of offers to remove capacity, see § 600.1105(d) of this proposed rule.

Plan Submission, Including Repayment. After the Selection Process is complete, the FLCC will develop the Reduction Plan in compliance with the Act, the MSA, and other applicable laws and regulations for submission to NMFS for approval on behalf of the Secretary of Commerce. The Reduction Plan will include the LLP licenses and other fishing interests selected by the offer process as the assets to be purchased in the Reduction Program, and provide for repayment over a 30-year term. The Reduction Plan must also include the FLCC's supporting documents and rationale for recognizing that these offers represent the expenditure of the least money for the greatest capacity reduction. Acceptance of the Offers are at the sole discretion of NMFS on behalf of the Secretary of Commerce. Further, the FLCC will give notice of the Reduction Plan to the North Pacific Fishery Management Council as required by the Act.

Repayment of the loan will begin by collection of annual fees collected from the Subsector Members operating in the Reduction Fishery after implementation of the Reduction Program. The amount of such fee will be calculated on an annual basis as: the principal and interest payment amount necessary to amortize the loan over a 30-year term, divided by the Reduction Fishery portion of the BSAI Pacific cod initial total allowable catch (ITAC) allocation in metric tons (converted to pounds), provided that the fees should not exceed 5 percent of the average ex-vessel production value of the Reduction Fishery. In the event that the total principal and interest due exceeds 5 percent of the ex-vessel Pacific cod revenues, a penny per pound round weight fee will be calculated based on the latest available revenue records and NMFS conversion factors for pollock, arrowtooth flounder, Greenland turbot, skate, yellowfin sole and rock sole. For more specific information on submission of the Reduction Plan, including fees to repay the Reduction Loan, see § 600.1105(e) of this proposed rule.

The Reduction Program - Other Matters Relating to the Reduction Agreement and Reduction Plan

Review/Disputes

The Reduction Agreement (but not these proposed regulations) provides for an expedited process to review any decision by the Auditor and for settlement of disputes utilizing an expedited review process by pre-selected legal counsel and, if necessary, binding arbitration. Also, all Offerors must comply with FLCC bylaws. By motion unanimously accepted by the members of the FLCC on February 21, 2005, the members of the FLCC approved the FLCC's development of a capacity reduction program in compliance with the Act (the Motion).

Decisions of the Auditor and the FLCC

Under the proposed § 600.1105(f), the Offerors would be subject to the terms and conditions set forth in the Reduction Agreement to settle any disputes regarding the decisions of the Auditor or the FLCC. That proposed section also explains the scope of the Auditor's examination.

Other Provisions of the Reduction Agreement

Proposed regulatory provisions mirroring the Reduction Agreement's provisions for Enforcement/Specific Performance, Miscellaneous, Amendment, and Warranties are specified at §§ 600.1105(g), (h), (i), and (j), respectively.

Approval of the Reduction Plan

The criteria for NMFS, on behalf of the Secretary, to approve any Reduction Plan are specified at § 600.1105(k). Among other things, the Assistant Administrator of NMFS must find that the Reduction Plan is consistent with the Act and the MSA, and that it will result in the maximum sustained reduction in fishing capacity at the least cost and in the minimum amount of time.

The FLCC has not yet submitted the Reduction Plan to NMFS for approval and cannot do so until after this proposed rule is published. The FLCC may wish to wait to submit the Reduction Plan until after the final rule (resulting from this proposed rule) is published, or the FLCC may submit the Reduction Plan before that time but it may necessitate a revision and re-submission of the Reduction Plan to conform with the provisions of the final rule.

The Referenda

NMFS will conduct an industry referendum to determine the industry's willingness to repay a fishing capacity reduction loan to purchase the licenses, fishing rights, etc. identified in the Reduction Plan subsequent to the publication of a final rule resulting from this proposed rule. A successful referendum by ⅔ of the members of the

Reduction Fishery would bind all parties and complete the reduction process.

The current Fishing Capacity Reduction Framework regulatory provisions of § 600.1010 stipulate procedural and other requirements for NMFS to conduct referenda on fishing capacity reduction programs. The proposed § 600.1105(l) makes those framework referenda requirements applicable to the Reduction Program for the Longline Subsector. After approval of the Reduction Program via a referendum, the Reduction Program will be implemented.

The Contract

A proposed appendix to this § 600.1105 sets forth the Contract component of the Reduction Program for the Longline Subsector. The appendix, or Contract, would also be codified along with the regulatory text of § 600.1105.

In addition to public comment about the proposed rule's substance, NMFS also seeks public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule.

Classification

The Assistant Administrator for Fisheries, NMFS, determined that this proposed rule is consistent with Title II, Section 219 of the FY 2005 Appropriations Act, Public Law 108–447, and with the Magnuson-Stevens Fishery Conservation and Management Act, codified at 16 U.S.C. 1801 *et seq.*

In compliance with the National Environmental Policy Act, NMFS prepared an environmental assessment for this proposed rule. The assessment discusses the impact of this proposed rule on the natural and human environment and integrates a Regulatory Impact Review (RIR) and an Initial Regulatory Flexibility Analysis (IRFA). NMFS will send the assessment, the review and analysis to anyone who requests a copy (see **ADDRESSES**).

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA), to describe the economic impacts this proposed rule, if adopted, would have on small entities. NMFS intends the analysis to aid us in considering regulatory alternatives that could minimize the economic impact on affected small entities. The proposed rule does not duplicate or conflict with other Federal regulations.

Summary of IRFA

The Small Business Administration (SBA) has defined small entities as all fish harvesting businesses that are independently owned and operated, not dominant in its field of operation, and with annual receipts of $4 million or less. In addition, processors with 500 or fewer employees for related industries involved in canned or cured fish and seafood, or preparing fresh fish and seafood, are also considered small entities. Small entities within the scope of this proposed rule include individual U.S. vessels and dealers. There are no disproportionate impacts between large and small entities.

Description of the Number of Small Entities:

The IRFA uses the most recent year of data available to conduct the analysis (2003). The vessels that might be considered large entities were either affiliated under owners of multiple vessels or were catcher processors. However, little is known about the ownership structure of the vessels in the fleet, so it is possible that the IRFA overestimates the number of small entities. In the Reduction Fishery, 24 of the 39 vessels meet the threshold for small entities. The remaining 13 vessels are not considered small entities for purposes of the RFA. There are 5 additional fishermen with permits but no vessels in the Longline Subsector who would benefit if they later purchase vessels and participate in the post-Reduction Fishery because there will be less competition for the harvest. Also, they would benefit if they chose to be bought out; and there would be no impact to them if they did not buy a vessel and were not selected for the buyback. Implementation of the buyback program would not change the overall reporting structure and recordkeeping requirements of the vessels in the BSAI Pacific cod fisheries. However, this program would impose collection of information requirements totaling 16 hours 10 minutes.

Most firms operating in the Reduction Fishery have annual gross revenues of less than $4 million. The IRFA analysis estimates that 24 of the 39 active longline catcher processor vessels (i.e., 39 vessels constitute the Longline Subsector) that participated in 2003 are considered small entities. The ownership characteristics of vessels operating in the Reduction Fishery are not available and therefore it is not possible to determine with certainty, if they are independently owned and operated, or affiliated in one way or another with a larger parent company. Furthermore, because analysts cannot quantify the exact number of small entities that may be directly regulated by this action, a definitive finding of non-significance for the proposed action under the RFA is not possible. However, because the proposed action would not result in changes to allocation percentages and participation is voluntary, net effects would be expected to be minimal relative to the status quo.

The proposed rule's impact would be positive for both those whose offers NMFS accepts and for post-reduction catcher processors whose landing fees repay the reduction loan because the Offerors and catcher processors would have voluntarily assumed the impact:

1. Offerors would have volunteered to make offers at dollar amounts of their own choice. Presumably, no Offeror would volunteer to make an offer with an amount that is inconsistent with the Offeror's interest; and

2. Reduction loan repayment landing fees would be authorized, and NMFS could complete the Reduction Program, only if at least two-thirds of Subsector Members voting in a post-offer referendum voted in favor of the Reduction Plan. Presumably, Subsector Members who are not Selected Offerors would not vote in favor of the Reduction Plan unless they concluded that the Reduction Program's prospective capacity reduction was sufficient to enable them to increase their post-reduction revenues enough to justify the fee.

Those participants remaining in the fishery after the buyback will incur additional fees of up to 5 percent of the ex-vessel production value of post-reduction landings. However, the additional costs could be mitigated by increased harvest opportunities by post-reduction fishermen.

NMFS believes that this proposed rule would affect neither authorized BSAI Pacific cod ITAC and other non-pollock groundfish harvest levels nor harvesting practices.

NMFS rejected the no action alternative considered in the EA because NMFS would not be in compliance with the mandate of Section 219 of the Act to establish a buyback program. In addition, the longline catcher processor subsector of the non-pollock groundfish fishery would remain overcapitalized. Although too many vessels compete to catch the current subsector total allowable catch (TAC) allocation, fishermen remain in the fishery because they have no other means to recover their significant capital investment. Overcapitalization reduces the potential net value that could be derived from the non-pollock groundfish resource, by dissipating rents, driving variable operating costs up, and imposing economic externalities. At the same time, excess capacity and effort diminish the

effectiveness of current management measures (e.g. landing limits and seasons, bycatch reduction measures). Overcapitalization has diminished the economic viability of members of the fleet and increased the economic and social burden on fishery dependent communities.

NMFS determined that this proposed rule is not significant for purposes of Executive Order 12866 based on the RIR/IRFA.

This proposed rule contains information collection requirements subject to the Paperwork Reduction Act (PRA). The Office of Management and Budget (OMB) previously approved this information collection under OMB Control Number 0648–0376 with requirements for 878 respondents with a total response time of 38,653 hours.

NMFS estimates that the public reporting burden for this information collection would average 4 hours for making an offer (which includes executing the Reduction Agreement and Reduction Contract) and 4 hours for voting in a referendum. Persons affected by this proposed rule would also be subject to other collection-of-information requirements referred to in the proposed rule and also approved under OMB Control Number 0648–0376. These requirements and their associated response times are: completing and filing a fish ticket (10 minutes), submitting monthly fish buyer reports (2 hours), submitting annual fish buyer reports (4 hours), and fish buyer/fish seller reports when a person fails either to pay or to collect the loan repayment fee (2 hours).

These response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Interested persons may send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to both NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, and no person is subject to a penalty for failure to comply with, an information collection subject to the PRA requirements unless that information collection displays a currently valid OMB control number.

This action would not result in any adverse effects on endangered species or marine mammals.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing capacity reduction, Fishing permits, Fishing vessels, Intergovernmental relations, Loan programs -business, Reporting and recordkeeping requirements.

Dated: August 7, 2006.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 600, subpart M, is proposed to be amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

Subpart M—Specific Fishery or Program Fishing Capacity Reduction Regulations

1. The authority citation for 50 CFR part 600, subpart M, is revised to read as follows:

Authority: 5 U.S.C. 561, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1861a(b) through (e), 46 App. U.S.C. 1279f and 1279g, section 144(d) of Division B of Pub. L. 106–554, section 2201 of Pub. L. 107–20, and section 205 of Pub. L. 107–117, Pub. L. 107–206, Pub. L. 108–7, Pub. L. 108–199, and Pub. L. 108–447.

2. Section 600.1105 is added to subpart M to read as follows:

§ 600.1105 Longline catcher processor subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery program.

(a) *Purpose.* This section implements the capacity reduction program that Title II, Section 219(e) of Public Law 108–447 enacted for the longline catcher processor subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery.

(b) *Definitions.* Unless otherwise defined in this section, the terms defined in § 600.1000 of Subpart L of this part expressly apply to this section. The following terms have the following meanings for the purpose of this section:

Act means Title II, Section 219 of Public Law 108–447.

AI means the Aleutian Islands.

Application Form means the form published on the FLCC's website that sets forth whether the qualifying LLP License is a Latent License and identifies the individual(s) authorized to execute and deliver Offers and Offer Ranking Ballots on behalf of the Subsector Member.

Auditor means Jack V. Tagart, Ph.D., d.b.a. Tagart Consulting.

Authorized Party means the individuals authorized by Subsector Members on the application form to execute and submit Offers, Rankings, protests and other documents and/or notices on behalf of Subsector Member.

Ballot means the form found on the auditor's website used to cast a vote in favor of, or in opposition to, the currently Selected Offers.

BS means the Bering Sea.

BSAI means the Bering Sea and the Aleutian Islands.

BSAI Pacific Cod ITAC means the Total Allowable Catch for Pacific cod after the subtraction of the 7.5 percent Community Development Program reserve.

Capacity Reduction Agreement or Reduction Agreement means an agreement entered into by the Subsector Members and the FLCC under which the FLCC is permitted to develop and submit a Capacity Reduction Plan to the Secretary.

Certificate of Documentation (COD) means a document issued by the U. S. Coast Guard's National Documentation Center that registers the vessel with the United States Government.

Closing Vote means a vote held pursuant to paragraph (d)(7) of this section, after two-thirds (⅔) or more of the Nonoffering Subsector Members submit Ranking Forms electing to accept the Selected Offerors and close the Selection Process, and there are no unresolved Protests or Arbitrations.

Current Offer means an Offer submitted by a Subsector Member to the Auditor during any Submission Period and, with regard to such Offer, Offeror has not become a Rejected Offeror. The term "Current Offer" includes Selected Offers.

Current Offeror means an Offering Subsector Member that has submitted an Offer to the Auditor during any Submission Period and, with regard to such Offer, Offeror has not become a Rejected Offeror. The term "Current Offeror" includes Selected Offerors.

Database means the online LLP License database maintained by NMFS as downloaded by the Auditor pursuant to paragraph(c)(1) of this section.

Effective Date means the date the Capacity Reduction Agreement becomes effective pursuant to section 4.e of the Capacity Reduction Agreement.

Fishing Capacity Reduction Contract or Reduction Contract means the contract that any Current Offeror must sign and agree to abide by if NMFS

accepts the offer by signing the Reduction Contract.

FLCC Counsel means Bauer Moynihan & Johnson LLP or other counsel representing the FLCC in any review or arbitration under this Capacity Reduction Agreement.

Latent License means an LLP License on which a vessel was not designated at the time an Offer is submitted.

LLP License means a Federal License Limitation Program groundfish license issued pursuant to § 679.4(k) of this chapter or successor regulation that is noninterim and transferable, or that is interim and subsequently becomes noninterim and transferable, and that is endorsed for BS or AI catcher processor fishing activity, C/P, Pacific cod and hook and line gear.

Longline Subsector means the longline catcher processor subsector of the BSAI non-pollock groundfish fishery as defined in the Act.

Longline Subsector ITAC means the longline catcher processor subsector remainder of the Total Allowable Catch after the subtraction of the 7.5 percent Community Development Program reserve.

Nonoffering Subsector Member shall have the meaning ascribed thereto in paragraph (d)(5)(i) of this section.

Offer Content means all information included in Offers submitted to the Auditor pursuant to paragraph (d)(2)(ii) of this section.

Offer Form means the form found on the Auditor's website used to make an offer.

Offer(s) means a binding offer(s) from a Subsector Member to sell its LLP, right to participate in the fisheries, the fishing history associated with such LLP, and any vessel set forth on the Offer Form submitted by Offeror pursuant to the terms of this Capacity Reduction Agreement.

Opening Date means the first Monday following the Effective Date set forth in paragraph (c)(3) of this section.

Person includes any natural person(s) and any corporation, partnership, limited partnership, limited liability company, association or any other entity whatsoever, organized under the laws of the United States or of a state.

Prequalification Offer shall have the meaning ascribed thereto in paragraph (d)(2)(iii) of this section.

Ranking Form means the form posted by the Auditor pursuant to paragraph (d)(5)(iii) of this section.

Ranking Period shall have the meaning ascribed thereto in paragraph (d)(5)(ii) of this section.

Reduction Fishery means the BSAI non-pollock groundfish fishery.

Reduction Fishing Interests shall have the meaning ascribed thereto in the Fishing Capacity Reduction Contract.

Reduction Plan means a business plan prepared by the Subsector Members in accordance with Section 1 of the Capacity Reduction Agreement and forwarded to the Secretary for approval.

Reduction Privilege Vessel means the vessel listed on the Offeror's License Limitation Program license.

Rejected Offer means an Offer that has been through one or more Rankings and is not a Selected Offer following the latest Ranking Period, with respect to which the Offering Subsector Member's obligations have terminated pursuant to paragraphs (d)(2)(i) and (d)(6)(v) of this section.

Rejected Offeror means a Subsector Member that has submitted an Offer which has been ranked and was not posted as a Selected Offer pursuant to paragraph (d)(6)(ii) of this section.

Restricted Access Management (RAM) refers to restricted access management program within Office of Sustainable Fisheries, Alaska Region, NMFS, located in Juneau, Alaska.

Secretary means the Secretary of Commerce or a designee.

Selected Offer shall have the meaning ascribed thereto in paragraph (d)(6)(iv) of this section.

Selected Offeror means a Subsector Member that has submitted an Offer which has been ranked and is posted as a Selected Offer pursuant to paragraph (d)(6)(ii) of this section.

Selection Process means the process set forth in paragraph (d) of this section for selecting the fishing capacity to be removed by the Reduction Plan.

Submission Period(s) or Submitting Period(s) shall have the meaning ascribed thereto in paragraph (d)(3)(ii) of this section.

Subsector Member(s) means a member(s) of the Longline Subsector.

Website means the internet web site developed and maintained on behalf of the FLCC for implementation of the Selection Process described herein with a URL address of *http://www.freezerlonglinecoop.org*.

(c) *Qualification and Enrollment of Subsector Members*—(1) *Distribution.* A copy of the Reduction Agreement, Application Form, and Reduction Contract shall be mailed to each holder of record of an LLP License endorsed for BS or AI catcher processor activity, C/P, Pacific cod and hook and line gear, as the Auditor determines from the Database downloaded by the Auditor as of January 30, 2006, regardless of whether the LLP License is indicated in the Database as noninterim and transferable or otherwise.

(2) *Application.* Any person, regardless of whether having received the mailing described in paragraph (c)(1) of this section, may apply as a Subsector Member, by submitting all of the following documents:

(i) Fully executed Reduction Agreement;

(ii) Photocopy of the LLP License(s) evidencing Subsector Member's qualification as a member of the Longline Subsector;

(iii) Unless applying as the holder of a Latent License, a photocopy of Federal Fisheries Permit for the vessel(s) designated on the LLP License(s) on the date the Reduction Agreement is signed by the Subsector Member;

(iv) Unless applying as the holder of a Latent License, a photocopy of the Certificate of Documentation (COD) for the vessel(s) designated on the LLP License(s) on the date the Reduction Agreement is signed by the Subsector Member;

(v) An executed Application Form which sets forth whether the qualifying LLP License is a Latent License and identifies the individual(s) authorized to execute and deliver Offers and Offer Ranking Ballots on behalf of the Subsector Member; and

(vi) A fully executed Reduction Contract consistent with the appendix to this section.

(3) *Examination by Auditor*—(i) *In general.* Each application must be submitted to the Auditor who will examine applications for completeness and inconsistencies, whether on the face of the documents or with the Database. Any application which is incomplete or which contains inconsistencies shall be invalid. The Auditor shall notify by e-mail or mail an applicant of the basis for the Auditor's finding an application invalid. An applicant may resubmit a revised application. If the application meets all requirements, the Auditor may accept the application as valid and enroll the applicant as a Subsector Member.

(ii) *Interim LLP Licenses.* If an LLP License is interim and/or nontransferable, the applicant's enrollment shall be accepted as a Subsector Member and may fully participate in the Selection Process. However, any posting of an Offer submitted with respect to such LLP License shall note the status of such LLP License until that Subsector Member submits to the Auditor a letter from the RAM confirming that it is within the Subsector Member's control to cause the qualifying LLP License to be issued as noninterim and transferable upon withdrawal of all applicable appeals.

(4) *Enrollment period.* Applications that meet all requirements will be accepted until the Selection Process is completed.

(5) *Effective date.* The Effective Date of any Reduction Agreement shall be ten (10) calendar days after written notice is sent by the Auditor to each holder of record of an LLP License endorsed for BS or AI catcher processor activity, C/P, Pacific cod and hook and line gear (as determined by the Auditor from the Auditor's examination of the Database) advising that the number of Subsector Members that have delivered to the Auditor a complete Application, including a fully executed Reduction Agreement, exceeds seventy percent (70 percent) of the members of the Longline Subsector (as determined by the Auditor from the Auditor's examination of the Database).

(6) *Notice.* All notices related to the effective date of the Reduction Agreement shall be sent by the Auditor via registered mail.

(7) *Withdrawal.* A Subsector Member, unless such Subsector Member is a Current Offeror or Selected Offeror, may terminate the Reduction Agreement at any time with respect to that Subsector Member by giving ten (10) calendar days written notice to the Auditor preferably via e-mail. Withdrawal of a Subsector Member shall not affect the validity of the Reduction Agreement with respect to any other Subsector Members. Once effective, the Reduction Agreement shall continue in full force and effect regardless of whether subsequent withdrawals reduce the number of Subsector Members below that level required to effectuate the Reduction Agreement. Attempted withdrawal by a Current Offeror or Selected Offeror shall be invalid, and such Offer shall remain a binding, irrevocable Offer, unaffected by the attempted withdrawal.

(d) *Selection of Fishing Capacity to be Removed by Reduction Plan.* The fishing capacity removed by the Reduction Plan will be the Reduction Fishing Interests voluntarily offered through the Reduction Plan by offering Subsector Members and as selected by the Nonoffering Subsector Members, up to an aggregate amount of thirty six million dollars ($36,000,000) as set forth in this paragraph (d).

(1) *Overview.* The Selection Process will begin upon the Effective Date of the Reduction Agreement. The Selection Process will alternate on a weekly basis between:

(i) Submitting Periods, during which individual Subsector Members may submit Offers of fishing capacity they wish to include in the Reduction Plan; and

(ii) Ranking Periods, during which Nonoffering Subsector Members will rank the submitted Offers.

(2) *Offers*—(i) *Binding Agreement.* An Offer from a Subsector Member shall be a binding, irrevocable offer from a Subsector Member to relinquish to NMFS the Reduction Fishing Interests for the price set forth on the Offer contingent on such Offer being a Selected Offer at the closing of the Selection Process. Once submitted, an Offer may not be revoked or withdrawn while that Offer is a Current Offer or Selected Offer. An Offer that is submitted by a Subsector Member, but is not a Selected Offer during the subsequent Ranking Period, shall be deemed to be terminated and the Subsector Member shall have no further obligation with respect to performance of that Offer.

(ii) *Offer Content.* All Offers submitted to the Auditor shall include the following information: LLP License number; LLP License number(s) of any linked crab LLP Licenses; license MLOA (MLOA - maximum length overall of a vessel is defined at § 679.2 of this chapter); the license area, gear and species endorsements; a summary of the Pacific cod catch history for the calendar years 1995–2004; and the offered price. The Offer shall also state whether a vessel is currently designated on the LLP License and as such will be withdrawn from all fisheries if the Offer is selected for reduction in the Reduction Plan. If so, the Offer shall identify such vessel by name, official number, and current owner. In addition, the Offer shall provide a summary of the Pacific cod catch history for the calendar years 1995–2004 of the vessel to be retired from the fisheries. All summary catch histories included in Offers shall be calculated utilizing both the weekly production report and best blend methodology and shall separately state for each methodology the Pacific cod catch in metric tons and as a percentage of the overall catch for the longline catcher processor subsector on an annual basis for each of the required years. If the vessel stated to be withdrawn from the fisheries is not owned by the LLP License owner of record, the Offer shall be countersigned by the owner of record of the vessel. An Offer offering a Latent License shall state on the Offer Form that the offered LLP License is a Latent License. The Offer Form shall also include a comment section for any additional information that Offerors wish to provide to the Subsector Members concerning the Offer.

(iii) *Prequalification of Offers.* A Subsector Member may submit a Prequalification Offer to the Auditor at any time prior to the Opening Date. A Prequalification Offer shall contain all elements of an Offer, except that a price need not be provided. The Auditor shall notify the Subsector Member submitting a Prequalification Offer as to any deficiencies as soon as practicable. All details of a Prequalification Offer shall be kept confidential by the Auditor.

(3) *Submitting an Offer*—(i) *Offer Submission.* Commencing on the first Tuesday following the Opening Date and during all Submission Periods until the Selection Process is closed, any Subsector Member may submit an Offer. All Offers are to be on the applicable form provided on the FLCC website, executed by an Authorized Party and submitted to the Auditor by facsimile. Any Subsector Member may submit an Offer during any Submission Period, even if that Subsector Member has not submitted an Offer in any previous Submission Period. If a Subsector Member holds more than one LLP License, such Subsector Member may, but is not required to, submit an Offer for each LLP License held during a Submission Period.

(ii) *Submission Periods.* The initial Submission Period shall commence at 9 a.m. (Pacific time) on the Tuesday following the Opening Date and end at 5 p.m. (Pacific time) on the Friday of that week. Subsequent Submission Periods shall commence at 9 a.m. (Pacific time) on the first Tuesday following the preceding Ranking Period and end at 5 p.m. (Pacific time) on the Friday of that week. All times set forth in the Reduction Agreement and used in the Offer process shall be the time kept in the Pacific time zone as calculated by the National Institute of Standards and Technology.

(iii) *Validity of Offer.* The Auditor shall examine each Offer for consistency with the Database and information contained in the enrollment documents. If there is an inconsistency in the information contained in the Offer, any of the elements required of an Offer pursuant to paragraph (d)(2)(ii) of this section are missing, or the Auditor does not receive the original Offer Form before the Offers are to be posted pursuant to paragraph (d)(4) of this section, the Auditor shall notify the offering Subsector Member by e-mail or mail that the Offer is nonconforming as soon as practicable after discovering the basis of invalidity. The Subsector Member may submit a revised, conforming Offer prior to the close of that Submission Period or, in any subsequent Submission Period. Only one Offer may be submitted with respect to an LLP License during a Submission

Period. In the event a Subsector Member submits more than one Offer with respect to an LLP License during a Submission Period, the first conforming Offer received by the Auditor shall be binding and irrevocable and any subsequent Offers shall be deemed invalid.

(iv) *Warranty.* By submitting an Offer, the Offering Subsector Member, warrants and represents that the Offering Subsector Member has read and understands the terms of the Reduction Agreement, the Offer, and the Reduction Contract and has had the opportunity to seek independent legal counsel regarding such documents and/or agreements and the consequences of submitting an Offer.

(4) *Posting Offers*—(i) *Current Offers.* For each Offer received during a Submission Period, the Auditor shall post on the Website no later than 5 p.m. (Pacific time) on the following Tuesday all of the details of such Offer as set forth on the Offer Form. In addition, the Auditor shall post, as available to Auditor, a summary by year of up to ten (10) years catch history during the period 1995–2004 in total round weight equivalents and percentage of Longline Subsector ITAC harvested for any vessel that is included in the Offer. Subsector Member (or vessel owner, if other than the Subsector Member) expressly authorizes Auditor to release the catch history summary information previously prepared for that Subsector Member or vessel owner by the Auditor as part of the analysis of FLCC's membership's catch history previously conducted by the Auditor on behalf of the FLCC.

(ii) *Posting Order.* Offers shall be posted on the Website by the Auditor in alphabetical order of the Offering Subsector Member's name.

(iii) *Questions as to Offer.* The Auditor shall respond to no questions from Subsector Member regarding Offers except to confirm that the posting accurately reflects the details of the Offer. If an Offering Subsector Member notices an error in an Offer posting on the Website, such Subsector Member shall notify the Auditor as soon as practicable, The Auditor shall review such notice, the posting and the original Offer. If an error was made in posting the Auditor shall correct the posting as soon as practicable and notify the Subsector Members via e-mail or mail of the correction. In the event such an error is not discovered prior to Ranking, an Offering Subsector Member shall be bound to the terms of the submitted Offer, not the terms of the posted Offer.

(iv) *Archive.* The Auditor shall maintain on the Website an archive of prior Offers posted, which shall be available for review by all Subsector Members.

(5) *Ranking*—(i) *Eligibility.* Each Subsector Member that has not submitted an Offer during the preceding Submission Period, or whose vessel is not included as a withdrawing vessel in an Offer during the preceding Submission Period (i.e., a Nonoffering Subsector Member), may submit to the Auditor a Ranking Form during a Ranking Period. With respect to Ranking, a Subsector Member that holds more than one LLP License may participate in the Ranking process for each LLP License not included in an Offer.

(ii) *Ranking Period.* The initial Ranking Period shall commence immediately after the Offers from the preceding Submission Period have been posted and end at 5 p.m. (Pacific time) on the Friday of that week. Subsequent Ranking Periods shall commence immediately after the Offers from the preceding Submission Period have been posted and end at 5 p.m. (Pacific time) on the Friday of that week.

(iii) *Ranking Form.* Prior to each Ranking Period, the Auditor will post a Ranking Form on the Website in "pdf" file format. Each eligible Subsector Member wishing to rank the current Offers shall rank the Offers on the Ranking Form numerically in the Subsector Member's preferred order of purchase. The Offer that Subsector Member would most like to have accepted should be ranked number one (1), and subsequent Offers ranked sequentially until the Offer that the Subsector Member would least like to see accepted is ranked with the highest numerical score. A Subsector Member wishing to call for a Closing Vote shall, in lieu of ranking the Current Offers, mark the Ranking Form to accept the Selected Offers selected during the prior Ranking Period and close the Selection Process. To be valid, the Ranking Form must rank each Current Offer listed on the Ranking Form or, if applicable, be marked to call for a Closing Vote. Ranking Forms shall be submitted by sending a completed Ranking Form, signed by an Authorized Party, to the Auditor by facsimile or mail prior to the end of the Ranking Period. A Subsector Member is not required to rank the Offers during a Ranking Period or call for a Closing Vote.

(iv) *Validity of Subsector Member Ranking.* The Auditor shall examine each Ranking Form for completeness, whether the form either ranks the Offers or calls for a Closing Vote (but not both), and authorized signature. Any incomplete or otherwise noncompliant Ranking Form(s) shall be invalid, and shall not be included in the Rankings of the Current Offers. The Auditor shall notify the Subsector Member of the reason for declaring any Ranking Form invalid as soon as practicable. A Subsector Member may cure the submission of an invalid Ranking Form by submitting a complying Ranking Form if accomplished before the end of the applicable Ranking Period.

(6) *Ranking Results*—(i) *Compiling the Rankings.* Unless two-thirds (⅔) of the Nonoffering Subsector Members have called for a Closing Vote, the Auditor shall compile the results of the Ranking Forms by assigning one point for each position on a Ranking Form. That is, the Offer ranked number one (1) on a Ranking Form shall be awarded one (1) point, the Offer ranked two (2) shall receive two (2) points, and continuing on in this manner until all Offers have been assigned points correlating to its ranking on each valid Ranking Form. The Offer with the least number of total points assigned shall be the highest ranked Offer, and the Offer with the greatest total points assigned shall be the lowest ranked Offer.

(ii) *Posting Rankings.* The Auditor shall post the results of the compilation of the Ranking Forms on the Website in alphabetical order based on the Offering Subsector Member's name no later than 5 p.m. (Pacific time) on the Monday following the Ranking Period. The Auditor shall post the highest consecutive ranking Offers that total thirty six million dollars ($36,000,000) or less. Those Offering Subsector Members whose Offers are posted shall be deemed Selected Offerors and their Offers shall be deemed Selected Offers. Those Offering Subsector Members whose Offers are not posted shall be deemed Rejected Offerors.

(iii) *Selected Offer Information or Confidentiality.* The Auditor shall post the name of the Offering Subsector Member, the amount of the Offer, and a summary of the total number of Ranking Forms received and the number of such forms on which the Members called for a Closing Vote. Other than the foregoing, the Auditor shall not post any details of the compilation of the Ranking Forms.

(iv) *Selected Offerors.* Selected Offerors may not withdraw their Offers unless in subsequent rankings their Offers no longer are within the highest ranking Offers and they become Rejected Offerors. A Selected Offeror may, however, modify a Selected Offer solely to the extent such modification consists of a reduction in the Offer price. A Selected Offeror may submit a modified Offer to the Auditor during the next Offering Period as set forth in paragraph (d)(3) of this section. Unless

a Selected Offeror becomes a Rejected Offeror in a subsequent Ranking, a Selected Offeror shall be bound by the terms of the lowest Selected Offer submitted as if such modified Offer had been the original Selected Offer. In the event a Selected Offeror submits a modified Offer and such Offer is not ranked because sufficient votes are received to call for a Closing Vote, the previously Selected Offer shall remain the Selected Offer.

(v) *Rejected Offerors.* The Offer of a Rejected Offeror is terminated and the Rejected Offeror is no longer bound by the terms of its Offer. A Rejected Offeror may, at its sole discretion, resubmit the same Offer, submit a revised Offer, or elect not to submit an Offer during any subsequent Submission Period until the Selection Process is closed.

(vi) *Ties.* In the event there is a tie with respect to Offers which results in the tied Offers exceeding thirty six million dollars ($36,000,000), the tied Offers and all Offers ranked lower than the tied Offers shall be deemed to be rejected and the Rejected Offerors may, at their option, submit an Offer in a subsequent Submission Period.

(vii) *Archive.* Auditor shall maintain on the Website an archive of prior Offer Rankings as posted over the course of the Selection Process, which shall be available for Subsector Member review.

(7) *Closing.* The Selection Process will close when two-thirds (⅔) or more of the Nonoffering Subsector Members of the Longline Subsector, as determined by the Auditor, affirmatively vote to accept the Selected Offerors selected during the prior Ranking Period as part of the Reduction Plan to be submitted to the Secretary.

(i) *Call for Vote.* A Closing Vote will be held when: at least two-thirds (⅔) of the Nonoffering Subsector Members submit Ranking Forms electing to accept the Selected Offerors and close the Selection Process in lieu of Ranking the current Offers; and there are no unresolved Protests or Arbitrations. The Auditor shall notify all Subsector Members by e-mail or mail and posting a notice on the Website as soon as practicable that a Closing Vote is to be held. Such notice shall state the starting and ending dates and times of the voting period, which shall be not less than three (3) nor more than seven (7) calendar days from the date of such notice. A voting period shall commence at 9 a.m. (Pacific time) on Monday and end at 5 p.m. on the Friday of that week.

(ii) *Voting.* No less than three (3) calendar days prior to the voting period, the Auditor will post a Closing Ballot on the Website in "pdf" file format. Each eligible Nonoffering Subsector Member wishing to vote shall print out the Closing Ballot, and, with respect to each of the currently Selected Offers on the Closing Ballot, vote either in favor of or opposed to accepting that Selected Offer and submit a completed and signed Closing Ballot to the Auditor preferably by facsimile prior to the end of the Voting Period.

(iii) *Ballot Verification.* The Auditor shall examine each submitted Closing Ballot for completeness and authorized signature. Any incomplete Closing Ballot shall be void, and shall not be included in the voting results. The Auditor shall not notify the Subsector Member of an invalid Closing Ballot.

(iv) *Voting Results.* The Auditor shall post the results of the Vote as soon as practicable after voting closes. Each Offer on the Closing Ballot that receives votes approving acceptance of such Offer from two-thirds (⅔) or more of the total number of Nonoffering Subsector Members shall be a Selected Offeror and shall be the basis for the Reduction Plan submitted to NMFS. Any Offer on the Closing Ballot that does not receive such two-thirds (⅔) approval shall be rejected and shall not be included among the Offers included among the Reduction Plan submitted to NMFS.

(v) *Notification to NMFS.* Upon closing of the Selection Process, FLCC shall notify NMFS in writing of the identities of the Selected Offerors and provide to NMFS a completed and fully executed original Reduction Agreement from each of the Selected Offerors and a certified copy of the fully executed Reduction Agreement and Reduction Contract.

(e) *Submission of Reduction Plan, Including Repayment.* Upon completion of the offering process, the FLCC on behalf of the Subsector Members shall submit to NMFS the Reduction Plan which shall include the provisions set forth in this paragraph (e).

(1) *Capacity Reduction.* The Reduction Plan shall identify as the proposed capacity reduction, without auction process, the LLP Licenses as well as the vessels and the catch histories related to the LLP Licenses, linked crab LLP Licenses, and any other fishing rights or other interests associated with the LLP Licenses and vessels included in the Selected Offers. The aggregate of all Reduction Agreements and Reduction Contracts signed by Subsector Members whose offers to participate in this buyback were accepted by votes of the Subsector Members, will together with the FLCC's supporting documents and rationale for recognizing that these offers represent the expenditure of the least money for the greatest capacity reduction, constitute the Reduction Plan to be submitted to NMFS for approval on behalf of the Secretary of Commerce.

(2) *Loan Repayment*—(i) *Term.* As authorized by Section 219(B)(2) of the Act, the capacity reduction loan (the "Reduction Loan") shall be amortized over a thirty (30) year term. The Reduction Loan's original principal amount may not exceed thirty six million dollars ($36,000,000), but may be less if the reduction cost is less. Subsector Members acknowledge that in the event payments made under the Reduction Plan are insufficient to repay the actual loan, the term of repayment shall be extended by NMFS until the loan is paid in full.

(ii) *Interest.* The Reduction Loan's interest rate will be the U.S. Treasury's cost of borrowing equivalent maturity funds plus 2 percent. NMFS will determine the Reduction Loan's initial interest rate when NMFS borrows from the U.S. Treasury the funds with which to disburse reduction payments. The initial interest rate will change to a final interest rate at the end of the Federal fiscal year in which NMFS borrows the funds from the U.S. Treasury. The final interest rate will be 2 percent plus a weighted average, throughout that fiscal year, of the U.S. Treasury's cost of borrowing equivalent maturity funds. The final interest rate will be fixed, and will not vary over the remainder of the reduction loan's 30-year term. The Reduction loan will be subject to a level debt amortization. There is no prepayment penalty.

(iii) *Fees.* The Reduction Loan shall be repaid by fees collected from the Longline Subsector. The fee amount will be based upon: The principal and interest due over the next twelve months divided by the product of the Hook & Line, Catcher Processor (Longline Subsector; sometimes referred to as the "H&LCP Subsector") portion of the BSAI Pacific cod ITAC (in metric tons) set by the North Pacific Fishery Management Council (NPFMC) in December of each year multiplied by 2,205 (i.e., the number of pounds in a metric ton). In the event that the Longline Subsector portion for the ensuing year is not available, the Longline Subsector portion forecast from the preceding year will be used to calculate the fee.

(A) The fee will be expressed in cents per pound rounded up to the next one-tenth of a cent. For example: If the principal and interest due equal $2,900,000 and the Longline Subsector portion equals 100,000 metric tons, then the fee per round weight pound of Pacific cod will equal 1.4 cents per pound. [2,900,000 /(100,000 x 2,205) =

.01315]. The fee will be accessed and collected on Pacific cod to the extent possible and if not, will be accessed and collected as provided for in this paragraph (e).

(B) Fees must be accessed and collected on Pacific cod used for bait or discarded. Although the fee could be up to 5 percent of the ex-vessel production value of all post-reduction Longline Subsector landings, the fee will be less than 5 percent if NMFS projects that a lesser rate can amortize the fishery's reduction loan over the reduction loan's 30-year term. In the event that the total principal and interest due exceeds 5 percent of the ex-vessel Pacific cod revenues, a penny per pound round weight fee will be calculated based on the latest available revenue records and NMFS conversion factors for pollock, arrowtooth flounder, Greenland turbot, skate, yellowfin sole and rock sole.

(C) The additional fee will be limited to the amount necessary to amortize the remaining twelve months principal and interest in addition to the 5 percent fee accessed against Pacific cod. The additional fee will be a minimum of one cent per pound. In the event that collections exceed the total principal and interest needed to amortize the payment due, the principal balance of the loan will be reduced. To verify that the fees collected do not exceed 5 percent of the fishery revenues, the annual total of principal and interest due will be compared to the latest available annual Longline Subsector revenues to ensure it is equal to or less than 5 percent of the total ex-vessel production revenues. In the event that any of the components necessary to calculate the next year's fee are not available, or for any other reason NMFS believes the calculation must be postponed, the fee will remain at the previous year's amount until such a time that new calculations are made and communicated to the post reduction fishery participants.

(D) It is possible that the fishery may not open during some years and no Longline Subsector portion of the ITAC is granted. Consequently, the fishery will not produce fee revenue with which to service the reduction loan during those years. However, interest will continue to accrue on the principal balance. When this happens, if the fee rate is not already at the maximum 5 percent, NMFS will increase the fisheries' fee rate to the maximum 5 percent of the revenues for Pacific cod and the species mentioned in paragraph (e)(2)(iii)(B), apply all subsequent fee revenue first to the payment of accrued interest, and continue the maximum fee rates until all principal and interest payments become current. Once all principal and interest payments are current, NMFS will make a determination about adjusting the fee rate.

(iv) *Reduction loan.* NMFS has promulgated framework regulations generally applicable to all fishing capacity reduction programs (§ 600.1000 *et seq.*). The reduction loan shall be subject to the provisions of § 600.1012, except that: the borrower's obligation to repay the reduction loan shall be discharged by the owner of the Longline Subsector license regardless of which vessel catches fish under this license and regardless of who processes the fish in the reduction fishery in accordance with § 600.1013. Longline Subsector license owners in the reduction fishery shall be obligated to collect the fee in accordance with § 600.1013.

(v) *Collection.* The LLP License holder of the vessel harvesting in the post-capacity reduction plan Longline Subsector shall be responsible for self-collecting the repayment fees owed by that LLP License holder. Fees shall be submitted to NMFS monthly and shall be due no later than fifteen (15) calendar days following the end of each calendar month.

(vi) *Recordkeeping and Reporting.* The holder of the LLP License on which a vessel harvesting in the post-capacity reduction plan Longline Subsector is designated shall be responsible for compliance with the applicable recordkeeping and reporting requirements.

(3) *Agreement with Secretary.* Each Selected Offeror, and vessel owner if not the Subsector Member, that has submitted a Selected Offer shall complete and deliver to the FLCC for inclusion in the Reduction Plan submitted to NMFS, designee for the Secretary, a completed and fully executed Reduction Contract. Any and all LLP License(s) and or vessels set forth on a Selected Offer shall be included as Reduction Fishing Interests in such Reduction Contract.

(f) *Decisions of the Auditor and the FLCC.* Time is of the essence in developing and implementing a Reduction Plan and, accordingly, the Offerors shall be limited to, and bound by, the decisions of the Auditor and the FLCC.

(1) The Auditor's examination of submitted applications, Offers, Prequalification Offers and Rankings shall be solely ministerial in nature. That is, the Auditor will verify whether the documents submitted by Subsector Members are, on their face, consistent with each other and the Database, in compliance with the requirements set forth in the Reduction Agreement, and, signed by an Authorized Party. The Auditor may presume the validity of all signatures on documents submitted. The Auditor shall not make substantive decisions as to compliance (e.g., whether an interim LLP License satisfies the requirements of the Act, or whether a discrepancy in the name appearing on LLP Licenses and other documents is material).

(2) [Reserved]

(g) *Enforcement/Specific Performance.* The parties to the Reduction Agreement have agreed that the opportunity to develop and submit a capacity reduction program for the Longline Subsector under the terms of the Act is both unique and finite and that failure of a Selected Offeror, and vessel owner, if not a Subsector Member, to perform the obligations provided by the Reduction Agreement will result in irreparable damage to the FLCC, the Subsector Members and other Selected Offerors. Accordingly, the parties to the Reduction Agreement expressly acknowledge that money damages are an inadequate means of redress and agree that upon the failure of the Selected Offeror, and vessel owner if not a Subsector Member, to fulfill its obligations under the Reduction Agreement that specific performance of those obligations may be obtained by suit in equity brought by the FLCC in any court of competent jurisdiction without obligation to arbitrate such action.

(h) *Miscellaneous*—(1) *Time/Holidays.* All times related to the Selection Process shall be the time kept in the Pacific time zone as calculated by the National Institute of Standards and Technology. In the event that any date occurring within the Selection Process is a Federal holiday, the date shall roll over to the next occurring business day.

(2) *Termination.* The Reduction Agreement shall automatically terminate if no vote of acceptance is completed by December 31, 2007. The Reduction Agreement may be terminated at any time prior to approval of the Reduction Plan by NMFS, on behalf of the Secretary, by written notice from 50 percent of Subsector Members.

(3) *Choice of Law/Venue.* The Reduction Agreement shall be construed and enforced in accordance with the laws of the State of Washington without regard to its choice of law provisions. The parties submit to the exclusive personal jurisdiction of the United States District Court located in Seattle, Washington, with respect to any litigation arising out of or relating to the Reduction Agreement or out of the performance of services hereunder.

(4) *Incorporation.* All executed counterparts of the Reduction Agreement, Application Forms and Offers constitute the agreement between the parties with respect to the subject matter of the Reduction Agreement and are incorporated into the Reduction Agreement as if fully written.

(5) *Counterparts.* The Reduction Agreement may be executed in multiple counterparts and will be effective as to signatories on the Effective Date. The Reduction Agreement may be executed in duplicate originals, each of which shall be deemed to be an original instrument. All such counterparts and duplicate originals together shall constitute the same agreement, whether or not all parties execute each counterpart.

(i) The facsimile signature of any party to the Reduction Agreement shall constitute the duly authorized, irrevocable execution and delivery of the Reduction Agreement as fully as if the Reduction Agreement contained the original ink signatures of the party or parties supplying a facsimile signature.

(ii) [Reserved]

(i) *Amendment.* Subsector Member acknowledges that the Reduction Agreement, the Reduction Contract, and the Reduction Plan may be subject to amendment to conform to the requirements for approval of the Reduction Plan by NMFS on behalf of the Secretary. The Auditor shall distribute to each Subsector Member in electronic format the amended form of the Reduction Agreement, the Reduction Contract, and the Reduction Plan, which amended documents in the form distributed by the Auditor and identified by the Auditor by date and version, the version of each such document then in effect at the time of any dispute arising or action taken shall be deemed binding upon the parties with respect to such dispute and/or action.

(j) *Warranties.* Subsector Member must expressly warrant and represent in the Reduction Agreement that:

(1) Subsector Member has had an opportunity to consult with Subsector Member's attorney or other advisors of Subsector Member with respect to the Reduction Agreement, the Reduction Contract, and the Act and the ramifications of the ratification of the Reduction Plan contemplated therein;

(2) Subsector Member has full understanding and appreciation of the ramifications of executing and delivering the Reduction Agreement and, free from coercion of any kind by the FLCC or any of its members, officers, agents and/or employees, executes and delivers the Reduction Agreement as the free and voluntary act of Subsector Member;

(3) The execution and delivery of the Reduction Agreement, does not and will not conflict with any provisions of the governing documents of Subsector Member;

(4) The person executing the Reduction Agreement has been duly authorized by Subsector Member to execute and deliver the Reduction Agreement and to undertake and perform the actions contemplated herein; and

(5) Subsector Member has taken all actions necessary for the Reduction Agreement to constitute the valid and binding obligation of Subsector Member, enforceable in accordance with its terms.

(k) *Approval of the Reduction Plan.* Acceptance of the Offers are at the sole discretion of NMFS on behalf of the Secretary of Commerce. To be approved by NMFS, on behalf of the Secretary, any Reduction Plan developed and submitted in accordance with this section and Subpart M to this part must be found by the Assistant Administrator of NMFS, to:

(1) Be consistent with the requirements of Section 219(e) of the FY 2005 Appropriations Act (Public Law 108–447);

(2) Be consistent with the requirements of Section 312(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861(a)) except for the requirement that a Council or Governor of a State request such a program (as set out in section 312(b)(1)) and for the requirements of section 312(b)(4);

(3) Contain provisions for a fee system that provides for full and timely repayment of the capacity reduction loan by the Longline Subsector and that it provide for the assessment of such fees;

(4) Not require a bidding or auction process;

(5) Result in the maximum sustained reduction in fishing capacity at the least cost and in the minimum amount of time; and

(6) Permit vessels in the Longline Subsector to be upgraded to achieve efficiencies in fishing operations provided that such upgrades do not result in the vessel exceeding the applicable length, tonnage, or horsepower limitations set out in Federal law or regulation.

Acceptance of the Offers are at the sole discretion of NMFS on behalf of the Secretary of Commerce.

(l) *Referenda.* The provisions of § 600.1010 (including §§ 600.1004(a), 600.1008, 600.1009, 600.1013, 600.1014, and 600.1017(a)(5),(6) and (7)) shall apply to the Reduction Plan of this section to the extent that they do not conflict with this section or with subpart M of this part.

3. Add an appendix to § 600.1105 in subpart M to read as follows:

Appendix to § 600.1105—Fishing Capacity Reduction Contract: Bering Sea and Aleutian Islands Longline Catcher Processor Subsector

FISHING CAPACITY REDUCTION CONTRACT: BERING SEA AND ALEUTIAN ISLANDS LONGLINE CATCHER PROCESSOR SUBSECTOR

THIS AGREEMENT, (the "Reduction Contract") is entered into by and between the party or parties named in section 46 of this contract entitled, "Fishing Capacity Reduction Offer Submission Form and Reduction Fishing Interests Identification," as the qualifying Offeror and as the co-Offeror (if there is a co-Offeror)(collectively the "Offeror") and the United States of America, acting by and through the Secretary of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Financial Services Division ("NMFS"). The Reduction Contract is effective when NMFS signs the Reduction Contract and, thereby, accepts the Offeror's offer, subject to the condition subsequent of NMFS' formal notification of a successful referendum.

WITNESSETH:

Whereas, Section 219, Title II, Division B of the Consolidated Appropriations Act, 2005, as enacted on December 8, 2004, (the "Act") authorizes a fishing capacity reduction program implementing capacity reduction plans submitted to NMFS by catcher processor subsectors of the Bering Sea and Aleutian Islands ("BSAI") non-pollock groundfish fishery as set forth in the Act;

Whereas, the longline catcher processor subsector (the "Longline Subsector") is among the catcher processor subsectors eligible to submit to NMFS a capacity reduction plan under the terms of the Act;

Whereas, the Freezer Longline Conservation Cooperative (the "FLCC") has developed and is submitting to NMFS concurrently with this Reduction Contract a capacity reduction plan for the Longline Subsector (the "Reduction Plan");

Whereas, the selection process will be pursuant to the fishing capacity Reduction Contract and the Reduction Plan;

Whereas, the term "Reduction Fishery" is defined by the Reduction Plan as the longline catcher processor subsector of the BSAI non-pollock groundfish fishery;

Whereas, the Reduction Plan's express objective is to permanently reduce harvesting capacity in the Reduction Fishery;

Whereas, NMFS implements the Reduction Plan pursuant to Section 219 of the Act as well as the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861 a(b)-(e))(as excepted by the Act, including inter alia, any requirement that the Reduction Plan include a bidding or auction process) and other applicable law;

Whereas, NMFS has promulgated framework regulations generally applicable to all fishing capacity reduction programs, portions of which are applicable to the Reduction Plan, (50 CFR 600.1000 *et seq.*);

Whereas, NMFS can implement the Reduction Plan only after giving notice to all members of the Longline Subsector of the Reduction Plan pursuant to Section 219(3)(b) of the Act and approval of the Reduction Plan by referendum of the Longline Subsector; and

Whereas, this Reduction Contract is submitted by Offeror and the FLCC as an integral element of the Reduction Plan and is expressly subject to the terms and conditions set forth herein, the framework regulations, the final rule (as used in this contract "final rule" means the final rule promulgated by NMFS which sets forth the regulations implementing the Reduction Plan for the Longline Subsector) and applicable law.

NOW THEREFORE, for good and valuable consideration and the premises and covenants hereinafter set forth the receipt and sufficiency of which the parties to the Reduction Contract hereby acknowledge, and intending to be legally bound hereby, the parties hereto agree as follows:

1. *Incorporation of Recitals.* The foregoing recitals are true and correct and are expressly incorporated herein by this reference.

2. *Further Incorporation.* The Act, framework regulations, final rule and any other rule promulgated pursuant to the Act are expressly incorporated herein by this reference. In the event of conflicting language, the framework regulations, the final rule and any other rule promulgated pursuant to the Act, take precedence over the Reduction Contract.

3. *Contract Form.* By completing and submitting the Reduction Contract to NMFS the Offeror hereby irrevocably offers to relinquish its Reduction Fishing Interests. If NMFS discovers any deficiencies in the Offeror's submission to NMFS, NMFS may, at its sole discretion, contact the Offeror in an attempt to correct such offer deficiency. "Reduction Fishing Interests" means all of Offeror(s) rights, title and interest to the Groundfish Reduction Permit, Reduction Permit(s), Reduction Fishing Privilege and Reduction Fishing History as defined in this Reduction Contract.

4. *Groundfish Reduction Permit.* Offeror expressly acknowledges that it hereby offers to permanently surrender, relinquish, and have NMFS permanently revoke the valid non-interim Federal License Limitation Program groundfish license issued pursuant to 50 CFR 679.4(k) (or successor regulation) endorsed for Bering Sea or Aleutian Islands catcher processor fishing activity, C/P, Pacific cod, and hook and line gear identified in section 46 of this contract as well as any present or future claims of eligibility for any fishery privilege based upon such permit, including any Latent License and any offered and accepted interim permit that Offeror causes to become a non-interim permit, (the "Groundfish Reduction Permit").

5. *Reduction Permit(s).* Offeror hereby acknowledges that it offers to permanently surrender, relinquish, and have NMFS permanently revoke any and all Federal fishery licenses, fishery permits, and area and species endorsements issued for any vessel named on the Groundfish Reduction Permit as well as any present or future claims of eligibility for any fishery privilege based upon such permit, including any Latent License, (the "Reduction Permits").

6. *Reduction Privilege Vessel.* The Reduction Privilege Vessel is the vessel listed on the Offeror's License Limitation Program license.

7. *Reduction Fishing Privilege.* If a vessel is specified in section 46 of this contract (the "Reduction Privilege Vessel"), Offeror hereby acknowledges that Offeror offers to relinquish and surrender the Reduction Privilege Vessel's fishing privilege and consents to the imposition of Federal vessel documentation restrictions that have the effect of permanently revoking the Reduction Privilege Vessel's legal ability to fish anywhere in the world as well as its legal ability to operate under foreign registry or control—including the Reduction Privilege Vessel's: fisheries trade endorsement under the Commercial Fishing Industry Vessel Anti-Reflagging Act (46 U.S.C. 12108); eligibility for the approval required under section 9(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)), for the placement of a vessel under foreign flag or registry, as well as its operation under the authority of a foreign country; and the privilege otherwise to ever fish again anywhere in the world (the "Reduction Fishing Privilege"). Offeror agrees to instruct the United States Coast Guard's Vessel Documentation Center to remove the fishery endorsement from the Reduction Privilege Vessel. If the Reduction Privilege Vessel is not a federally documented vessel, the Offeror offers to promptly scrap the vessel and allow NMFS whatever access to the scrapping NMFS deems reasonably necessary to document and confirm the scrapping.

8. *Reduction Fishing History.* Offeror surrenders, relinquishes, and consents to NMFS' permanent revocation of the following Reduction Fishing History (the "Reduction Fishing History"):

a. The Reduction Privilege Vessel's full and complete documented harvest of groundfish;

b. For any documented harvest of the Reduction Privilege Vessel whatsoever, including that specified in section 8 of this contract, any right or privilege to make any claim in any way related to any fishery privilege derived in whole or in part from any such other and documented harvest which could ever qualify any party for any future limited access system fishing license, permit, and other harvest authorization of any kind; including without limitation crab LLP licenses linked to License Limitation Program ("LLP") licenses, state fishing rights appurtenant to Reduction Fishing Vessels, and all fishing history associated therewith, but without prejudice to any party who before submission of this offer may have for value independently acquired the fishing history involving any such documented harvest;

c. Any documented harvest on any other vessel (Reduction Fishing Vessel) that gave rise to the Groundfish Reduction Permit; and

d. All fishing history associated with any Latent License that remains in the Offeror's possession as of August 11, 2006.

9. *Halibut, Sablefish and Crab IFQs Excluded.* Notwithstanding any other provision of this Reduction Contract, no right, title and/or interest to harvest, process or otherwise utilize individual fishing quota ("IFQ") quota share in the halibut, sablefish and crab fisheries pursuant to 50 CFR parts 679 and 680, nor crab LLP license history to the extent necessary for the issuance of crab IFQ pursuant to 50 CFR part 680 as in effect as of the date of this Contract, shall be included among Offeror's Reduction Fishing Interests.

10. *Representations and Warranties.* Offeror represents and warrants that, as of the date of submission of this Reduction Contract, Offeror is:

a. The holder of record, according to NMFS' official fishing license records, at the time of offer, of the Groundfish Reduction Permit and the Reduction Permit(s).

b. The Reduction Privilege Vessel's owner of record, according to the National Vessel Documentation Center's official vessel documentation records, at the time of offer, and that the Reduction Privilege Vessel is neither lost nor destroyed at the time of offer.

c. In retention of and fully and legally entitled to offer and dispose of hereunder, full and complete rights to the Reduction Privilege Vessel's full and complete Reduction Fishing History necessary to fully and completely comply with the requirements of section 8 of this contract.

11. *Offer Amount.* NMFS' payment to Offeror in the exact amount of the amount set forth by Offeror in section 46 of this contract is full and complete consideration for the Offeror's offer.

12. *Additional Offer Elements.* Offeror shall include with its offer an exact photocopy of the Reduction Privilege Vessel's official vessel documentation or registration (i.e., the certificate of documentation the U.S. Coast

Guard's National Vessel Documentation Center issued for federally documented vessels or the registration a State issues for State registered vessels) and an exact photocopy of the Groundfish Reduction Permit and all Reduction Permit(s). The Offeror shall also include with the offer all other information required in this Reduction Contract and otherwise comply with Reduction Contract requirements.

13. *Use of Official Fishing License or Permit Databases.* Offeror expressly acknowledges that NMFS shall use the appropriate official governmental fishing license or permit database to:

Determine the Offeror's address of record; verify the Offeror's qualification to offer; determine the holder of record of the Groundfish Reduction Permit and Reduction Permit(s); and verify the Offeror's inclusion in the offer of all permits and licenses required to be offered in the Offer.

14. *Use of National Vessel Documentation Center Database.* Offeror expressly acknowledges that NMFS shall use the records of the National Vessel Documentation Center to determine the owner of record for a federally documented Reduction Privilege Vessel and the appropriate State records to determine the owner of record of a non-federally documented Reduction Privilege Vessel..

15. *Offeror to Ensure Accurate Records.* Offeror shall, to the best of its ability, ensure that the records of the databases relevant to sections 13 and 14 of this contract are true, accurate, and complete.

16. *Submissions are Irrevocable.* The parties hereto expressly acknowledge as the essence hereof that the Offeror voluntarily submits to NMFS this firm and irrevocable offer. The Offeror expressly acknowledges that it hereby waives any privilege or right to withdraw, change, modify, alter, rescind, or cancel any portion of the Reduction Contract and that the receipt date and time which NMFS marks on the Reduction Contract constitutes the date and time of the offer's submission.

17. *Offer Rejection.* NMFS shall reject an offer that NMFS deems is in any way unresponsive or not in conformance with the Reduction Contract, and the applicable law or regulations unless the Offeror corrects the defect and NMFS, in its sole discretion, accepts the correction.

18. *Notarized Offeror Signature(s) Required.* NMFS shall deem as non-responsive and reject an offer whose Offer Submission Form does not contain the notarized signatures of all persons required to sign the form on behalf of the Offeror.

19. *Offer Rejections Constitute Final Agency Action.* NMFS's offer rejections are conclusive and constitute final agency action as of the rejection date.

20. *Effect of Offer Submission.* Submitting an irrevocable offer conforming to the requirements stated herein entitles the Offeror to have NMFS accept the offer if NMFS, in its sole discretion, deems that the offer is fully responsive and complies with the Act, the final rule and any other rule promulgated pursuant to the Act.

21. *Offeror Retains Use.* After submitting an offer, the Offeror shall continue to hold, own, or retain unimpaired every aspect of any and all LLP License(s) and or vessels set forth on an Offer included as Reduction Fishing Interests, until such time as: NMFS notifies the Offeror that the Reduction Plan is not in compliance with the Act or other applicable law and will not be approved by NMFS; notifies the Offeror that the referendum was unsuccessful; NMFS tenders the reduction payment and the Offeror complies with its obligations under the Reduction Contract; or NMFS otherwise excuses the Offeror's performance.

22. *Acceptance by Referendum.* NMFS shall formally notify the Offeror in writing whether the referendum is successful, which written notice shall inform Offeror that the condition subsequent has been satisfied. Therefore, Offeror expressly acknowledges that all parties must perform under the Reduction Contract and the Reduction Contract is enforceable against, and binding on, the Reduction Contract parties in accordance with the terms and conditions herein.

23. *Reduction Contract Subject to Federal Law.* The Reduction Contract is subject to Federal law.

24. *Notice to Creditors.* Upon NMFS' offer acceptance notice to the Offeror, Offeror agrees to notify all parties with secured interests in the Reduction Fishing Interests that the Offeror has entered into the Reduction Contract.

25. *Referendum.* Offeror acknowledges that the outcome of the referendum of the Reduction Plan is an occurrence over which NMFS has no control.

26. *Unsuccessful Referendum Excuses Performance.* An unsuccessful referendum excuses all parties hereto from every obligation to perform under the Reduction Contract. In such event, NMFS need not tender reduction payment and the Offeror need not surrender and relinquish or allow the revocation or restriction of any element of the Reduction Fishing Interest specified in the Reduction Contract. An unsuccessful referendum shall cause the Reduction Contract to have no further force or effect.

27. *Offeror Responsibilities upon Successful Referendum.* Upon NMFS' formal notification to the Offeror that the referendum was successful and that NMFS had accepted the Reduction Contract, Offeror shall immediately become ready to surrender and relinquish and allow the revocation or restriction of (as NMFS deems appropriate) the Reduction Fishing Interests.

28. *Written Payment Instructions.* After a successful referendum, NMFS shall tender reduction payment by requesting the Offeror to provide to NMFS, and the Offeror shall subsequently so provide, written payment instructions for NMFS' disbursement of the reduction payment to the Offeror or to the Offeror's order.

29. *Request for Written Payment Instructions Constitutes Tender.* NMFS' request to the Offeror for written payment instructions constitutes reduction payment tender, as specified in 50 CFR 600.1011.

30. *Offeror Responsibilities upon Tender.* Upon NMFS' reduction payment tender to the Offeror, the Offeror shall immediately surrender and relinquish and allow the revocation or restriction of (as NMFS deems appropriate) the Reduction Fishing Interests. The Offeror must then return the original of its Groundfish Reduction Permit and Reduction Permit(s) to NMFS. Concurrently with NMFS' reduction payment tender, the Offeror shall forever cease all fishing for any species with the Reduction Privilege Vessel and immediately retrieve all fishing gear, irrespective of ownership, previously deployed from the Reduction Privilege Vessel. Offeror agrees to authorize the United States Coast Guard to cancel the fishery endorsement in the Reduction Privilege Vessel.

31. *Reduction Privilege Vessel Lacking Federal Documentation.* Upon NMFS' reduction payment tender to the Offeror, the Offeror shall immediately scrap any vessel which the Offeror specified as a Reduction Privilege Vessel and which is documented solely under state law or otherwise lacks documentation under Federal law. The Offeror shall scrap such vessel at the Offeror's expense. The Offeror shall allow NMFS, its agents, or its appointees reasonable opportunity to observe and confirm such scrapping. The Offeror shall conclude such scrapping within a reasonable time.

32. *Future Harvest Privilege and Reduction Fishing History Extinguished.* Upon NMFS' reduction payment tender to the Offeror, the Offeror shall surrender and relinquish and consent to the revocation, restriction, withdrawal, invalidation, or extinguishment by other means (as NMFS deems appropriate), of any claim in any way related to any fishing privilege derived, in whole or in part, from the use or holdership of the Groundfish Reduction Permits and the Reduction Permit(s), from the use or ownership of the Reduction Privilege Vessel (subject to and in accordance with the provisions of section 8 of this contract), and from any documented harvest fishing history arising under or associated with the same which could ever qualify the Offeror for any future limited access fishing license, fishing permit, and other harvest authorization of any kind.

33. *Post Tender Use of Federally Documented Reduction Privilege Vessel.* After NMFS' reduction payment tender to the Offeror, the Offeror may continue to use a federally documented Reduction Privilege Vessel for

any lawful purpose except "fishing" as defined under the Magnuson-Stevens Act and may transfer—subject to all restrictions in the Reduction Contract, other applicable regulations, and the applicable law—the vessel to a new owner. The Offeror or any subsequent owner shall only operate the Reduction Privilege Vessel under the United States flag and shall not operate such vessel under the authority of a foreign country. In the event the Offeror fails to abide by such restrictions, the Offeror expressly acknowledges and hereby agrees to allow NMFS to pursue any and all remedies available to it, including, but not limited to, recovering the reduction payment and seizing the Reduction Privilege Vessel and scrapping it at the Offeror's expense.

34. *NMFS' Actions upon Tender.* Contemporaneously with NMFS' reduction payment tender to the Offeror, and without regard to the Offeror's refusal or failure to perform any of its Reduction Contract duties and obligations, NMFS shall: permanently revoke the Offeror's Groundfish Reduction Permit and Reduction Permit(s); notify the National Vessel Documentation Center to permanently revoke the Reduction Privilege Vessel's fishery trade endorsement; notify the U.S. Maritime Administration to make the Reduction Privilege Vessel permanently ineligible for the approval of requests to place the vessel under foreign registry or operate the vessel under a foreign country's authority; record in the appropriate NMFS records that the Reduction Fishing History represented by any documented harvest fishing history accrued on, under, or as a result of the operation of the Reduction Privilege Vessel and/or Reduction Fishing Vessel (subject to and in accordance with the provisions of section 8 of this contract), the Groundfish Reduction Permit, and the Reduction Permit(s) which could ever qualify the Offeror for any future limited access fishing license, fishing permit, or other harvesting privilege of any kind shall never again be available to anyone for any fisheries purpose; and implement any other restrictions the applicable law or regulations impose.

35. *Material Disputes to be Identified.* Members of the public shall, up until NMFS receives the Offeror's written payment instructions, be able to advise NMFS in writing of any material dispute with regard to any aspect of any accepted Reduction Contract. Such a material dispute shall neither relieve the Offeror of any Reduction Contract duties or obligations nor affect NMFS' right to enforce performance of the Reduction Contract terms and conditions.

36. *Reduction Payment Disbursement.* Once NMFS receives the Offeror's written payment instructions and certification of compliance with the Reduction Contract, NMFS shall as soon as practicable disburse the reduction payment to the Offeror. Reduction payment disbursement shall be in strict accordance with the Offeror's written payment instructions. Unless the Offeror's written payment instructions direct NMFS to the contrary, NMFS shall disburse the whole of the reduction payment to the Offeror. If the qualifying Offeror offers with a co-Offeror, both the qualifying Offeror and the co-Offeror must approve and sign the written payment instructions.

37. *Reduction Payment Withheld for Scrapping or for Other Reasons.* In the event that a Reduction Privilege Vessel which is not under Federal documentation must be scrapped, NMFS shall withhold from reduction payment disbursement an amount sufficient to scrap such vessel. NMFS shall withhold such sum until the vessel is completely scrapped before disbursing any amount withheld. NMFS may confirm, if NMFS so chooses, that the vessel has been scrapped before disbursing any amount withheld. If NMFS has reason to believe the Offeror has failed to comply with any of the Reduction Contract terms and conditions, NMFS shall also withhold reduction payment disbursement until such time as the Offeror performs in accordance with the Reduction Contract terms and conditions.

38. *Offeror Assistance with Restriction.* The Offeror shall, upon NMFS' request, furnish such additional documents, undertakings, assurances, or take such other actions as may be reasonably required to enable NMFS' revocation, restriction, invalidation, withdrawal, or extinguishment by other means (as NMFS deems appropriate) of all components of the Reduction Contract's Reduction Fishing Interest in accordance with the requirements of the Reduction Contract terms and conditions, applicable regulations and the applicable law.

39. *Recordation of Restrictions.* Upon the Reduction Fishing Privilege's revocation, the Offeror shall do everything reasonably necessary to ensure that such revocation is recorded on the Reduction Privilege Vessel's Federal documentation (which the National Vessel Documentation Center maintains in accordance with Federal maritime law and regulations) in such manner as is acceptable to NMFS and as shall prevent the Reduction Privilege Vessel, regardless of its subsequent ownership, from ever again being eligible for a fishery trade endorsement or ever again fishing. The term "fishing" includes the full range of activities defined in the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).

40. *Reduction Element Omission.* In the event NMFS accepts the offer and the Offeror has failed, for any reason, to specify in the Reduction Contract any Groundfish Reduction Permit, non-Groundfish Reduction Permit(s), Reduction Privilege Vessel, Reduction Fishing Vessel, Reduction Fishing History, or any other element of the Reduction Fishing Interest which the Offeror should under Reduction Contract, applicable regulations and the applicable law have specified in Reduction Contract, such omitted element shall nevertheless be deemed to be included in the Reduction Contract and to be subject to the Reduction Contract's terms and conditions; and all Reduction Contract terms and conditions which should have applied to such omitted element had it not be omitted shall apply as if such element had not been omitted. Upon the Offeror discovering any such omission, the Offeror shall immediately and fully advise NMFS of such omission. Upon either NMFS or the Offeror discovering any such omission, the Offeror shall act in accordance with the Reduction Contract, applicable regulations and the applicable law.

41. *Remedy for Breach.* Because money damages are not a sufficient remedy for the Offeror breaching any one or more of the Reduction Contract terms and conditions, the Offeror explicitly agrees to and hereby authorizes specific performance of the Reduction Contract, in addition to any money damages, as a remedy for such breach. In the event of such breach, NMFS shall take any reasonable action, including requiring and enforcing specific performance of the Reduction Contract, NMFS deems necessary to carry out the Reduction Contract, applicable regulations and the applicable law.

42. *Waiver of Data Confidentiality.* The Offeror consents to the public release of any information provided in connection with the Reduction Contract or pursuant to Reduction Plan requirements, including any information provided in the Reduction Contract or by any other means associated with, or necessary for evaluation of, the Offeror's Reduction Contract if NMFS finds that the release of such information is necessary to achieve the Reduction Plan's authorized purpose. The Offeror hereby explicitly waives any claim of confidentiality otherwise afforded to catch, or harvest data and fishing histories otherwise protected from release under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881 a(b)) or any other law. In the event of such information release, the Offeror hereby forever fully and unconditionally releases and holds harmless the United States and its officers, agents, employees, representatives, of and from any and all claims, demands, debts, damages, duties, causes of action, actions and suits whatsoever, in law or equity, on account of any act, failure to act or event arising from, out of, or in any way related to, the release of any information associated with the Reduction Program.

43. *Oral Agreement Invalid.* The Reduction Contract, any addendums to section 46 of this contract, and enclosures of photocopies of licenses and permits required under section 46 of this contract, contain the final terms and conditions of the agreement between the Offeror and NMFS and represent the entire and exclusive agreement between them. NMFS and the Offeror forever waive all right to sue, or otherwise counterclaim against each other, based on any claim of past, present, or future oral agreement between them.

44. *Severable Provisions.* The Reduction Contract provisions are severable; and, in the event that any portion of the Reduction Contract is held to be void, invalid, non-binding, or otherwise unenforceable, the

remaining portion thereof shall remain fully valid, binding, and enforceable against the Offeror and NMFS.

45. *Disputes.* Any and all disputes involving the Reduction Contract, and any other Reduction Plan aspect affecting them shall in all respects be governed by the Federal laws of the United States; and the Offeror and all other parties claiming under the Offeror irrevocably submit themselves to the jurisdiction of the Federal courts of the United States and/or to any other Federal administrative body which the applicable law authorizes to adjudicate such disputes.

46. *Fishing Capacity Reduction Offer Submission Form and Reduction Fishing Interests Identification.*

a. *Completion and Submission.* The Offeror must fully, faithfully, and accurately complete this section 46 of this contract and thereafter submit the full and complete Reduction Contract to NMFS in accordance with the Reduction Contract. If completing this section requires inserting more information than the places provided for the insertion of such information allows, the Offeror should attach an addendum to the Reduction Contract that: includes and identifies the additional information, states that the addendum is a part of the Reduction Fishing Interests Identification portion of the Reduction Contract, states (as a means of identifying the Reduction Contract to which the addendum relates) the NMFS license number designated on the Reduction Contract's Groundfish Reduction Permit, and is signed by all persons who signed the Reduction Contract as the Offeror.

b. *Offeror Information.*

(1) *Offeror name(s).* Insert in the table provided under this section 46.b(1) of this contract the name(s) of the qualifying Offeror and of the co-Offeror (if there is a co-Offeror), and check the appropriate box for each name listed. Each name the Offeror inserts must be the full and exact legal name of record of each person, partnership, corporation or other business entity identified on the offer. If any Reduction Fishing Interest element is co-owned by more than one person, partnership, corporation or other business entity, the Offeror must insert each co-owner's name.

In each case, the Offeror is the holder of record, at the time of Offeror's execution of this Reduction Contract, of the Groundfish Reduction Permit and the Reduction Permit(s). A co-Offeror is not allowed for either the Groundfish Reduction Permit or the Reduction Permit(s). If the Offeror is also the owner of record, at the time of offering, of the Reduction Privilege Vessel, the qualifying Offeror is the sole Offeror. If, however, the owner of record, at the time of execution of this Reduction Contract, of the Reduction Privilege Vessel is not exactly the same as the Offeror, then the owner of record is the co-Offeror; and the Offeror and the co-Offeror jointly offer together as the Offeror.

OFFEROR NAME(S) If Offeror or co-Offeror consists of more than one owner, use one row of this column to name each co-Offeror. If not, use only one row for Offeror and one row for any co-Offeror.	Check appropriate box for each name listed in the adjacent column.	
	Offeror	Co-Offeror (if any)
(1)		
(2)		
(3)		
(4)		
(5)		

(2) *Offeror address(s) of record.* Insert in the table provided under this section 46.b(2) of this contract the Offeror's and the co-Offeror's (if there is a co-Offeror) full and exact address(s) of record, and check the appropriate box for each address listed.

OFFEROR ADDRESS(S) If Offeror or co-Offeror consists of more than one owner, use one row of this column for address of each co-owner. If not, use only one row for Offeror and one row for any co-Offeror. Always use the same row order as is Offeror Name(s) table in section 46.b (1), i.e., address (1) is for name (1), address (2) is for name (2), address (3) is for name (3), etc.	Check appropriate box for each address listed in the adjacent column.	
	Offeror	Co-Offeror (if any)
(1)		
(2)		
(3)		
(4)		
(5)		

(3) *Offeror business telephone number(s).* Insert in the table provided under this section 46.b(3) the Offeror's and the co-Offeror's (if there is a co-Offeror) full and exact business telephone number(s), and check the appropriate box for each number listed.

OFFEROR BUSINESS TELEPHONE NUMBERS(S) If Offeror or co-Offeror consists of more than one owner, use one row of this column for the telephone number of each co-owner. If not, use only one row for Offeror and one row for any co-offeror. Always use the same row order as is Offeror Name(s) table in section 46.b(1), i.e., telephone number (1) is for name (1), telephone number (2) is for name (2), telephone number (3) is for name (3), etc.	Check appropriate box for each telephone number listed in the adjacent column.	
	Offeror	Co-Offeror (if any)
(1)		
(2)		
(3)		
(4)		
(5)		

(4) *Offeror electronic mail address(s) (if available).* Insert in the table printed under this section 46.b(4) the Offeror's and the co-Offeror's (if there is a co-Offeror) full and exact electronic mail (e-mail) address(s), and check the appropriate box for each address,

OFFEROR E-MAIL ADDRESS(S) If Offeror or co-Offeror consists of more than one owner, use one row of this column for the e-mail address of each co-owner. If not, use only one row for Offeror and one row for any co-Offeror. Always use the same row order as is Offeror Name in section 46.b(1) of this contract, i.e., e-mail (1) is for name (1), e-mail (2) is for name (2), e-mail (3) is for name (3), etc.	Check appropriate box for each e-mail address listed in the adjacent column.	
	Offeror	Co-Offeror (if any)
(1)		
(2)		
(3)		
(4)		
(5)		

c. *LLP license number for Groundfish Reduction Permit.* Insert in the place this section 46.c provides the full and exact license number which NMFS designated on the LLP license which the Offeror specifies as the Groundfish Reduction Permit. Attach with the Reduction Contract an exact photocopy of such license.

LLP LICENSE NUMBER(S) AND FISHERY(S) OF LLP LICENSE(S) SPECIFIED AS GROUNDFISH REDUCTION PERMIT(S)	
License Number(s)	Fishery(s)
(1)	
(2)	
(3)	
(4)	
(5)	

d. *License number(s) for Reduction Permit(s).* Insert in the place this section 46.d provides the fishery(s) involved in, and the full and exact license number(s) with NMFS designated on the license(s) which the Offeror specifies in the Reduction Contract as the Reduction Permit(s). Enclose with the Reduction Contract an exact photocopy of each such license.

LICENSE NUMBER(S) AND FISHERY OF LICENSE(S) SPECIFIED AS REDUCTION PERMITS	
License Number(s)	Fishery(s)
(1)	
(2)	
(3)	
(4)	
(5)	

e. *Reduction Fishing History.* For all Reduction Fishing History insert in the place provided in the table under this section 46.e the chronological and other information with each column heading therein requires. The information required does not include any actual landing data. Any Offeror whose Groundfish Reduction Permit whose issuance NMFS based on the fishing history of a lost or destroyed vessel plus a replacement vessel must insert information for both vessels and meet the requirements of the framework regulations, final rule and any other regulations promulgated pursuant to the Act. Any Offeror whose Groundfish Reduction Permit whose issuance NMFS in any part based on acquisition of fishing history from another party must insert information regarding such catch history.

NAMES(S) AND OFFICIAL NUMBER OF REDUCTION PRIVILEGE VESSEL AND NAME(S) AND OFFICIAL NUMBER(S) OF ANY VESSEL FROM WHICH FISHING HISTORY WAS ACQUIRED	FOR EACH REDUCTION PRIVILEGE VESSEL IN 1ST COLUMN PROVIDE FROM/TO DATE OF EACH FISHING HISTORY OFFEROR POSSESSES	FOR EACH FISHING HISTORY IN 2ND COLUMN	
		License No. of each Groundfish Reduction Permit and Reduction Permit(s) associated with each vessel involved	If Reduction Privilege Vessel acquired fishing history from another party, provide name of party, manner in which acquired, and date acquired
(1)			
(2)			
(3)			
(4)			
(5)			

f. *Reduction Privilege Vessel.* Insert the full and exact name and official number which the National Vessel Documentation Center designated for the Reduction Privilege Vessel which the Offeror or the co-Offeror (if there is a co-Offeror) specifies in the Reduction Contract, and check the box appropriate for the vessel's ownership of record. Enclose with the Reduction Contract an exact photocopy of such vessel's official certificate of documentation.

REDUCTION PRIVILEGE VESSEL		Check appropriate Ownership box below	
Official Name	Official Number	Offeror	Co-Offeror (if any)

g. *Offer Amount.* Insert in the place this section 46.g provides the Offeror's full and exact offer amount, both in words and in numbers.

OFFER AMOUNT (U.S. DOLLARS)	
In Words	In Numbers

h. *Reduction Contract Signature.* In compliance with the Reduction Contract, applicable regulations and the applicable law, the Offeror submits the Reduction Contract as the Offeror's irrevocable offer to NMFS for the permanent surrender and relinquishment and revocation, restriction, withdrawal, invalidation, or extinguishment by other means (as NMFS deems appropriate) of the Groundfish Reduction Permit, any Reduction Permit(s), the Reduction Fishing Privilege, and the Reduction Fishing History all as identified in the Reduction Contract or as required under applicable regulations, or the applicable law.

The Offeror expressly acknowledges that NMFS' acceptance of the Offeror's offer hereunder and NMFS' tender, following a successful referendum, of a reduction payment in the same amount specified in section 46.g of this contract (less any sum withheld for scrapping any Reduction Privilege Vessel lacking Federal documentation or for any other purpose) to the Offeror shall, among other things, render the Reduction Privilege Vessel permanently ineligible or any fishing worldwide, including, but not limited to, fishing on the high seas or in the jurisdiction of any foreign country while operating under United States flag, and shall impose or create other legal and contractual restrictions, impediments, limitations, obligations, or other provisions which restrict, revoke, withdraw, invalidate, or extinguish by other means (as NMFS deems appropriate) the complete Reduction Fishing Interest and any other fishery privileges or claims associated with the Groundfish Reduction Permit, any Reduction Permit(s), the Reduction Privilege Vessel, and the Reduction Fishing History—all as more fully set forth in the Reduction Contract, applicable regulations, and the applicable law.

By completing and signing the Reduction Contract, the Offeror expressly acknowledges that the Offeror has fully and completely read the entire Reduction Contract. The Offeror expressly states, declares, affirms, attests, warrants, and represents to NMFS that the Offeror is fully able to enter into the Reduction Contract and that the Offeror legally holds, owns, or retains, and is fully able under the Reduction Contract provisions to offer and dispose of, the full Reduction Fishing Interest which the Reduction Contract specifies and the applicable regulations, and the applicable law requires that any person or entity completing the Reduction Contract and/or signing the Reduction Contract on behalf of another person or entity, expressly attests, warrants, and represents to NMFS that such completing and/or signing person or entity has the express and written permission or other grant of authority to bind such other person or entity to the Reduction Contract's terms and conditions. The Offeror expressly attests, warrants, and represents to NMFS that every co-owner of the Offeror necessary to constitute the Offeror's full and complete execution of the Reduction Contract has signed the Reduction Contract. The Offeror expressly attests, warrants, and represents to NMFS that the Offeror: fully understands the consequences of submitting the completed Reduction Contract of which it is a part to NMFS; pledges to abide by the terms and conditions of the Reduction Contract; and is aware of, understands, and consents to, any and all remedies available to NMFS for the Offeror's breach of the Reduction Contract or submission of an offer which fails to conform with the Reduction Contract, final rule, applicable regulations and the applicable law. The Offeror expressly attests, warrants, and represents to NMFS that all information which the Offeror inserted in the Reduction Contract is true, accurate, complete, and fully in accordance with the Reduction Contract, final rule, other applicable regulations and the applicable law.

IN WITNESS WHEREOF, the Offeror has, in the place provided below, executed the Reduction Contract either as an Offeror offering alone or as an Offeror and co-Offeror (if there is a co-Offeror) jointly offering together, in accordance with the requirements specified above, and on the date written below. The Reduction Contract is effective as of the date NMFS accepts the Offeror's offer by signing the Reduction Contract.

The Offeror and co-Offeror (if there is a co-Offeror) must each sign the Reduction Contract exactly as instructed herein. Each co-owner (if there is a co-owner) of each Offeror and co-Offeror (if there is a co-Offeror) must also sign the Reduction Contract exactly as instructed herein. A notary public must, for each person or entity signing on behalf of the Offeror, complete and sign the acknowledgment and certification provision associated with each such person or entity's signature.

I. *Offeror and co-Offeror's (if there is a co-Offeror) signature(s) and notary's acknowledgment(s) and certification(s).*

OFFEROR'S SIGNATURE AND NOTARY'S ACKNOWLEDGMENT AND CERTIFICATION If Offeror or co-Offeror consists of more than one owner, use one row of column 1 for each co-owner's signature. If not, use only one row for Offeror and one row for co-Offeror (if any). Always use same Offeror row order as in Offeror Name in the table under section 46.b(1) of this contract (i.e., signature (1) is for name (1), signature (2) is for name (2) signature (3) is for name (3), etc.)			
OFFEROR SIGNATURE (1) Sign. (2) Print: the following: (a) signer's name, (b) signer's title (if signing for corporation or other business entity), and (c) signing date	Check appropriate column for each signature in 1st column		*NOTARY SIGNATURE* (1) Sign. (2) Print: the following: (a) name, (b) signing date, (3) date commission expires, and (4) State and county. Each notary signature attests to the following: "I certify that I know or have satisfactory evidence that the person who signed in the 1st column of this same row is the person who appeared before me and: (1) acknowledged his/her signature; (2) on oath, stated that he/she was authorized to sign; and (3) acknowledged that he/she did so freely and voluntarily."
	Qualifying Offeror	Co-Offeror (if any)	
(1)			
(2)			
(3)			

II. *United States of America's signature.*

United States of America,
Acting by and through the Secretary of Commerce

National Oceanic and Atmospheric Administration

National Marine Fisheries Service,
Financial Services Division
Dated: _____

By: _____
Charles Cooper,
Acting Chief Financial Services Division,
National Marine Fisheries Service

[FR Doc. 06–6844 Filed 8–10–06; 8:45 am]
BILLING CODE 3510–22–P

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To amend the Iran and Libya Sanctions Act of 1996 to extend the authorities provided in such Act until September 29, 2006. (Aug. 4, 2006; 120 Stat. 680)

S. 3741/P.L. 109–268

To provide funding authority to facilitate the evacuation of persons from Lebanon, and for other purposes. (Aug. 4, 2006; 120 Stat. 681)

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109th Congress

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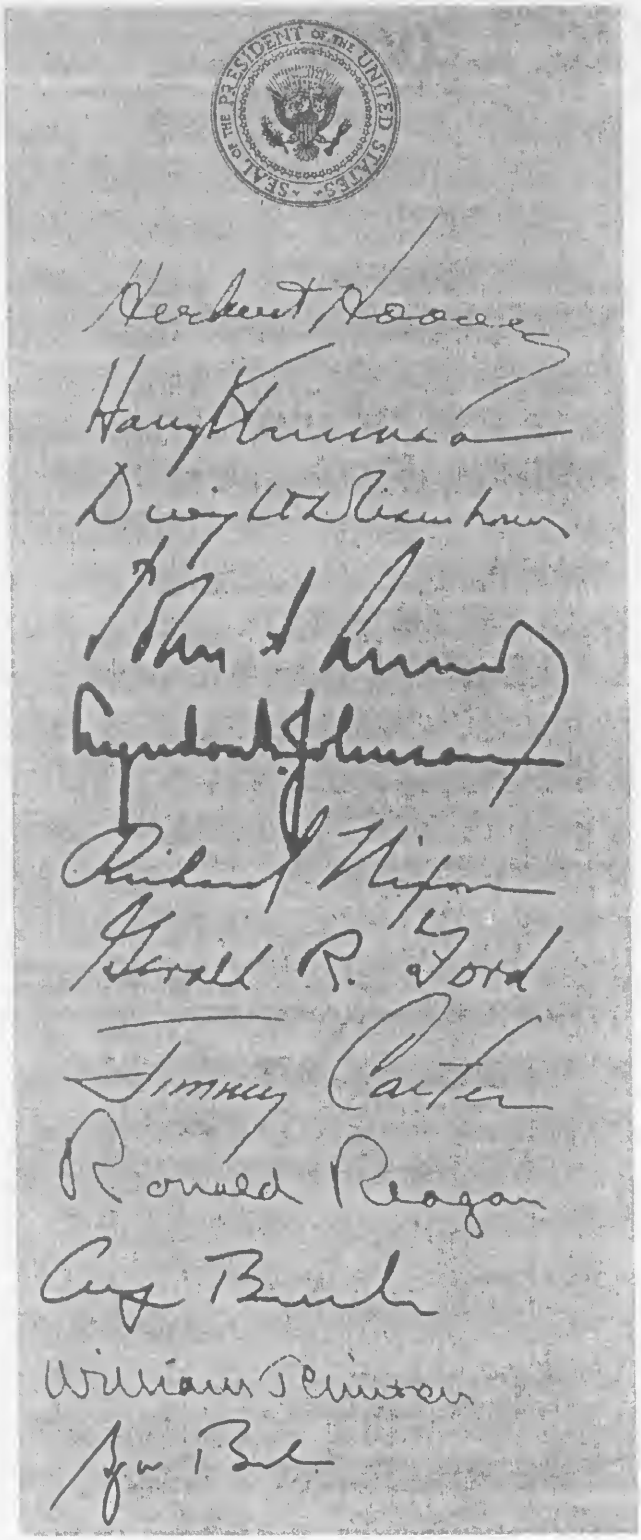

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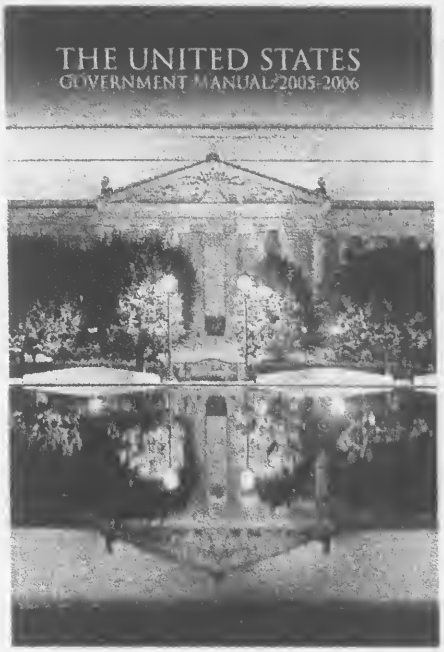

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