Federal Register

4–11–06 Tuesday
Vol. 71 No. 69 Apr. 11, 2006

United States Government Printing Office
SUPERINTENDENT OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for Private Use, $300

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

Federal Register

4–11–06 Tuesday
Vol. 71 No. 69 Apr. 11, 2006

Pages 18161–18588

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

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

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

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

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

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

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

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

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

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

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–512–1800
Assistance with public subscriptions	202–512–1806
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

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

FEDERAL REGISTER WORKSHOP

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

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 71, No. 69

Tuesday, April 11, 2006

Separate Parts In This Issue

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 71, No. 69
Tuesday, April 11, 2006

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

RIN 3206–AK59

Excepted Service—Student Program

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to allow certain job-related experience acquired in a structured work-study program to be credited under the Student Career Experience Program (SCEP or Program). This change will permit agencies to credit a student's job-related work-study experience toward the minimum requirement for conversion to a permanent appointment under the Program.

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

FOR FURTHER INFORMATION CONTACT: Hakeem Basheerud-Deen at (202) 606–1434, FAX: (202) 606–2329, TTY: (202) 418–3134, or e-mail: *hakeem.basheerud-deen@opm.gov.*

SUPPLEMENTARY INFORMATION: On March 16, 2005, OPM issued proposed regulations at **Federal Register** 70 FR 12812 to allow agencies to credit certain job-related experience acquired in a structured work-study program or active duty military service toward the requirements of the Student Career Experience Program. In addition, the proposal would allow agencies to waive up to one-half of the required SCEP work experience of 640 hours for students who have exceptional job performance and academic excellence while enrolled in the Program (or equivalent). OPM specifically sought comments from reviewers as to whether they believed this rule would give certain students an unfair advantage over others, such as fellows appointed under 5 CFR 213.3102(r) or student volunteers under 5 CFR part 308. OPM received comments from four Federal agencies, three professional organizations, and ten individuals. All comments are addressed below.

Comments

The comments we received generally support the proposed changes. Seven comments in particular noted the positive impact of the changes on the SCEP program.

Impact on Other Student Appointments

One agency commented that the proposed rule did not give an unfair advantage over other students such as fellows appointed under 5 CFR 213.3102(r) or student volunteers appointed under 5 CFR part 308. Two agencies, however, recommended OPM allow volunteer service performed under 5 CFR part 308 to be creditable toward the SCEP requirements for non-competitive conversion to the competitive service. Of these two agencies, one suggested that service performed by individuals appointed under 5 CFR 213.3102(r) should also be creditable toward the SCEP minimum requirement for conversion to the competitive service. OPM agrees that service performed by individuals in accordance with 5 CFR 213.3102(r) or 5 CFR part 308 should be creditable toward SCEP requirements (when the individual in question is appointed under SCEP) on the basis that such service is oftentimes indistinguishable from service performed by students working in Federal agencies but not under Federally sponsored intern programs. Consequently, we have modified §§ 213.3202(b)(11)(ii) and 213.3202(b)(11)(ii)(A) to include service performed under 5 CFR 213.3102(r) and 5 CFR part 308. Section 213.3202(b)(11)(ii) now reads, "To be creditable under paragraph (b)(11)(i)(A) of this section, work experience must be in a field or functional area that is related to the student's target position/career field and must be acquired either under a Student Educational Employment Program appointment, any previous Federal appointment (e.g. fellowships and similar programs in accordance with 5 CFR 213.3102(r)), or while the student:". Section 213.3202(b)(11)(ii)(A) now reads, "Worked in, but not for, a Federal agency, pursuant to a formal work-study agreement between the agency and an accredited academic institution; to include those student volunteers as defined by 5 CFR part 308;".

Nine individuals believed the proposed regulations were unfair to students on Student Temporary Employment Program (STEP) appointments because the STEP authority does not provide for non-competitive conversion to the competitive service. These commenters suggested that OPM create a noncompetitive conversion mechanism for students in the STEP program. OPM has no authority to establish a conversion mechanism for STEP appointees into the competitive service. Such an authority must be provided by Congress or the President via an Executive order. OPM notes, however, that agencies currently have the authority to convert a student on a STEP appointment into a SCEP appointment, in accordance with 5 CFR 213.3202(a)(15).

Credit for Experience Gained in the Armed Forces

Two agencies recommended OPM define the phrase, "a member in good standing" as used in the context of active duty military service in the proposed regulation. OPM agrees this phrase lacks clarity, so we have modified § 213.3202(b)(11)(ii)(C) so that it now reads, "Served as an active duty member of the armed forces of the United States (including the National Guard and Reserves), as defined in 5 U.S.C. 2101, and has been discharged or released from active duty in the armed forces under honorable conditions."

One agency recommended OPM clarify whether qualifying military service must be performed while the individual is in school, or whether it can be performed prior to enrollment. The agency also asked us to explain whether creditable military experience only includes experience that relates to the student's academic curriculum. Any active duty military service, performed while the individual is in school or prior to enrollment, is creditable toward the 640-hour requirement provided the military service satisfies the requirements of § 213.3202(b)(11)(ii); i.e., the experience must be in a field or

functional area that is related to the student's target position or career field.

The same agency commented the proposed regulation does not stipulate any minimum time requirement for creditable active duty military service nor does it define the type of active duty service (e.g., active duty for training) agencies may credit toward SCEP requirements. OPM is not imposing a minimum time requirement for creditable active duty service. Any active duty military service (including active duty for training) which satisfies the requirements of § 213.3202(b)(11)(ii) may be credited toward the SCEP 640-hour requirement for non-competitive conversion to the competitive service.

Creditable Experience

One agency suggested OPM define creditable experience to include any career-related experience gained through a formal work-study program or experience certified as equivalent to that gained through a formal program by an accredited college/university. OPM did not adopt this suggestion on the basis that work experience gained in non-Federal environments does not provide students with exposure to public service or the work of specific Federal agencies that SCEP students receive by virtue of being in the Program. OPM's intent in crafting the proposed rules was to include non-Federal internships performed in Federal Executive branch agencies because these internships oftentimes closely parallel experience gained through the SCEP. We do not believe the same can be said for experience gained through internships with non-Federal entities.

One agency recommended OPM describe work-study programs that meet the criteria referenced in § 213.3202(b)(11)(ii)(A) and (B) and describe documentation required to verify the criteria have been met. Work-study programs which meet the criteria of § 213.3202(b)(11)(ii)(A) and (B) are those programs which provide for the integration of academic studies and work experience performed in a Federal agency in a manner comparable to the SCEP requirements under § 213.3202(b)(12) (e.g., scheduling and nature of work assignments, relation of work assignments to the student's academic curriculum, evaluating the student's performance, etc.). These programs include, but are not limited to, non-Federal internships, stipend and grant programs, and student volunteer service which the student performs in a Federal executive branch agency. These programs require a formal agreement between the agency and either: (1) The academic institution the student attends or (2) the intern provider which pays the student. Agencies may evaluate these formal agreements to ensure the program meets regulatory criteria.

One agency asked whether the proposed rules allow agencies to add or combine credit for a student's non-Federal internship and military experience or academic excellence, in excess of 320 hours of credit toward the SCEP requirement of 640 hours needed for non-competitive conversion to the competitive service (i.e., may an agency credit a student with 280 hours for active duty service and 320 hours for academic excellence so that the student need only be employed for 40 hours under SCEP prior to conversion). Agencies may only credit up to a total of 320 hours toward the required 640 hours of career-related work experience. OPM's rationale is that this flexibility is intended to augment, not replace, SCEP program requirements. However, an agency could use multiple sources such as comparable work-study programs, experience gained in the armed forces, and exceptional job performance and academic excellence to credit an individual up to 320 hours for non-SCEP work experience.

One private organization recommended OPM allow students to accrue, under a non-Federal internship, the entire 640 hours of work experience required for noncompetitive conversion to permanent Federal employment. OPM did not adopt this recommendation because it may result in some students spending as little as one day under a SCEP appointment prior to conversion to the competitive service. OPM does not believe such an outcome would be consistent with Executive Order 12015, which authorizes appointment to the competitive service from Federal work-study programs. As previously noted, these flexibilities are meant to enhance SCEP program experience, but not replace that experience completely. Agencies that wish to noncompetitively appoint students to the competitive service that are working for third-party internship providers must first appoint those students to a SCEP position within the agency, and the student must accrue 640 hours of work experience while on this appointment (up to 320 hours of which may be credited from certain non-Federal internships).

Another private organization proposed that all students who have accumulated 640 hours in career-related work-study programs be eligible for noncompetitive conversion. OPM did not adopt this proposal because it is beyond the scope of Executive Order 12015, which provides for appointment to the competitive service only from Federal work-study programs established by the Office of Personnel Management.

One private organization recommended OPM include a provision in the final rules that allows agencies to credit students for multiple non-Federal internships performed in Federal agencies arranged through third-party internship providers. OPM does not believe such a provision is necessary because the proposed rules do not prohibit agencies from crediting multiple non-Federal internships. We would, however, like to clarify that agencies have the option of crediting up to 320 hours toward the 640-hour requirement only if the student's work experience is related to the duties performed and the position for which the agency is developing the student, per § 213.3202(11)(ii)(A) and (B).

One individual asked if experience gained through a Department of Veterans Affairs, Veterans Benefits Administration sponsored work-study program would qualify as creditable experience under the SCEP. Agencies may credit any work performed in a Federal executive branch agency under a work-study program provided it meets the criteria of § 213.3202(11)(ii)(A) and (B).

Outstanding Academic Achievement and Exceptional Job Performance

Three private organizations suggested OPM lower the 3.5 grade point average (GPA) requirement for outstanding academic achievement to a 3.0 GPA. OPM disagrees with lowering the outstanding academic achievement standard to a 3.0 GPA. The waiver of up to 320 hours for those students under a SCEP appointment with a 3.5 GPA provides an incentive for those students with outstanding academic achievement and exceptional job performance.

Two agencies requested OPM clarify the terms "superior academic achievement" and "outstanding academic achievement" in relation to OPM's *Qualification Standards for General Schedule Positions*. OPM agrees that clarification is needed. Outstanding academic achievement in relation to the SCEP program is different from the definition for superior academic achievement found in the *Qualification Standards for General Schedule Positions*. OPM has rephrased § 213.3202(b)(11)(iii)(A) to state, "Outstanding academic achievement must be demonstrated by an overall grade point average of 3.5 or better, on a 4.0 scale; standing in the top 10 percent of the student's graduating class; and/or induction into a

nationally-recognized scholastic honor society. Notwithstanding these differences, agencies may still refer to "superior academic achievement" in OPM's *Qualifications Standards for General Schedule Positions* available on the OPM Web site at *http://www.opm.gov* to obtain specific guidance on GPA, class standing, and nationally recognized honor societies.

One agency asked OPM to clarify whether the final rules allow agencies to evaluate a student's performance when the student has not served the minimum period (e.g., 90 days) as specified in the agency's performance program. The final rules give agencies the flexibility to evaluate a student's performance based on 320 hours of service under a SCEP appointment. Agencies which choose to require longer periods of service before evaluating a SCEP appointee may do so at their discretion. The final rules were not intended to supersede agency-specific plans in this regard.

One agency expressed concern about consistency in applying the criterion for exceptional job performance because comparable work-study programs may not have approved performance appraisal systems, and appraisal systems throughout the Government typically vary, some with 3, 4, or 5 levels or even pass/fail systems. The agency asked whether OPM is planning to issue additional information and/or guidance on evaluating exceptional job performance under the new student regulations. OPM disagrees that further guidance is required on evaluating exceptional job performance. Under the final rules, agencies may use the same process under § 213.3202(b)(12) to evaluate SCEPs, the only difference being the final rules allow agencies to make such determinations after 320 hours of service when the student demonstrates outstanding academic achievement in accordance with § 213.3202(b)(11)(iii)(A) and (B).

One private organization proposed that students who have completed 320 hours on a SCEP appointment and have exceptional job performance, but lack outstanding academic achievement, be granted a waiver of the additional 320-hour work requirement. OPM is not adopting this suggestion on the basis that because we are waiving half of the 640-hour requirement, SCEP appointees should be held to a higher or more rigorous standard (in this case a GPA of 3.5 or better) to gauge the student's success in these work-study programs. In addition, we do not believe 320 hours of SCEP experience, in and of itself, provides an adequate basis for converting students non-competitively to the competitive service.

Conversion

One private organization recommended OPM change the number of days available for noncompetitive conversion from the current 120 days to 180 days to provide graduating seniors who intern with Federal agencies during the summer months enough time to complete the required 640 hours for noncompetitive conversion. OPM has no authority to adopt this recommendation because the Executive order, which allows for conversion from SCEP to the competitive service, specifies a 120-day period before which all program requirements needed for conversion must be met (i.e. students cannot use the 120-day period to accrue the 640 hours necessary for conversion to the competitive service).

One agency recommended OPM delete the term "generally" from section 213.3202(11)(ii) because it implies that it is optional for work to be related to the target position. OPM agrees and has deleted the term.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

Executive Order 12866, Regulatory Review

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

List of Subjects in 5 CFR Part 213

Government employees, Reporting and recordkeeping requirements.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, OPM amends 5 CFR part 213 as follows:

PART 213—EXCEPTED SERVICE

■ 1. The authority citation for part 213 is revised to read as follows:

Authority: 5 U.S.C. 3161; 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; Sec. 213.101 also issued under 5 U.S.C. 2103; Sec. 213.3102 also issued under 5 U.S.C. 3307, 8337(h) and 8456; E.O. 13318, 68 FR 66317, Nov. 25, 2003; 38 U.S.C. 4301 *et seq.*; Pub. L. 105–339, 112 Stat 3182–83; and E.O. 13162, 65 FR 43211, July 12, 2000.

■ 2. Revise § 213.3202, paragraphs (a)(2), (b)(2), and (b)(11) to read as follows:

§ 213.3202 Entire executive civil service.

(a) * * *

(2) *Definition of student.* A student is an individual who has been accepted for enrollment or who is enrolled and seeking a degree (diploma, certificate, etc.) in a high school whose curriculum has been approved by a State or local governing body, or in a technical or vocational school, 2-year or 4-year college or university, or graduate or professional school, that has been accredited by an accrediting body recognized by the Secretary of the U.S. Department of Education. The definition of *half-time* is the definition provided by the school in which the student is enrolled. Students need not be in actual physical attendance, so long as all other requirements are met. An individual who needs to complete less than the equivalent of half an academic/vocational or technical course-load in the class enrollment period immediately prior to graduating is still considered a student for purposes of this program.

* * * * *

(b) * * *

(2) *Definition of student.* A student is an individual who has been accepted for enrollment or who is enrolled and seeking a degree (diploma, certificate, etc.) in a high school whose curriculum has been approved by a State or local governing body, or in a technical or vocational school, 2-year or 4-year college or university, or graduate or professional school, that has been accredited by an accrediting body recognized by the Secretary of the U.S. Department of Education. The definition of half-time is the definition provided by the school in which the student is enrolled. Students need not be in actual physical attendance, so long as all other requirements are met. An individual who needs to complete less than the equivalent of half an academic/vocational or technical course-load in the class enrollment period immediately prior to graduating is still considered a student for purposes of this program.

* * * * *

(11) *Program requirements for noncompetitive conversion.* (i) A student who is a U.S. citizen may be noncompetitively converted from the Student Career Experience Program to a term, career-conditional, or career appointment under Executive Order 12015 (as amended by Executive Order 13024) when the student has:

(A) Completed at least 640 hours of career-related work experience acquired through a Federal work-study program while otherwise enrolled as a full-time or part-time, degree-seeking student. Up to 320 hours acquired through a comparable non-Federal work-study program meeting the criteria set forth in

paragraph (b)(11)(ii) of this section may be credited toward the 640-hour minimum for students pursuing degrees under paragraphs (b)(1)(i)(D) through (F) of this section;

(B) Completed a course of academic study from an accredited school conferring a diploma, certificate, or degree, within the 120-day period preceding the appointment;

(C) Received a favorable recommendation regarding such an appointment by an official of the agency or agencies in which the job-related work experience was acquired; and

(D) Met the qualification standards for the position to which the student will be appointed.

(ii) To be creditable under paragraph (b)(11)(i)(A) of this section, work experience must be in a field or functional area that is related to the student's target position/career field and must be acquired either under a Student Educational Employment Program appointment, any previous Federal appointment (*e.g.* fellowships and similar programs in accordance with 5 CFR 213.3102(r)), or while the student:

(A) Worked in, but not for, a Federal agency, pursuant to a formal work-study agreement comparable to the SCEP agreements under 213.3202(b)(12) between the agency and an accredited academic institution; to include those student volunteers as defined by 5 CFR part 308;

(B) Worked in, but not for, a Federal agency, pursuant to a written contract comparable to the SCEP agreements under 213.3202(b)(12) between the agency and an organization officially established to provide internship experiences to students; or

(C) Served as an active duty member of the armed forces of the United States (including the National Guard and Reserves), as defined in 5 U.S.C. 2101, and has been discharged or released from active duty in the armed forces under honorable conditions.

(iii) Agencies may waive up to one-half (*i.e.*, 320 hours) of the 640-hour minimum service requirement in paragraph (b)(11)(i)(A) of this section if a student enrolled in an accredited college or university completes 320 hours of career-related work experience under a Student Educational Employment Program appointment and has demonstrated high potential, as evidenced by outstanding academic achievement and exceptional job performance.

(A) Outstanding academic achievement must be demonstrated by an overall grade point average of 3.5 or better, on a 4.0 scale; standing in the top 10 percent of the student's graduating class; and/or induction into a nationally-recognized scholastic honor society. Notwithstanding these differences, agencies may still refer to "superior academic achievement" in OPM's *Qualifications Standards for General Schedule Positions* available on the OPM Web site at *http://www.opm.gov* to obtain specific guidance on GPA, class standing, and nationally recognized honor societies.

(B) Exceptional job performance must be demonstrated by a formal evaluation conducted by the student's work-study supervisor(s), in a manner consistent with the applicable performance appraisal program established under an approved performance appraisal system.

(iv) Service credited under paragraphs (b)(ii)(A) and (B) of this section is not creditable for any other purpose of this chapter. Student volunteer service under part 308 of this chapter and fellows appointed under 5 CFR 213.3102(r) may be evaluated, considered, and credited under this section when that experience is determined to be comparable in scope to experience gained in the Student Career Experience Program.

(v) Noncompetitive conversion may be to a position within the same agency or any other agency within the Federal Government but must be to an occupation related to the student's academic training and work-study experience.

(vi) Agencies that noncompetitively convert a Student Career Experience Program graduate to a term appointment may also noncompetitively convert that individual to a career or career-conditional appointment before the term appointment expires.

* * * * *

[FR Doc. 06–3391 Filed 4–10–06; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV06–982–1 FIR]

Hazelnuts Grown in Oregon and Washington; Establishment of Final Free and Restricted Percentages for the 2005–2006 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule establishing final free and restricted percentages for domestic inshell hazelnuts for the 2005–2006 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. This rule continues in effect the final free and restricted percentages of 11.4388 and 88.5612 percent, respectively. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market (free) and the quantity of domestically produced hazelnuts that must be disposed of in other approved outlets (restricted). Volume regulation is intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts with the goal of providing producers with reasonable returns. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the marketing order.

DATES: *Effective Date:* May 11, 2006. This rule applies to all 2005–2006 marketing year restricted hazelnuts until they are properly disposed of in accordance with applicable marketing order requirements.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Avenue, Suite 385, Portland, OR 97204; Telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 115 and Marketing Order No. 982, both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended that this action apply to all merchantable hazelnuts handled during the 2005–2006 marketing year (July 1, 2005, through June 30, 2006). This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect free and restricted percentages which allocate the quantity of domestically produced hazelnuts which may be marketed in domestic inshell markets (free) and hazelnuts which must be exported, shelled, or otherwise disposed of by handlers (restricted). The Board met and, after determining that volume regulation would tend to effectuate the declared policy of the Act, developed a marketing policy to be employed for the duration of the 2005–2006 marketing year. Using statistical compilations and a well defined procedure, the Board estimated inshell trade demand and total available supply for the coming marketing year and subsequently used those estimates as the basis for computing and announcing the free and restricted marketing percentages for the year.

The Board determined that, for the 2005–2006 marketing year, projected inshell trade demand is 3,095 tons and projected total available new supply is 27,057 tons. Using those estimates, the Board voted unanimously at their November 15, 2005, meeting to recommend to USDA that the final free and restricted percentages for the 2005–2006 marketing year be established at 11.4388 and 88.5612 percent, respectively.

The Board's authority to recommend volume regulation and use computations to determine the allocation of hazelnuts to individual markets is specified in § 982.40 of the order. Under the order's provisions, free and restricted market allocations of hazelnuts are expressed as percentages of the total supply subject to regulation and are derived by dividing the computed inshell trade demand by the Board's estimate of the total domestically produced supply of hazelnuts that will be available over the course of the marketing year.

Inshell trade demand, the key component of the marketing policy, is the quantity of inshell hazelnuts necessary to adequately supply the needs of the domestic market for the duration of the marketing year. The Board determines the inshell trade demand for each year and uses that estimate as the basis for setting the percentage of the available hazelnuts that handlers may ship to the domestic inshell market throughout the marketing season. The order specifies that the inshell trade demand be computed by averaging the preceding three years' trade acquisitions of inshell hazelnuts, allowing adjustments for abnormal crop or marketing conditions. The Board may increase the computed inshell trade demand by up to 25 percent, if market conditions warrant an increase.

Prior to September 20 of each marketing year, the Board follows a procedure, specified by the order, to compute and announce preliminary free and restricted percentages. The preliminary free percentage releases 80 percent of the adjusted inshell trade demand to the domestic market. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against any potential underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation where total supply is the sum of the estimated crop production less the three-year average disappearance plus the undeclared carry-in from the previous marketing year.

On or before November 15 of each marketing year, the Board must meet again to recommend interim final and final free and restricted percentages and to authorize permitted outlets for restricted percentages. Interim final percentages release 100 percent of the inshell trade demand (effectively releasing the 20 percent held back during the preliminary stage). Final percentages may release an additional 15 percent for desirable carryout and are effective 30 days prior to the end of the marketing year, or earlier as recommended by the Board.

On August 23, 2005, the National Agricultural Statistics Service (NASS) released an estimate of 2005 hazelnut production for the Oregon and Washington area at 28,000 dry orchard-run tons. NASS uses an objective yield survey method to estimate hazelnut production which has historically been very accurate.

On August 25, 2005, the Board met and estimated total available supply for the 2005 crop year at 27,057 tons. The Board arrived at this estimate by using the crop estimate compiled by NASS (28,000 tons) and then adjusting that estimate to account for disappearance and carry-in. The order requires the Board to reduce the estimate by the average disappearance over the preceding three years (1,075 tons) and to increase it by the amount of undeclared carry-in from previous years' production (132 tons).

Disappearance is the difference between the estimated orchard-run production and the actual supply of merchantable product available for sale by handlers. Disappearance can consist of (1) unharvested hazelnuts; (2) culled product (nuts that are delivered to handlers but later discarded); (3) product used on the farm, sold locally, or otherwise disposed of by producers; and (4) statistical error in the orchard-run production estimate.

Undeclared carry-in consists of hazelnuts that were produced in a previous marketing year but were not subject to regulation because they were not shipped during that marketing year. Undeclared carry-in is subject to regulation during the current marketing year and is accounted for as such by the Board.

As provided by the order, the Board computed inshell trade demand to be 3,095 tons by taking the average of the past three years' sales (2,775 tons), increasing the three year average by 15 percent to encourage increased sales (416 tons), and then reducing that quantity by the declared carry-in from last year's crop (96 tons). Declared carry-in is product regulated under the order during a preceding marketing year but not shipped during that year. This inventory must be accounted for when estimating the quantity of product to make available to adequately supply the market.

The Board computed and announced preliminary free and restricted percentages of 9.1511 percent and 90.8489 percent, respectively, at its August 25, 2005, meeting. The Board

computed the preliminary free percentage by multiplying the adjusted trade demand by 80 percent and dividing the result by the total available supply subject to regulation (3,095 tons × 80 percent/27,057 tons = 9.1511 percent). The preliminary free percentage initially released 2,476 tons of hazelnuts from the 2005–2006 supply for domestic inshell use, and the preliminary restricted percentage withheld 24,581 tons for the export and kernel markets.

Under the order, the Board must meet again on or before November 15 to recommend interim final and final percentages. The Board uses current crop estimates to calculate interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release the remaining 20 percent (to qtotal 100 percent of the inshell trade demand) previously computed by the Board. Final free and restricted percentages may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions to provide an adequate carryover into the following season (i.e., desirable carryout). The order requires that the final free and restricted percentages shall be effective 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by USDA. Revisions in the marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with § 982.40(e).

The Board met on November 15, 2005, and reviewed and approved an amended marketing policy and recommended the establishment of final free and restricted percentages. The Board decided that market conditions were such that it would not be necessary to release additional domestic inshell hazelnuts to ensure adequate carryout. Accordingly, no interim final free and restricted percentages were recommended. The Board recommended final free and restricted percentages of 11.4388 and 88.5612 percent, respectively, and that those percentages be effective immediately. The final free percentage releases approximately 3,095 tons of inshell hazelnuts from the 2005–2006 supply for domestic use.

The final marketing percentages are based on the Board's final production estimate and the following supply and demand information for the 2005–2006 marketing year:

	Tons
Total Available Supply:	
(1) Production forecast (crop estimate)	26,000
(2) Less disappearance (three year average; 3.84 percent of Item 1)	1,075
(3) Merchantable production (Item 1 minus Item 2)	26,925
(4) Plus undeclared carry-in as of July 1, 2005 (subject to regulation)	132
(5) Available supply subject to regulation (Item 3 plus Item 4)	27,057
Inshell Trade Demand:	
(6) Average trade acquisitions of inshell hazelnuts (three prior years domestic sales)	2,775
(7) Add: Increase to encourage increased sales (15% of average trade acquisitions)	416
(8) Less: Declared carry-in as of July 1, 2005 (not subject to 2005–2006 regulation)	96
(9) Adjusted inshell trade demand (Item 6 plus Item 7 minus Item 8)	3,095

	Free	Restricted
Percentages:		
(10) Final percentages (Item 9 divided by Item 5) × 100	11.4388	88.5612
(11) Final free tonnage (Item 9)	3,095	
(12) Final restricted tonnage (Item 5 minus Item 11)		23,962

In addition to complying with the provisions of the order, the Board also considered USDA's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has available a quantity equal to 110 percent of prior years' shipments before allocating supplies for the export inshell, export kernel, and domestic kernel markets. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. The established final percentages make available approximately 416 additional tons to encourage increased sales. The total free supply for the 2005–2006 marketing year is estimated to be 3,095 tons of hazelnuts. That amount is 112 percent of prior years' sales and exceeds the goal of the Guidelines.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $6,500,000. There are approximately 700 producers of hazelnuts in the production area and approximately 18 handlers subject to regulation under the order. Average annual hazelnut revenue per producer is approximately $64,000. This is computed by dividing NASS figures for the average value of production for 2003 and 2004 ($44,863,000) by the number of producers. The level of sales of other crops by hazelnut producers is not known. In addition, based on Board records, about 83 percent of the handlers ship under $6,500,000 worth of hazelnuts on an annual basis. In view of the foregoing, it can be concluded that the majority of hazelnut producers

and handlers may be classified as small entities.

Board meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

Currently, U.S. hazelnut production is allocated among three main market outlets: Domestic inshell, export inshell, and kernel markets. Handlers and producers receive the highest return for sales in the domestic inshell market. They receive less for product going to export inshell, and the least for kernels. Based on Board records of average shipments for 1995–2004, the percentage going to each of these markets was 11 percent (domestic inshell), 49 percent (export inshell), and 38 percent (kernels). Other minor market outlets make up the remaining 2 percent.

The inshell hazelnut market can be characterized as having limited and inelastic demand with a very short primary marketing period. On average, 76 percent of domestic inshell hazelnut shipments occur between October 1 and November 30, primarily to supply holiday nut demand. The inshell market is, therefore, prone to oversupply and correspondingly low producer prices in the absence of supply restrictions. This volume control regulation provides a method for the U.S. hazelnut industry to limit the supply of domestic inshell hazelnuts available for sale in the continental U.S. and thereby mitigate market oversupply conditions.

Many years of marketing experience led to the development of the current volume control procedures. These procedures have helped the industry solve its marketing problems by keeping inshell supplies in balance with domestic needs. Volume controls ensure that the domestic inshell market is fully supplied while protecting the market from the negative effects of oversupply.

Although the domestic inshell market is a relatively small portion of total hazelnut sales (11 percent of total shipments), it remains a profitable market segment. The volume control provisions of the marketing order are designed to avoid oversupplying this particular market segment, because that would likely lead to substantially lower producer prices. The other market segments, export inshell and kernels, are expected to continue to provide good outlets for U.S. hazelnut production. Adverse weather conditions have negatively impacted production in the other hazelnut producing regions of the world, creating lower than normal world supplies. As a result, it is expected that the demand and producer price for U.S. hazelnuts will remain above average for some time.

In Oregon and Washington, low hazelnut production years typically follow high production years (a historically consistent pattern), and such was the case in 2005. The 2004 crop of 37,500 tons was 15 percent above the 10-year average (1995–2004) for hazelnut production. The 2005 crop is estimated to be 14 percent below the average. It is predicted that the 2006 crop will follow this pattern and will be larger than the current crop year. This cyclical trait also leads to inversely corresponding cyclical price patterns for hazelnuts. The intrinsic cyclical nature of the hazelnut industry lends credibility to the volume control measures enacted by the Board under the order.

Recent production and price data reflect the stabilizing effect of volume control regulations. Industry statistics show that total hazelnut production has varied widely over the 10-year period between 1995 and 2004, from a low of 16,500 tons in 1998 to a high of 49,500 tons in 2001. Production in the smallest crop year and the largest crop year were 47 percent and 151 percent, respectively, of the 10-year average of 32,685 tons. Producer price, however, has not fluctuated to the extent of production. Prices in the lowest price year and the highest price year were 90 percent and 150 percent, respectively, of the 10-year average price of $959 per ton. The coefficient of variation (a standard statistical measure of variability; "CV") for hazelnut production over the 10-year period is 0.36. In contrast, the coefficient of variation for hazelnut producer prices is 0.19, about half of the CV for production. The lower level of variability of price versus the variability of production provides an illustration of the order's price-stabilizing impact.

Comparing revenue to cost at the producer level is useful in highlighting the impact on producers of recent product and price levels. A recent hazelnut production cost study from Oregon State University estimated cost-of-production per acre to be approximately $1,340 for a typical 100-acre hazelnut enterprise. Average producer revenue per bearing acre (based on NASS acreage and value of production data) equaled or exceeded that typical cost level only three times from 1995 to 2004. Average producer revenue was below typical costs in the other years. Without the stabilizing influence of the order, producers may have lost more money. While crop size has fluctuated, volume regulations contribute to orderly marketing and market stability by moderating the variation in returns for all producers and handlers, both large and small.

While the level of benefits of this rulemaking is difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain and expand markets even though hazelnut supplies fluctuate widely from season to season. This regulation provides equitable allotment of the most profitable market, the domestic inshell market. That market is available to all handlers, regardless of size.

As an alternative to this regulation, the Board discussed not regulating the 2005–2006 hazelnut crop. However, without any regulations in effect, the Board believes that the industry would tend to oversupply the inshell domestic market. Even though the 2005–2006 hazelnut crop is much smaller than last year's crop and 16 percent below the ten-year average, the unregulated release of 27,057 tons on the domestic inshell market would oversupply that small, but lucrative market. The Board believes that any oversupply would completely disrupt the market, causing producer returns to decrease dramatically.

Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to USDA establishment of preliminary, interim final, and final percentages of hazelnuts to be released to the free and restricted markets each marketing year. The program results in plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations.

Hazelnuts produced under the order comprise virtually all of the hazelnuts produced in the U.S. This production represents, on average, less than 3 percent of total U.S. production of all tree nuts, and less than 6 percent of the world's hazelnut production.

Last season, 68 percent of the domestically produced hazelnut kernels were marketed in the domestic market and 32 percent were exported. Domestically produced kernels generally command a higher price in the domestic market than imported kernels. The industry is continuing its efforts to develop and expand other markets with emphasis on the domestic kernel market. Small business entities, both

producers and handlers, benefit from the expansion efforts resulting from this program.

Inshell hazelnuts produced under the order compete well in export markets because of quality. Based on Board statistics, Europe has historically been the primary export market for U.S. produced inshell hazelnuts. Recent years, though, have seen a significant shift in export destinations. Last season, inshell shipments to Europe totaled 4,304 tons, representing just 22 percent of exports, with the largest share going to Germany. Inshell shipments to Southwest Pacific countries, and Hong Kong in particular, have increased dramatically in the past few years, rising to 68 percent of total exports of 19,881 tons in 2004. The industry continues to pursue export opportunities.

There are some reporting, recordkeeping, and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The information collection requirements have been previously approved by the Office of Management and Budget under OMB No. 0581–0178. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. This rule does not change those requirements. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Further, the Board's meetings were widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meetings and participate in Board deliberations. Like all Board meetings, those held on August 25, and November 15, 2005, were public meetings and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on January 12, 2006. Copies of this rule were mailed by the Board's staff to all Board members. In addition, the rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period ending March 13, 2006, was provided to allow interested parties to respond to the rule. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that finalizing the interim final rule, without change, as published in the **Federal Register** (71 FR 1921, January 12, 2006) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

■ Accordingly, the interim final rule amending 7 CFR part 982 which was published at 71 FR 1921 on January 12, 2006, is adopted as a final rule without change.

Dated: April 5, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–3417 Filed 4–10–06; 8:45 am]

BILLING CODE 3410–02–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 612, 614, 615, 618, 619, 620, and 630

RIN 3052–AC19

Organization; Standards of Conduct and Referral of Known or Suspected Criminal Violations; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions; Definitions; Disclosure to Shareholders; Disclosure to Investors in System-Wide and Consolidated Bank Debt Obligations of the Farm Credit System; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Final rule; Announcement of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under parts 611, 612, 614, 615, 618, 619, 620, and 630 on February 2, 2006 (71 FR 5740). This final rule amends our regulations affecting the governance of the Farm Credit System (System). The final rule enhances impartiality and disclosure in the election of directors; requires that Farm Credit banks and associations establish policies identifying desirable director qualifications; requires boards to have a director or an advisor who is a financial expert; requires System institutions to establish director training procedures; and ensures that boards conduct annual self-evaluations. The final rule addresses the term of service and removal of outside directors, while requiring all Farm Credit banks and associations with assets over $500 million to have at least two outside directors. The rule also provides associations with small boards an exemption from having at least two outside directors. The rule further requires that Farm Credit banks and associations have nominating committees and that all System institutions have audit and compensation committees. The final rule clarifies the current rule on disclosure of conflicts of interest and compensation. The final rule does not apply to the Federal Agricultural Mortgage Corporation (FAMC). In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulation is April 5, 2006.

DATES: *Effective Date:* The regulation amending 12 CFR parts 611, 612, 614, 615, 618, 619, 620, and 630 published on February 2, 2006 (71 FR 5740) is effective April 5, 2006, except for the amendments to §§ 611.210(a)(2), 611.220(a)(2)(i) and (ii), 611.325, and 620.21(d)(2) which will be effective April 5, 2007. A reminder of the effective date for these sections will be published at a later date.

Compliance Date: Compliance with board composition requirements (§§ 611.210(a)(2) and 611.220(a)(2)(i) and (ii)) and establishment of bank nominating committees (§§ 611.325 and 620.21(d)(2)) must be achieved 1 year from the effective date of this rule. All other provisions require compliance on the effective date of this rule.

FOR FURTHER INFORMATION CONTACT: Gary Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit

Administration, McLean, VA 22102–5090, (703) 883–4232, TTY (703) 883–4434; or Laura D. McFarland, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

(12 U.S.C. 2252(a)(9) and (10))

Dated: April 5, 2006.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 06–3448 Filed 4–10–06; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM305; Special Conditions No. 25–316–SC]

Special Conditions: Airbus Model A380–800 Airplane; Dynamic Braking, Interaction of Systems And Structures, Limit Pilot Forces, Side Stick Controllers, Dive Speed Definition, Electronic Flight Control System-Lateral-Directional Stability, Longitudinal Stability, And Low Energy Awareness, Electronic Flight Control System-Control Surface Awareness, Electronic Flight Control System-Flight Characteristics Compliance Via the Handling Qualities Rating Method, Flight Envelope Protection-General Limiting Requirements, Flight Envelope Protection-Normal Load Factor (G) Limiting, Flight Envelope Protection-High Speed Limiting, Flight Envelope Protection-Pitch And Roll Limiting, Flight Envelope Protection-High Incidence Protection and Alpha-Floor Systems, High Intensity Radiated Fields (HIRF) Protection, and Operation Without Normal Electrical Power

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Special Conditions.

SUMMARY: These Special Conditions are issued for the Airbus A380–800 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include side stick controllers, a body landing gear in addition to conventional wing and nose landing gears, electronic flight control systems, and flight envelope protection. These Special Conditions also pertain to the effects of such novel or unusual design features, such as their effects on the structural performance of the airplane. Finally, the Special Conditions pertain to the effects of certain conditions on these novel or unusual design features, such as the effects of high intensity radiated fields (HIRF) or of operation without normal electrical power. Additional Special Conditions will be issued for other novel or unusual design features of the Airbus A380–800 airplanes. A list is provided in the section of this document entitled "Discussion of Novel or Unusual Design Features."

EFFECTIVE DATE: March 30, 2006.

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

SUPPLEMENTARY INFORMATION

Background

Airbus applied for FAA certification/validation of the provisionally-designated Model A3XX–100 in its letter AI/L 810.0223/98, dated August 12, 1998, to the FAA. Application for certification by the Joint Aviation Authorities (JAA) of Europe had been made on January 16, 1998, reference AI/L 810.0019/98. In its letter to the FAA, Airbus requested an extension to the 5-year period for type certification in accordance with 14 CFR 21.17(c).

The request was for an extension to a 7-year period, using the date of the initial application letter to the JAA as the reference date. The reason given by Airbus for the request for extension is related to the technical challenges, complexity, and the number of new and novel features on the airplane. On November 12, 1998, the Manager, Aircraft Engineering Division, AIR–100, granted Airbus' request for the 7-year period based on the date of application to the JAA.

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

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

Type Certification Basis

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

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

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

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

Discussion of Novel or Unusual Design Features

The Airbus A380–800 airplane will incorporate a number of novel or unusual design features. Because of rapid improvements in airplane technology, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features.

These Special Conditions for Airbus Model A380 contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

These Special Conditions are identical or nearly identical to those previously required for type certification of the basic Model A340 airplane or earlier models. One exception is the Special Conditions pertaining to Interaction of Systems and Structures. It was not required for the basic Model A340 but was required for type certification of the larger, heavier Model A340–500 and—600 airplanes.

In general, the Special Conditions were derived initially from standardized requirements developed by the Aviation Rulemaking Advisory Committee (ARAC), comprised of representatives of the FAA, Europe's Joint Aviation Authorities (now replaced by the European Aviation Safety Agency), and industry. In some cases, a draft Notice of Proposed Rulemaking has been prepared but no final rule has yet been promulgated.

Additional Special Conditions will be issued for other novel or unusual design features of the Airbus Model A380–800 airplane. Those Special Conditions pertain to the following topics:

- Fire protection,
- Evacuation, including availability of stairs in an emergency,
- Emergency exit arrangement—outside viewing,
- Escape system inflation systems,
- Escape systems installed in non-pressurized compartments,
- Ground turning loads,
- Crashworthiness,
- Flotation and ditching,
- Discrete gust requirements,
- Transient engine failure loads,
- Airplane jacking loads,
- Landing gear pivoting loads,
- Design roll maneuvers,
- Extendable length escape systems,
- Reinforced flightdeck bulkhead, and
- Lithium ion battery installations.

1. Dynamic Braking

The A380 landing gear system will include body gear in addition to the conventional wing and nose gear. This landing gear configuration may result in more complex dynamic characteristics than those found in conventional landing gear configurations. Section 25.493(d) by itself does not contain an adequate standard for assessing the braking loads for the A380 landing gear configuration.

Due to the potential complexities of the A380 landing gear system, in addition to meeting the requirements of § 25.493(d), a rational analysis of the braked roll conditions is necessary. Airbus Model A340–500 and –600 also have a body-mounted main landing gear in addition to the wing and nose gears. Therefore, Special Conditions similar to those required for that model are appropriate for the model A380–800.

2. Interaction of Systems and Structures

The A380 is equipped with systems which affect the airplane's structural performance either directly or as a result of failure or malfunction. The effects of these systems on structural performance must be considered in the certification analysis. This analysis must include consideration of normal operation and of failure conditions with required structural strength levels related to the probability of occurrence.

Previously, Special Conditions have been specified to require consideration of the effects of systems on structures. The Special Conditions for the Model A380 are nearly identical to those issued for the Model A340–500 and –600 series airplanes.

3. Limit Pilot Forces

Like some other Airbus models, the Model A380 airplane is equipped with a side stick controller instead of a conventional control stick. This kind of controller is designed to be operated using only one hand. The requirement of § 25.397(c), which defines limit pilot forces and torques for conventional wheel or stick controls, is not appropriate for a side stick controller. Therefore, Special Conditions are necessary to specify the appropriate loading conditions for this kind of controller.

Special Conditions for side stick controllers have already been developed for the Airbus model A320 and A340 airplanes, both of which also have a side stick controller instead of a conventional control stick. The same Special Conditions are appropriate for the model A380 airplane.

4. Side Stick Controllers

The A380—like its predecessors, the A320, A330, and A340—will use side stick controllers for pitch and roll control. Regulatory requirements for conventional wheel and column controllers, such as requirements pertaining to pilot strength and controllability, are not directly applicable to side stick controllers. In addition, pilot control authority may be uncertain, because the side sticks are not mechanically interconnected as with conventional wheel and column controls.

In previous Airbus airplane certification programs, Special Conditions pertaining to side stick controllers were addressed in three separate issue papers, entitled "Pilot Strength," "Pilot Coupling," and "Pilot Control." The resulting separate Special Conditions are combined in these Special Conditions under the title of "Side Stick Controllers." In order to harmonize with the JAA, the following has been added to Special Conditions 4.c. Side Stick Controllers:

Pitch and roll control force and displacement sensitivity must be compatible, so that normal inputs on one control axis will not cause significant unintentional inputs on the other.

5. Dive Speed Definition

Airbus proposes to reduce the speed spread between V_C and V_D required by § 25.335(b), based on the incorporation of a high speed protection system in the A380 flight control laws. The A380—like the A320, A330, and A340—is equipped with a high speed protection system which limits nose down pilot authority at speeds above V_C/M_C and prevents the airplane from actually performing the maneuver required under § 25.335(b)(1).

Section 25.335(b)(1) is an analytical envelope condition which was originally adopted in Part 4b of the Civil Air Regulations to provide an acceptable speed margin between design cruise speed and design dive speed. Freedom from flutter and airframe design loads is affected by the design dive speed. While the initial condition for the upset specified in the rule is 1g level flight, protection is afforded for other inadvertent overspeed conditions as well. Section 25.335(b)(1) is intended as a conservative enveloping condition for all potential overspeed conditions, including non-symmetric ones. To establish that all potential overspeed conditions are enveloped, the applicant must demonstrate either of the following:

- Any reduced speed margin—based on the high speed protection system in the A380—will not be exceeded in inadvertent or gust induced upsets, resulting in initiation of the dive from non-symmetric attitudes; or
- The airplane is protected by the flight control laws from getting into non-symmetric upset conditions.

In addition, the high speed protection system in the A380 must have a high level of reliability.

6. Electronic Flight Control System: Lateral-Directional Stability, Longitudinal Stability, and Low Energy Awareness

In lieu of compliance with the regulations pertaining to lateral-directional and longitudinal stability, these Special Conditions ensure that the model A380 will have suitable airplane

handling qualities throughout the normal flight envelope (reference paragraphs 6.a. and 6.b.).

The unique features of the A380 flight control system and side-stick controllers, when compared with conventional airplanes with wheel and column controllers, do not provide conventional awareness to the flight crew of a change in speed or a change in the direction of flight (reference paragraph 6.c.). These Special Conditions requires that adequate awareness be provided to the pilot of a low energy state (low speed, low thrust, and low altitude) below normal operating speeds.

a. *Lateral-directional Static Stability:* The model A380 airplane has a flight control design feature within the normal operational envelope in which side stick deflection in the roll axis commands roll rate. As a result, the stick force in the roll axis will be zero (neutral stability) during the straight, steady sideslip flight maneuver of § 25.177(c) and will not be "substantially proportional to the angle of sideslip," as required by the regulation.

The electronic flight control system (EFCS) on the A380 as on its predecessors—the A320, A330 and A340—contains fly-by-wire control laws that result in neutral lateral-directional static stability. Therefore, the conventional requirements of the regulations are not met.

With conventional control system requirements, positive static directional stability is defined as the tendency to recover from a skid with the rudder free. Positive static lateral stability is defined as the tendency to raise the low wing in a sideslip with the aileron controls free. The regulations are intended to accomplish the following:

- Provide additional cues of inadvertent sideslips and skids through control force changes.
- Ensure that short periods of unattended operation do not result in any significant changes in yaw or bank angle.
- Provide predictable roll and yaw response.
- Provide acceptable level of pilot attention (i.e., workload) to attain and maintain a coordinated turn.

b. *Longitudinal Static Stability:* The longitudinal flight control laws for the A380 provide neutral static stability within the normal operational envelope. Therefore, the airplane design does not comply with the static longitudinal stability requirements of §§ 25.171, 25.173, and 25.175.

Static longitudinal stability on conventional airplanes with mechanical links to the pitch control surface means that a pull force on the controller will result in a reduction in speed relative to the trim speed, and a push force will result in higher than trim speed. Longitudinal stability is equired by the regulations for the following reasons:

- Speed change cues are provided to the pilot through increased and decreased forces on the controller.
- Short periods of unattended control of the airplane do not result in significant changes in attitude, airspeed, or load factor.
- A predictable pitch response is provided to the pilot.
- An acceptable level of pilot attention (i.e., workload) to attain and maintain trim speed and altitude is provided to the pilot.
- Longitudinal stability provides gust stability.

The pitch control movement of the side stick is a normal load factor or "g" command which results in an initial movement of the elevator surface to attain the commanded load factor. That movement is followed by integrated movement of the stabilizer and elevator to automatically trim the airplane to a neutral (1g) stick-free stability. The flight path commanded by the initial side stick input will remain stick-free until the pilot gives another command. This control function is applied during "normal" control law within the speed range from $V\alpha_{prot}$ (the speed at the angle of attack protection limit) to V_{MO}/M_{MO}. Once outside this speed range, the control laws introduce the conventional longitudinal static stability as described above.

As a result of neutral static stability, the A380 does not meet the requirements of part 25 for static longitudinal stability.

c. *Low Energy Awareness:* Static longitudinal stability provides an awareness to the flight crew of a low energy state (low speed and thrust at low altitude). Past experience on airplanes fitted with a flight control system which provides neutral longitudinal stability shows there are insufficient feedback cues to the pilot of excursion below normal operational speeds. The maximum angle of attack protection system limits the airplane angle of attack and prevents stall during normal operating speeds, but this system is not sufficient to prevent stall at low speed excursions below normal operational speeds. Until intervention, there are no stability cues, because the airplane remains trimmed. Additionally, feedback from the pitching moment due to thrust variation is reduced by the flight control laws. Recovery from a low speed excursion may become hazardous when the low speed is associated with low altitude and the engines are operating at low thrust or with other performance limiting conditions.

7. Electronic Flight Control System: Control Surface Awareness

With a response-command type of flight control system and no direct coupling from cockpit controller to control surface, such as on the A380, the pilot is not aware of the actual surface deflection position during flight maneuvers. Some unusual flight conditions, arising from atmospheric conditions or airplane or engine failures or both, may result in full or nearly full surface deflection. Unless the flight crew is made aware of excessive deflection or impending control surface deflection limiting, piloted or auto-flight system control of the airplane might be inadvertently continued in a way which would cause loss of control or other unsafe handling or performance characteristics.

These Special Conditions requires that suitable annunciation be provided to the flight crew when a flight condition exists in which nearly full control surface deflection occurs. Suitability of such a display must take into account that some pilot-demanded maneuvers (e.g., rapid roll) are necessarily associated with intended full or nearly full control surface deflection. Therefore, simple alerting systems which would function in both intended or unexpected control-limiting situations must be properly balanced between needed crew awareness and not getting nuisance warnings.

8. Electronic Flight Control System: Flight Characteristics Compliance Via the Handling Qualities Rating Method (HQRM)

The Model A380 airplane will have an Electronic Flight Control System (EFCS). This system provides an electronic interface between the pilot's flight controls and the flight control surfaces (for both normal and failure states). The system also generates the actual surface commands that provide for stability augmentation and control about all three airplane axes. Because EFCS technology has outpaced existing regulations—written essentially for unaugmented airplanes with provision for limited ON/OFF augmentation—suitable Special Conditions and a method of compliance are required to aid in the certification of flight characteristics.

These Special Conditions and the method of compliance presented in Appendix 7 of the Flight Test Guide, AC 25–7A, provide a means by which one may evaluate flight characteristics—as,

for example, "satisfactory," "adequate," or "controllable"—to determine compliance with the regulations. The HQRM in Appendix 7 was developed for airplanes with control systems having similar functions and is employed to aid in the evaluation of the following:

- All EFCS/airplane failure states not shown to be extremely improbable and where the envelope (task) and atmospheric disturbance probabilities are each 1.
- All combinations of failures, atmospheric disturbance level, and flight envelope not shown to be extremely improbable.

The HQRM provides a systematic approach to the assessment of handling qualities. It is not intended to dictate program size or need for a fixed number of pilots to achieve multiple opinions. The airplane design itself and success in defining critical failure combinations from the many reviewed in Systems Safety Assessments would dictate the scope of any HQRM application.

Handling qualities terms, principles, and relationships familiar to the aviation community have been used to formulate the HQRM. For example, we have established that the well-known COOPER–HARPER rating scale and the proposed FAA three-part rating system are similar. This approach is derived in part from the contract work on the flying qualities of highly augmented/relaxed static stability airplanes, in relation to regulatory and flight test guide requirements. The work is reported in DOT/FAA/CT–82/130, Flying Qualities of Relaxed Static Stability Aircraft, Volumes I and II.

9. Flight Envelope Protection: General Limiting Requirements

These Special Conditions and the following ones—pertaining to flight envelope protection—present general limiting requirements for all the unique flight envelope protection features of the basic A380 Electronic Flight Control System (EFCS) design. Current regulations do not address these types of protection features. The general limiting requirements are necessary to ensure a smooth transition from normal flight to the protection mode and adequate maneuver capability. The general limiting requirements also ensure that the structural limits of the airplane are not exceeded. Furthermore, failure of the protection feature must not create hazardous flight conditions. Envelope protection parameters include angle of attack, normal load factor, bank angle, pitch angle, and speed. To accomplish these envelope protections, one or more significant changes occur in the EFCS control laws as the normal flight envelope limit is approached or exceeded.

Each specific type of envelope protection is addressed individually in the Special Conditions which follow.

10. Flight Envelope Protection: Normal Load Factor (G) Limiting

The A380 flight control system design incorporates normal load factor limiting on a full time basis that will prevent the pilot from inadvertently or intentionally exceeding the positive or negative airplane limit load factor. This limiting feature is active in all normal and alternate flight control modes and cannot be overridden by the pilot. There is no requirement in the regulations for this limiting feature.

Except for the Airbus airplanes with fly-by-wire flight controls, the normal load factor limit is unique in that traditional airplanes with conventional flight control systems (mechanical linkages) are limited in the pitch axis only by the elevator surface area and deflection limit. The elevator control power is normally derived for adequate controllability and maneuverability at the most critical longitudinal pitching moment. The result is that traditional airplanes have a significant portion of the flight envelope in which maneuverability in excess of limit structural design values is possible.

Part 25 does not require a demonstration of maneuver control or handling qualities beyond the design limit structural loads. Nevertheless, some pilots have become accustomed to the availability of this excess maneuver capacity in case of extreme emergency, such as upset recoveries or collision avoidance. Airbus is aware of the concern and has published the results of its research which indicate the following:

- Pilots rarely, if ever, use the excess maneuvering capacity in collision avoidance maneuvers, and
- Other features of its flight control system would have prevented most, if not all, of the upset cases on record where pilots did exceed limit loads during recovery.

Because Airbus has chosen to include this optional design feature for which part 25 does not contain adequate or appropriate safety standards, Special Conditions pertaining to this feature are included. These Special Conditions establish minimum load factor requirements to ensure adequate maneuver capability during normal flight. Other limiting features of the normal load factor limiting function, as discussed above, that would affect the upper load limits are not addressed in these Special Conditions. The phrase "in the absence of other limiting factors" has been added relative to past similar Special Conditions to clarify that while the main focus is on the lower load factor limits, there are other limiting factors that must be considered in the load limiting function.

11. Flight Envelope Protection: High Speed Limiting

The longitudinal control law design of the A380 incorporates a high speed limiting protection system in the normal flight mode. This system prevents the pilot from inadvertently or intentionally exceeding the airplane maximum design speeds, V_D M_D. Part 25 does not address such a system that would limit or modify flying qualities in the high speed region.

The main features of the high speed limiting function are as follows:

- It protects the airplane against high speed/high mach number flight conditions beyond V_{MO}/M_{MO}.
- It does not interfere with flight at V_{MO}/M_{MO}, even in turbulent air.
- It still provides load factor limitation through the "pitch limiting" function described below.
- It restores positive static stability beyond V_{MO}/M_{MO}.

This Special Condition establishes requirements to ensure that operation of the high speed limiter does not impede normal attainment of speeds up to the overspeed warning.

12. Flight Envelope Protection: Pitch and Roll Limiting

Currently, part 25 does not specifically address flight characteristics associated with fixed attitude limits. Airbus proposes to implement pitch and roll attitude limiting functions on the A380 via the Electronic Flight Control System (EFCS) normal modes. These normal modes will prevent airplane pitch attitudes greater than +30 degrees and less than −15 degrees and roll angles greater than plus or minus 67 degrees. In addition, positive spiral stability is introduced for roll angles greater than 33 degrees at speeds below V_{MO}/M_{MO}. At speeds greater than V_{MO}/M_{MO}, the maximum aileron control force with positive spiral stability results in a maximum bank angle of 45 degrees.

These Special Conditions establish requirements to ensure that pitch limiting functions do not impede normal maneuvering and that pitch and roll limiting functions do not restrict or prevent attaining certain roll angles necessary for emergency maneuvering.

Special Conditions to supplement § 25.143 concerning pitch and roll limits

were developed for the A320, A330 and A340 in which performance of the limiting functions was monitored throughout the flight test program. The FAA expects similar monitoring to take place during the A380 flight test program to substantiate the pitch and roll attitude limiting functions and the appropriateness of the chosen limits.

13. Flight Envelope Protection: High Incidence Protection and Alpha-floor Systems

The A380 is equipped with a high incidence protection system that limits the angle of attack at which the airplane can be flown during normal low speed operation and that cannot be overridden by the flight crew. The application of this limitation on the angle of attack affects the longitudinal handling characteristics of the airplane, so that there is no need for the stall warning system during normal operation. In addition, the alpha-floor function automatically advances the throttles on the operating engines whenever the airplane angle of attack reaches a predetermined high value. This function is intended to provide increased climb capability. This Special Conditions thus addresses the unique features of the low speed high incidence protection and the alpha-floor systems on the A380.

The high incidence protection system prevents the airplane from stalling, which means that the stall warning system is not needed during normal flight conditions. If there is a failure of the high incidence protection system that is not shown to be extremely improbable, the flight characteristics at the angle of attack for C_{LMAX} must be suitable in the traditional sense, and stall warning must be provided in a conventional manner.

14. High Intensity Radiated Fields (HIRF) Protection

The Airbus Model A380–800 will utilize electrical and electronic systems which perform critical functions. These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane. There is no specific regulation that addresses requirements for protection of electrical and electronic systems from HIRF. With the trend toward increased power levels from ground-based transmitters and the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, Special Conditions are needed for the Airbus Model A380 airplane. These Special Conditions require that avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, adequate protection from HIRF exists when there is compliance with either paragraph a. or b. below:

a. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

(1) The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

(2) Demonstration of this level of protection is established through system tests and analysis.

b. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table below are to be demonstrated.

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

The field strengths are expressed in terms of peak root-mean-square (rms) values over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF.

15. Operation Without Normal Electrical Power

This Special Condition was developed to address fly-by-wire airplanes starting with the Airbus Model A330. As with earlier airplanes, the Airbus A380–800 fly-by-wire control system requires a continuous source of electrical power for the flight control system to remain operable.

Section 25.1351(d), "Operation without normal electrical power," requires safe operation in visual flight rules (VFR) weather conditions for at least five minutes with inoperative normal power. This rule was structured around a traditional design utilizing mechanical control cables for flight control while the crew took time to sort out the electrical failure, start the engine(s) if necessary, and re-establish some of the electrical power generation capability.

To maintain the same level of safety as that associated with traditional designs, the Model A380 design must not be time limited in its operation, including being without the normal source of engine or Auxiliary Power Unit (APU) generated electrical power. Service experience has shown that the loss of all electrical power generated by the airplane's engine generators or APU is not extremely improbable. Thus, it must be demonstrated that the airplane can continue through safe flight and landing—including steering and braking on the ground for airplanes using steer/brake-by-wire—using its emergency electrical power systems. These emergency electrical power systems must be able to power loads that are essential for continued safe flight and landing.

Discussion of Comments

Notice of Proposed Special Conditions No. 25–04–05–SC for the Airbus A380 airplane was published in the **Federal Register** on April 12, 2005 (70 FR 19015). The only commenter, the Boeing Company, submitted comments on all proposed Special Conditions, except Special Condition No. 12.

Boeing submitted comments in support of proposed Special Conditions No. 1, 3, 4, 8, and 11. No change to those special conditions was requested. In addition, Boeing submitted comments requesting a change to proposed Special Conditions 2, 5, 6, 7, 9, 10, 12, 13, 14, and 15. Those comments are discussed below.

Comments on Special Conditions No. 2. Interaction of Systems and Structures

Requested change 1: The Boeing Company states that paragraph c.(2)(d), Warning considerations, "should be revised to use nomenclature that is consistent with 14 CFR 25.1322 and, thus, less onerous on system failure detection expectations." Specifically,

Boeing suggests using the text of the final version of the Load and Dynamics Harmonization Working Group (LDHWG) report of January 2003 that was accepted by the Aviation Rulemaking Advisory Committee (ARAC).

FAA response: The FAA agrees, in part, with this comment and, accordingly, has changed the sentence which states "The flight crew must be made aware of these failures before flight," to "As far as reasonably practicable, the flight crew must be made aware of these failures before flight." The other changes suggested would not substantively affect the Special Conditions and, therefore, were not adopted. The FAA does not agree, however, that retaining the proposed nomenclature makes the requirement more onerous.

Requested change 2: The Boeing Company says that proposed Special Conditions No. 2, paragraph c (2)(e), Dispatch with known failure conditions, "should be revised to stay within the scope of Part 25." Boeing adds that the proposed Special Conditions "is attempting to require what is acceptable for [Minimum Equipment List] MEL dispatch with system failures, which falls under part 121 requirements (specifically 14 CFR 121.628). Dispatch considerations and intervals should be determined in coordination with the Flight Operations Evaluation Board (FOEB) in establishing the Master Minimum Equipment List (MMEL)."

Specifically, Boeing objects to the fact that the proposed Special Conditions "excludes the consideration of the probability of dispatching with known failures to be considered in the Time of Occurrence loads conditions, described in paragraph c. (2)(c)(1) and its Figure 1 (Factor of safety at the time of occurrence). This would effectively preclude failure conditions that meet the no-single-failure criterion and are almost, but not quite, extremely improbable without this dispatch probability consideration."

FAA response: The FAA does not agree that a certification standard for what is acceptable when the airplane is dispatched with known failure conditions is outside the scope of part 25. Acceptable dispatch configurations for the airplane are essentially variations of the type design and, as such, should not compromise the level of safety provided by the airplane's certification basis. Section 121.628 does not contain standards by which to judge the safety of MMEL dispatch configurations. It is the certification basis for the airplane, including any special conditions, that provides these standards. Limitations on acceptable dispatch configurations are legitimate subjects of these standards, and such limitations have been included previously on Special Conditions pertaining to Interaction of Systems and Structures. Such limitations may be necessary, depending on the severity of the potential consequences of failure conditions that could occur following dispatch under the MMEL.

In terms of the comment that the proposed Special Conditions would "effectively preclude failure conditions that meet the no-single-failure criterion * * *" we agree that the Special Conditions should be clearer about how the provisions of paragraph (c) and Figure 1 apply. We have revised the text of Special Conditions No. 2, paragraph c (2)(e), accordingly.

Comments on Special Conditions No. 5. Dive Speed Definition

Requested change 1: The Boeing Company states that on the design for the Boeing Model 777, a dive speed definition with a speed protection system was the subject of an equivalent level of safety finding. According to Boeing, "since the Model A380 is similarly pursuing relief from the Dive Speed Definition, it should also be required to include bank angle protection features designed to failure rates less than 10E–5 per flight hour in order to be consistent with previous FAA positions."

FAA response: The FAA does not agree. The A380 does not have the same protective functions as the Boeing Model 777. In particular, it does not have a similar bank angle protection feature. However, the A380 has protective systems that compensate for a reduced speed margin. The proposed Special Conditions specify maximum failure rates for these protective systems which are consistent with the approach taken on the Boeing 777. Accordingly, we have not changed the text of proposed Special Conditions No. 5.

Requested change 2: The Boeing Company also suggests that the maximum failure rate specified for the protective systems is stated differently in the equivalent level of safety finding for the Boeing Model 777 airplane and in the Special Conditions proposed for the A380. Boeing says, "For consistency of application and interpretation, the FAA should revise the Special Conditions to require that each of the A380 compensating features also meet the minimum 10E–5 failure rate criterion."

FAA response: The FAA does not agree. The A380 includes failure annunciation features not included in the Boeing 777. The FAA considered these annunciation features and follow-on pilot actions defined in the airplane flight manual in determining adequate requirements for maximum failure rate for the A380 protective systems. We determined that a higher maximum failure rate (10E–3 per flight hour) for such systems would provide adequate overall airplane level protection. The FAA did not consider such annunciation features and follow-on pilot actions during certification of the Boeing 777, because such features were not presented to the FAA by the Boeing Company. Nevertheless, the FAA considers the overall airplane level of protection to be essentially the same in the two cases.

Comments on Special Conditions No. 6. Electronic Flight Control System: Lateral-directional Stability, Longitudinal Stability, and Low Energy Awareness

Requested change 1: The Boeing Company says that in the certification programs for Airbus Models A330, A340, and A340–500/600, the Special Conditions required demonstration of "dynamic" and "static" longitudinal stability and that the same requirement should be added for consistency.

FAA response: The FAA does not agree. In past certification programs on Airbus airplanes with electronic flight control systems, a requirement to demonstrate dynamic stability was included in Special Conditions, because the FAA initially thought that the requirement for heavy damping of any short period oscillation, as contained in § 25.181(a), might not be appropriate for the electronic flight control system of Airbus airplanes. However, the FAA later learned that direct compliance with § 25.181 (a) could be demonstrated on Airbus airplanes.

When Airbus initiated the certification process for the A380, the FAA and the Joint Aviation Authorities (JAA) harmonized their corresponding Special Conditions, including that pertaining to Electronic Flight Control System-Longitudinal Stability. As a result of the transition of authority from the JAA to the European Aviation Safety Agency (EASA), EASA is now the certifying authority for the Airbus A380 airplane. This harmonized A380 Special Conditions does not include a dynamic requirement, because direct compliance with § 25.181(a) will be demonstrated. Therefore, we have not revised the text of the proposed Special Conditions.

Requested change 2: Boeing suggests that some of the qualifying terms used are not defined, so that the Special

Conditions may not be applied consistently.

FAA response: The FAA agrees that—when we use words which have a specific meaning in the context of a Special Conditions—we should define or explain them. Therefore, we have revised the text of the Special Conditions to add definitions of the terms "suitable" and "adequate awareness."

Comments on Special Conditions No. 7. Electronic Flight Control System: Control Surface Awareness

Requested change: The Boeing Company comments that, "The intent of these Special Conditions is to provide suitable annunciation to the flight crew when the flight control surfaces are close to their authority limits without crew awareness." Boeing notes that "in a similar recent Issue Paper on the Boeing Model 787, the FAA references autopilot back-drive in flight conditions described in these Special Conditions. Without autopilot back-drive, control saturation is further exacerbated." The company suggests that a crew procedure be required when control saturation occurs along with Airplane Flight Manual (AFM) instructions.

FAA response: The FAA does not agree. The Special Conditions for indication of flight control position are relevant to electronic flight control systems, regardless of whether or not the pilots' controls are back-driven. While it is true that the differences in the designs may affect the magnitude of the difference between control position and surface position, the basic requirement for surface position awareness applies to both design types. Both the A380 Special Conditions and the 787 Special Conditions issue paper noted by Boeing refer to the need for a specific crew action. For both airplanes, the acceptability of those crew actions will be determined as part of finding compliance with their associated Special Conditions. However, the differences in the designs do not warrant an additional, specific requirement for a crew procedure based solely on the fact that the A380 control is not back-driven.

The Boeing Company further requests that the statement "without being commanded by the crew *or autopilot*" be included in the Special Conditions. The FAA does not agree with this request, because the suggested change would exclude the autopilot from the basic Special Conditions requirement to provide an annunciation to the flight crew. The autopilot drives the control surface without pilot input and, therefore, could create flight conditions in which the control surface deflection is approaching a limit without being commanded by the crew. Accordingly, we have not changed the text of the proposed Special Conditions.

Comments on Special Conditions No. 9. Flight Envelope Protection: General Limiting Requirements

Requested change: The Boeing Company observes that Special Conditions issued for earlier Airbus models that employ envelope protection functions within the Electronic Flight Control System (EFCS) have specifically addressed abnormal attitudes, while the proposed Special Conditions for the Model A380 do not. Specifically, Boeing suggests "revising the proposed Special Conditions by adding a paragraph to address abnormal attitudes and EFCS impact on recovery to normal attitudes."

FAA response: The FAA agrees that the paragraph addressing abnormal attitudes should be included in the Special Conditions as in past certification programs on Airbus airplanes. It was the FAA's intent to cover this topic in other Special Conditions, in order to harmonize with the approach used by the JAA. As a result of administrative oversight, the FAA did not include this topic in other Special Conditions, so it has been added to Special Condition No. 9. Since this requirement has been included in multiple previous FAA Special Conditions for Airbus airplanes without significant public comment, the FAA has determined that it can be added to Special Condition No. 9 without further notice and comment.

Comments on Special Conditions No. 10. Flight Envelope Protection: Normal Load Factor (G) Limiting

Requested change: The Boeing Company states that the text of these Special Conditions differs from similar ones issued previously for Airbus Models A320, A330, and A340, in that the phrase "in the absence of other limiting factors" has been added as a condition of applying the required action. Boeing suggests that, "With this additional phrase, the applicability of this Special Conditions is ambiguous; it allows this Special Conditions essentially to be ignored when other 'limiting factors' are present." Therefore, Boeing recommends that the phrase be either removed or explained.

FAA response: The phrase "in the absence of other limiting factors" was added to the proposed Special Conditions to harmonize with the JAA. The FAA does not agree that the phrase is ambiguous or that it allows the Special Conditions to be ignored when other limiting factors are present. It simply means that there are other limiting factors, such as those discussed in the preamble, that would establish the upper boundary for normal load factor and that the Special Conditions are addressing only the lower boundary. Accordingly, we have not revised the text of the proposed Special Conditions but have added a sentence of explanation to the preamble.

Comment on Special Conditions No. 13. Flight Envelope Protection: High Incidence Protection and Alpha-Floor Systems

Requested change 1: The Boeing Company recommends that we "change the procedure for determining minimum operating speeds, so that angle-of-attack limiting envelope protection functions are active during the maneuvers used to define the Reference Stall Speed." Boeing also requests that paragraph c. (5)(g) specify that the high incidence protection system should be "operating normally" instead of "adjusted to a high enough incidence to allow full development of the 1g stall."

FAA response: The meaning of the request is unclear, since it is not the intent of paragraph c. (5) to determine either minimum operating speeds or the reference stall speed. The FAA does not agree with the request to revise the text. The intent of paragraph c. (5) is to set the conditions for determining V_{CLMAX} as defined in paragraph c. (4). Without adjusting the high incidence protection system angle, it would not be possible to achieve the 1g stall speed, V_{CLMAX}. V_{CLMAX} is not a minimum operating speed but rather a speed that depends on a specific test procedure and on the stall characteristics of the airplane. The reference stall speed is selected by the applicant, but it must be greater than or equal to V_{CLMAX}. Accordingly, we have not revised the text of the proposed Special Conditions.

Requested change 2: The Boeing Company suggests that—to be consistent with the criteria, intent, and philosophy of prior Issue Papers and Special Conditions—certain changes be made to the proposed Special Conditions. These changes pertain to (1) failure annunciation, (2) prohibition of dispatch with the high incidence protection and alpha floor systems inoperative, (3) additional demonstration for alpha floor system inoperative, and (4) testing with system components set to adverse tolerances limits.

FAA Response. (1) Failure Annunciation: The FAA does not agree that annunciation of failure of the stall protection system and loss of control

capability should be specified in these Special Conditions. Annunciation of a system failure condition is covered in § 25.1309(c). Paragraph 13(d)(2) of these Special Conditions states that stall warning must be provided in accordance with § 25.207 following failures of the high incidence protection system not shown to be extremely improbable.

(2) *No dispatch with system inoperative:* As noted in the FAA response to Boeing's comment on Special Condition No. 2, the FAA has the authority, under part 25, to identify limitations to dispatch configurations in the MMEL, when necessary for type certification. However, in the case of Special Condition No. 13, we have determined that specific limitations on dispatch following failures of the high incidence protection and alpha floor protection systems are not needed for type certification. The FAA Flight Operations Evaluation Board should still determine the dispatch capability of the A380 relevant to these two systems, as part of the their normal processes for operational approvals.

(3) *Additional demonstration for alpha floor system inoperative:* The FAA does not agree that—to satisfy the intent of paragraph d(2)—the requirement should include the failure of the alpha floor system. Paragraph d(2) refers to paragraphs b(1), (2), and (3), and states that stall warning must be provided if these requirements are not met. The alpha floor system is independent of the high incidence protection system. If the alpha floor system fails, it should have no effect on the function and requirements of the high incidence protection system and should not invoke stall warning.

(4) *Requirement to test with system components set to adverse tolerance limits:* The Boeing Company suggests that the Special Conditions require that "Unless angle of attack (AOA) protection system (stall warning and stall identification) production tolerances are acceptably small, so as to produce insignificant changes in performance determinations, the flight test settings for stall warning and stall identification should be set at the low AOA tolerance limit; high AOA tolerance limits should be used for characteristics evaluations." The FAA agrees that the above statement should be included in these Special Conditions. However, as this statement also pertains to production tolerances for the angle-of-attack protection system, application to the Airbus A380 should include tolerances for the angle-of-attack limits set for the high incidence protection system as well as for the backup stall warning system. The FAA has revised the text of the Special Conditions, accordingly.

Comments on Special Conditions No. 14. High Intensity Radiated Fields (HIRF) Protection

Requested change: The Boeing Company says that the requirement for "engineering validation of maintenance" which has been included in previous Special Conditions is not included and requests that it be added.

FAA Response: "Engineering validation of maintenance" is a method of compliance issue that is addressed in issue papers. It has not been included in previously-published special conditions and is not appropriate for Special Condition No. 14.

Comments on Special Condition No. 15. Operation Without Normal Electrical Power

Requested change: The Boeing Company comments that, "this proposed Special Condition is attempting to advance safety standards through the use of Special Conditions" and that "the current regulations, §§ 25.1351(d), 25.671(d) and 25.1309, considering the intended operation of the airplane and its longest diversion, provide appropriate and adequate safety standards." Boeing requests that the proposed Special Conditions be replaced with information about appropriate means of compliance.

FAA response: The FAA does not agree. The A380 design incorporates electronic flight controls which are a new and novel feature not envisioned when § 25.1351(d) was promulgated. In addition, § 25.1351(d) is inadequate, because it requires only 5 minutes of standby power. The A380 would be incapable of continued safe flight and landing with less than 5 minutes of standby power. Therefore, Special Conditions that address operations without normal electrical power are appropriate for the A380 fly-by-wire airplane, and we have not revised the text of the proposed Special Conditions.

Clarification

In addition to changes made in responses to comments, the FAA has revised the wording of one of the provisions of Special Conditions No. 13, Flight Envelope Protection: High Incidence Protection and Alpha-floor Systems. The wording of paragraph j (1) has been slightly revised to clarify the intent.

Applicability

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

Conclusion

This action affects only certain novel or unusual design features of the Airbus A380–800 airplane. It is not a rule of general applicability, and it affects only the applicant that applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these Special Conditions is as follows:

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

The Special Conditions

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

1. Dynamic Braking

In addition to the requirements of § 25.493(d), the following Special Conditions apply:

Loads arising from the sudden application of maximum braking effort must be defined, taking into account the behavior of the braking system. Failure conditions of the braking system must be analyzed in accordance with the criteria specified in Special Conditions No. 2, "Interaction of Systems and Structures."

2. Interaction of Systems and Structures

In addition to the requirements of part 25, subparts C and D, the following Special Conditions apply:

a. For airplanes equipped with systems that affect structural performance—either directly or as a result of a failure or malfunction—the influence of these systems and their failure conditions must be taken into account when showing compliance with the requirements of part 25, subparts C and D. Paragraph c. below must be used to evaluate the structural performance of airplanes equipped with these systems.

b. Unless shown to be extremely improbable, the airplane must be designed to withstand any forced structural vibration resulting from any failure, malfunction, or adverse condition in the flight control system. These loads must be treated in

accordance with the requirements of paragraph a. above.

c. Interaction of Systems and Structures

(1) General: The following criteria must be used for showing compliance with these Special Conditions and with § 25.629 for airplanes equipped with flight control systems, autopilots, stability augmentation systems, load alleviation systems, flutter control systems, and fuel management systems. If this paragraph is used for other systems, it may be necessary to adapt the criteria to the specific system.

(a) The criteria defined herein address only the direct structural consequences of the system responses and performances. They cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. These criteria may, in some instances, duplicate standards already established for this evaluation. These criteria are applicable only to structures whose failure could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements when operating in the system degraded or inoperative modes are not provided in this paragraph.

(b) Depending upon the specific characteristics of the airplane, additional studies may be required that go beyond the criteria provided in this paragraph in order to demonstrate the capability of the airplane to meet other realistic conditions, such as alternative gust or maneuver descriptions for an airplane equipped with a load alleviation system.

(c) The following definitions are applicable to this paragraph.

Structural performance: Capability of the airplane to meet the structural requirements of part 25.

Flight limitations: Limitations that can be applied to the airplane flight conditions following an in-flight occurrence and that are included in the flight manual (*e.g.*, speed limitations and avoidance of severe weather conditions).

Operational limitations: Limitations, including flight limitations, that can be applied to the airplane operating conditions before dispatch (*e.g.*, fuel, payload, and Master Minimum Equipment List limitations).

Probabilistic terms: The probabilistic terms (probable, improbable, and extremely improbable) used in this Special Conditions are the same as those used in § 25.1309.

Failure condition: The term failure condition is the same as that used in § 25.1309. However, this Special Conditions applies only to system failure conditions that affect the structural performance of the airplane (*e.g.*, system failure conditions that induce loads, change the response of the airplane to inputs such as gusts or pilot actions, or lower flutter margins).

(2) Effects of Systems on Structures.

(a) *General.* The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structure.

(b) *System fully operative.* With the system fully operative, the following apply:

(1) Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in Subpart C, taking into account any special behavior of such a system or associated functions or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant non-linearity (rate of displacement of control surface, thresholds or any other system non-linearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(2) The airplane must meet the strength requirements of part 25 (Static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of non-linearities must be investigated beyond limit conditions to ensure that the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered, when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

(3) The airplane must meet the aeroelastic stability requirements of § 25.629.

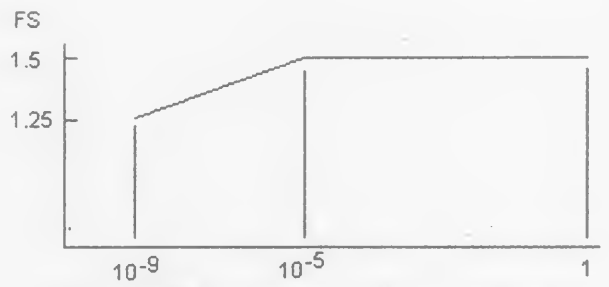
(c) *System in the failure condition.* For any system failure condition not shown to be extremely improbable, the following apply:

(1) At the time of occurrence. Starting from 1g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure.

(i) For static strength substantiation, these loads multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure are ultimate loads to be considered for design. The factor of safety (FS) is defined in Figure 1.

Figure 1

Factor of safety at the time of occurrence



(ii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in Paragraph (c)(1)(i) of this section.

(iii) Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speed increases beyond V_C/M_C, freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

(iv) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

(2) For the continuation of the flight. For the airplane in the system failed state and considering any appropriate reconfiguration and flight limitations, the following apply:

(i) The loads derived from the following conditions at speeds up to Vc or the speed limitation prescribed for the remainder of the flight must be determined:

(A) the limit symmetrical maneuvering conditions specified in § 25.331 and in § 25.345.

(B) the limit gust and turbulence conditions specified in § 25.341 and in § 25.345.

(C) the limit rolling conditions specified in § 25.349 and the limit unsymmetrical conditions specified in § 25.367 and § 25.427(b) and (c).

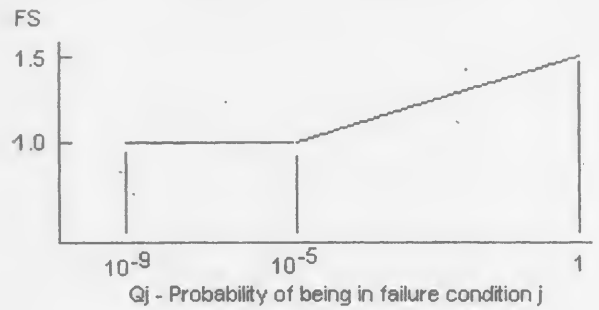
(D) the limit yaw maneuvering conditions specified in § 25.351.

(E) the limit ground loading conditions specified in § 25.473 and § 25.491.

(ii) For static strength substantiation, each part of the structure must be able to withstand the loads in Paragraph (2)(i) of this Special Conditions multiplied by a factor of safety, depending on the probability of being in this failure state. The factor of safety is defined in Figure 2.

Figure 2

Factor of safety for continuation of flight



$Q_j = (T_j)(P_j)$ where:

T_j = Average time spent in failure condition j (in hours)

P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then a 1.5 factor of safety must be applied to all limit load conditions specified in Subpart C.

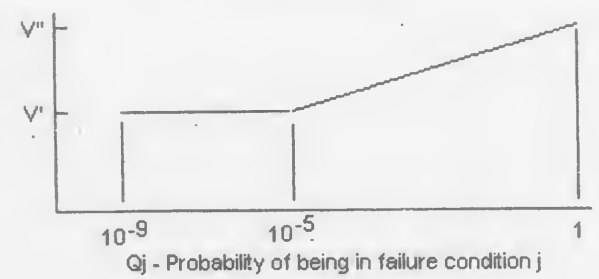
(iii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in Paragraph (c)(2)(ii).

(iv) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance, then their effects must be taken into account.

(v) Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3. Flutter clearance speeds V′ and V″ may be based on the speed limitation specified for the remainder of the flight, using the margins defined by § 25.629(b).

Figure 3

Clearance speed



V′ = Clearance speed as defined by § 25.629(b)(2).
V″ = Clearance speed as defined by § 25.629(b)(1).
$Q_j = (T_j)(P_j)$ where:
T_j = Average time spent in failure condition j (in hours)
P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V′

(vi) Freedom from aeroelastic instability must also be shown up to V′ in Figure 3 above for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b).

(3) Consideration of certain failure conditions may be required by other sections of this Part, regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10_{-9}, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

(d) *Warning considerations.* For system failure detection and warning, the following apply:

(1) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by part 25 or significantly reduce the reliability of the remaining system. As far as reasonably practicable, the flight crew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks in lieu of warning systems to achieve the objective of this requirement. These certification maintenance requirements must be limited to components that are not readily detectable by normal warning systems and where service history shows that inspections will provide an adequate level of safety.

(2) The existence of any failure condition, not extremely improbable, during flight that could significantly affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations must be signaled to the flightcrew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of part 25, subpart C, below 1.25 or flutter margins below V″ must be signaled to the crew during flight.

(e) *Dispatch with known failure conditions.* If the airplane is to be dispatched in a known system failure condition that affects structural performance or affects the reliability of the remaining system to maintain structural performance, then the provisions of this Special Conditions must be met, including the provisions of Paragraph (b), for the dispatched condition and Paragraph (c) for subsequent failures. Expected operational limitations may be taken into account in establishing P_j as the probability of failure occurrence for determining the safety margin in Figure 1. Flight limitations and expected operational limitations may be taken into account in establishing Qj as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed, if the subsequent system failure rate is greater than 1E–3 per flight hour.

3. Limit Pilot Forces

In addition to the requirements of § 25.397(c) the following Special Conditions apply: The limit pilot forces are as follows:

a. For all components between and including the handle and its control stops.

Pitch	Roll
Nose up 200 lbf	Nose left 100 lbf.
Nose down 200 lbf	Nose right 100 lbf.

b. For all other components of the side stick control assembly, but excluding the internal components of the electrical sensor assemblies to avoid damage as a result of an in-flight jam.

Pitch	Roll
Nose up 125 lbf	Nose left 50 lbf.
Nose down 125 lbf	Nose right 50 lbf.

4. Side Stick Controllers

In the absence of specific requirements for side stick controllers, the following Special Conditions apply:

a. *Pilot strength:* In lieu of the "strength of pilots" limits shown in § 25.143(c) for pitch and roll and in lieu of the specific pitch force requirements of §§ 25.145(b) and 25.175(d), it must be shown that the temporary and maximum prolonged force levels for the side stick controllers are suitable for all expected operating conditions and configurations, whether normal or non-normal.

b. *Pilot control authority:* The electronic side stick controller coupling design must provide for corrective and/or overriding control inputs by either pilot with no unsafe characteristics. Annunciation of the controller status must be provided and must not be confusing to the flight crew.

c. *Pilot control:* It must be shown by flight tests that the use of side stick controllers does not produce unsuitable pilot-in-the-loop control characteristics when considering precision path control/tasks and turbulence. In addition, pitch and roll control force and displacement sensitivity must be compatible, so that normal inputs on one control axis will not cause significant unintentional inputs on the other.

d. *Autopilot quick-release control location:* In lieu of compliance with 25.1329(d), autopilot quick release (emergency) controls must be on both side stick controllers. The quick release means must be located so that it can readily and easily be used by the flight crew.

5. Dive Speed Definition

In lieu of the requirements of § 25.335(b)(1)—if the flight control system includes functions which act automatically to initiate recovery before the end of the 20 second period specified in § 25.335(b)(1)—the greater of the speeds resulting from the following Special Conditions applies.

a. From an initial condition of stabilized flight at VC/ MC, the airplane is upset so as to take up a new flight path 7.5 degrees below the initial path. Control application, up to full authority, is made to maintain this new flight path. Twenty seconds after initiating the upset, manual recovery is made at a load factor of 1.5 g (0.5 acceleration increment) or such greater load factor that is automatically applied by the system with the pilot's pitch control neutral. The speed increase occurring in this maneuver may be calculated, if reliable or conservative aerodynamic data is used. Power, as specified in § 25.175(b)(1)(iv), is assumed until recovery is made, at which time power reduction and the use of pilot controlled drag devices may be used.

b. From a speed below V_C/M_C with power to maintain stabilized level flight at this speed, the airplane is upset so as to accelerate through V_C/M_C at a flight path 15 degrees below the initial path—or at the steepest nose down attitude that the system will permit with full control authority if less than 15 degrees.

Note: The pilot's controls may be in the neutral position after reaching V_C/M_C and before recovery is initiated.

c. Recovery may be initiated three seconds after operation of high speed warning system by application of a load of 1.5g (0.5 acceleration increment) or such greater load factor that is automatically applied by the system with the pilot's pitch control neutral. Power may be reduced simultaneously. All other means of decelerating the airplane, the use of which is authorized up to the highest speed reached in the maneuver, may be used. The interval between successive pilot actions must not be less than one second.

d. The applicant must also demonstrate either that

(1) the speed margin, established as above, will not be exceeded in inadvertent or gust induced upsets, resulting in initiation of the dive from non-symmetric attitudes, or

(2) the airplane is protected by the flight control laws from getting into non-symmetric upset conditions.

e. The probability of failure of the protective system that mitigates for the reduced speed margin must be less than 10^{-5} per flight hour, except that the probability of failure may be greater than 10^{-5}, but not greater than 10^{-3}, per flight hour, provided that:

(1) Failures of the system are annunciated to the pilots, and

(2) The flight manual instructions require the pilots to reduce the speed of the airplane to a value that maintains a speed margin between V_{MO} and V_D consistent with showing compliance with 25.335(b) without the benefit of the system, and

(3) no dispatch of the airplane is allowed with the system inoperative.

6. Electronic Flight Control System: Lateral-Directional and Longitudinal Stability and Low Energy Awareness

In lieu of the requirements of §§ 25.171, 25.173, 25.175, and 25.177(c), the following Special Conditions apply:

a. The airplane must be shown to have suitable static lateral, directional, and longitudinal stability in any condition normally encountered in service, including the effects of atmospheric disturbance. The showing of suitable static lateral, directional, and longitudinal stability must be based on the airplane handling qualities, including pilot workload and pilot compensation, for specific test procedures during the flight test evaluations.

b. The airplane must provide adequate awareness to the pilot of a low energy (low speed/low thrust/low height) state when fitted with flight control laws presenting neutral longitudinal stability significantly below the normal operating speeds. "Adequate awareness" means warning information must be provided to alert the crew of unsafe operating conditions and to enable them to take appropriate corrective action.

c. The static directional stability—as shown by the tendency to recover from a skid with the rudder free—must be positive for any landing gear and flap position and symmetrical power condition, at speeds from 1.13 V_{S1g} up to V_{FE}, V_{LE}, or V_{FC}/M_{FC} (as appropriate).

d. In straight, steady sideslips (unaccelerated forward slips), the rudder control movements and forces must be substantially proportional to the angle of sideslip, and the factor of proportionality must be between limits found necessary for safe operation throughout the range of sideslip angles appropriate to the operation of the airplane. At greater angles—up to the angle at which full rudder control is used or a rudder pedal force of 180 pounds (81.72 kg) is obtained—the rudder pedal forces may not reverse, and increased rudder deflection must produce increased angles of sideslip. Unless the airplane has a suitable sideslip indication, there must be enough bank and lateral control deflection and force accompanying sideslipping to clearly indicate any departure from steady, unyawed flight.

7. Electronic Flight Control System: Control Surface Awareness

In addition to the requirements of §§ 25.143, 25.671 and 25.672, the following Special Conditions apply:

a. A suitable flight control position annunciation must be provided to the crew in the following situation:

A flight condition exists in which—without being commanded by the crew—control surfaces are coming so close to their limits that return to normal flight and (or) continuation of safe flight requires a specific crew action.

b. In lieu of control position annunciation, existing indications to the crew may be used to prompt crew action, if they are found to be adequate.

Note: The term "suitable" also indicates an appropriate balance between nuisance and necessary operation.

8. Electronic Flight Control System: Flight Characteristics Compliance Via the Handling Quantities Rating Method (HQRM)

a. Flight Characteristics Compliance Determination for EFCS Failure Cases:

In lieu of compliance with § 25.672(c), the HQRM contained in Appendix 7 of AC 25–7A must be used for evaluation of EFCS configurations resulting from single and multiple failures not shown to be extremely improbable.

The handling qualities ratings are as follows:

(1) *Satisfactory:* Full performance criteria can be met with routine pilot effort and attention.

(2) *Adequate:* Adequate for continued safe flight and landing; full or specified reduced performance can be met, but with heightened pilot effort and attention.

(3) *Controllable:* Inadequate for continued safe flight and landing, but controllable for return to a safe flight condition, safe flight envelope and/or reconfiguration, so that the handling qualities are at least Adequate.

b. Handling qualities will be allowed to progressively degrade with failure state, atmospheric disturbance level, and flight envelope, as shown in Figure 12 of Appendix 7. Specifically, for probable failure conditions within the normal flight envelope, the pilot-rated handling qualities must be satisfactory in light atmospheric disturbance and adequate in moderate atmospheric disturbance. The handling qualities rating must not be less than adequate in light atmospheric disturbance for improbable failures.

Note: AC 25–7A, Appendix 7 presents a method of compliance and provides guidance for the following:

- Minimum handling qualities rating requirements in conjunction with atmospheric disturbance levels, flight envelopes, and failure conditions (Figure 12),
- Flight Envelope definition (Figures 5A, 6 and 7),
- Atmospheric Disturbance Levels (Figure 5B),
- Flight Control System Failure State (Figure 5C),
- Combination Guidelines (Figures 5D, 9 and 10), and
- General flight task list, from which appropriate specific tasks can be selected or developed (Figure 11).

9. Flight Envelope Protection

(a) *General Limiting Requirements.* (1) Onset characteristics of each envelope protection feature must be smooth, appropriate to the phase of flight and type of maneuver, and not in conflict with the ability of the pilot to satisfactorily change the airplane flight path, speed, or attitude, as needed.

(2) Limit values of protected flight parameters (and if applicable, associated warning thresholds) must be compatible with the following:

(a) Airplane structural limits,

(b) Required safe and controllable maneuvering of the airplane, and

(c) Margins to critical conditions.

Dynamic maneuvering, airframe and system tolerances (both manufacturing and in-service), and non-steady atmospheric conditions—in any appropriate combination and phase of flight—must not result in a limited flight parameter beyond the nominal design limit value that would cause unsafe flight characteristics.

(3) The airplane must be responsive to intentional dynamic maneuvering to within a suitable range of the parameter limit. Dynamic characteristics, such as damping and overshoot, must also be appropriate for the flight maneuver and limit parameter in question.

(4) When simultaneous envelope limiting is engaged, adverse coupling or adverse priority must not result.

b. *Failure States:* EFCS failures, including sensor failures, must not result in a condition where a parameter is limited to such a reduced value that safe and controllable maneuvering is no longer available. The crew must be alerted by suitable means, if any change in envelope limiting or maneuverability is produced by single or multiple failures of the EFCS not shown to be extremely improbable.

c. *Abnormal Attitudes:* In case of abnormal attitude or excursion of any other flight parameters outside the protected boundaries, the operation of the EFCS, including the automatic protection functions, must not hinder airplane recovery.

10. Flight Envelope Protection: Normal Load Factor (g) Limiting

In addition to the requirements of 25.143(a)—and in the absence of other limiting factors—the following Special Conditions apply:

a. The positive limiting load factor must not be less than:

(1) 2.5g for the EFCS normal state.

(2) 2.0g for the EFCS normal state with the high lift devices extended.

b. The negative limiting load factor must be equal to or more negative than:

(1) Minus 1.0g for the EFCS normal state.

(2) 0.0g for the EFCS normal state with high lift devices extended.

Note: This Special Condition does not impose an upper bound for the normal load factor limit, nor does it require that the limit exist. If the limit is set at a value beyond the structural design limit maneuvering load factor "n," indicated in § 25.333(b) and 25.337(b) and (c), there should be a very positive tactile feel built into the controller and obvious to the pilot that serves as a deterrent to inadvertently exceeding the structural limit.

11. Flight Envelope Protection: High Speed Limiting

In addition to § 25.143, the following Special Condition applies:

Operation of the high speed limiter during all routine and descent procedure flight must not impede normal attainment of speeds up to the overspeed warning.

12. Flight Envelope Protection: Pitch And Roll Limiting

In addition to § 25.143, the following Special Conditions apply:

a. The pitch limiting function must not impede normal maneuvering for pitch angles up to the maximum required for normal maneuvering—including a normal all-engines operating takeoff plus a suitable margin to allow for satisfactory speed control.

b. The pitch and roll limiting functions must not restrict or prevent attaining roll angles up to 65 degrees or pitch attitudes necessary for emergency maneuvering. Spiral stability, which is introduced above 33 degrees roll angle, must not require excessive pilot strength to achieve roll angles up to 65 degrees.

13. Flight Envelope Protection: High Incidence Protection And Alpha-floor Systems

a. *Definitions.* For the purpose of this Special Condition, the following definitions apply:

High Incidence Protection System A system that operates directly and automatically on the airplane's flying controls to limit the maximum angle of attack that can be attained to a value below that at which an aerodynamic stall would occur.

Alpha-Floor System. A system that automatically increases thrust on the operating engines when the angle of attack increases through a particular value.

Alpha Limit. The maximum angle of attack at which the airplane stabilizes with the high incidence protection system operating and the longitudinal control held on its aft stop.

V_{min}. The minimum steady flight speed is the stabilized, calibrated airspeed obtained when the airplane is decelerated at an entry rate not exceeding 1 knot per second, until the longitudinal pilot control is on its stop with the high incidence protection system operating.

V_{min1g} V_{min} corrected to 1g conditions. It is the minimum calibrated airspeed at which the airplane can develop a lift force normal to the flight path and equal to its weight when at an angle of attack not greater than that determined for V_{min}.

b. *Capability and Reliability of the High Incidence Protection System:* (1) It must not be possible to encounter a stall during pilot induced maneuvers, and handling characteristics must be acceptable, as required by paragraphs e and f below, entitled High Incidence Handling Demonstrations and High Incidence Handling Characteristics respectively.

(2) The airplane must be protected against stalling due to the effects of windshears and gusts at low speeds, as required by paragraph g below, entitled Atmospheric Disturbances.

(3) The ability of the high incidence protection system to accommodate any reduction in stalling incidence resulting from residual ice must be verified.

(4) The reliability of the system and the effects of failures must be acceptable, in accordance with § 25.1309 and Advisory Circular 25.1309–1A, System Design and Analysis.

(5) The high incidence protection system must not impede normal maneuvering for pitch angles up to the maximum required for normal maneuvering, including a normal all-engines operating takeoff plus a suitable margin to allow for satisfactory speed control.

c. *Minimum Steady Flight Speed and Reference Stall Speed:* In lieu of the requirements of § 25.103, the following Special Conditions apply:

(1) V_{min}. The minimum steady flight speed, for the airplane configuration under consideration and with the high incidence protection system operating, is the final stabilized calibrated airspeed obtained when the airplane is decelerated at an entry rate not exceeding 1 knot per second until the longitudinal pilot control is on its stop.

(2) The minimum steady flight speed, V_{min}, must be determined with:

(a) The high incidence protection system operating normally.

(b) Idle thrust.

(c) Alpha-floor system inhibited.

(d) All combinations of flap settings and landing gear positions.

(e) The weight used when V_{SR} is being used as a factor to determine compliance with a required performance standard.

(f) The most unfavorable center of gravity allowable, and

(g) The airplane trimmed for straight flight at a speed achievable by the automatic trim system.

(3) V_{min1g} is V_{min} corrected to 1g conditions. V_{min1g} is the minimum calibrated airspeed at which the airplane can develop a lift force normal to the flight path and equal to its weight when at an angle of attack not greater

than that determined for V_{min}. V_{min1g} is defined as follows:

$$V\ min\ 1g = \frac{V\ min}{\sqrt{n_{zw}}}$$

where $n_{z\,w}$ = load factor normal to the flight path at V_{min}

(4) The Reference Stall Speed, V_{SR}, is a calibrated airspeed selected by the applicant. V_{SR} may not be less than the 1g stall speed. V_{SR} is expressed as:

$$V_{SR} \geq \frac{V_{CL_{MAX}}}{\sqrt{n_{zw}}}$$

where

V_{CLMAX} = Calibrated airspeed obtained when the load factor-corrected lift coefficient

$$\left(\frac{n_{zw}W}{qS}\right)$$

is first a maximum during the maneuver prescribed in Paragraph (5)(h) of this Special Conditions.

n_{zw} = Load factor normal to the flight path at V_{CLMAX}

W = Airplane gross weight

S = Aerodynamic reference wing area, and

q = Dynamic pressure.

(5) V_{CLMAX} must be determined with the following conditions:

(a) Engines idling or—if that resultant thrust causes an appreciable decrease in stall speed—not more than zero thrust at the stall speed

(b) The airplane in other respects, such as flaps and landing gear, in the condition existing in the test or performance standard in which V_{SR} is being used.

(c) The weight used when V_{SR} is being used as a factor to determine compliance with a required performance standard.

(d) The center of gravity position that results in the highest value of reference stall speed.

(e) The airplane trimmed for straight flight at a speed achievable by the automatic trim system, but not less than 1.13 V_{SR} and not greater than 1.3 V_{SR}.

(f) The alpha-floor system inhibited.

(g) The high incidence protection system adjusted to a high enough incidence to allow full development of the 1g stall.

(h) Starting from the stabilized trim condition, apply the longitudinal control to decelerate the airplane so that the speed reduction does not exceed one knot per second.

(6) The flight characteristics at the angle of attack for C_{LMAX} must be suitable in the traditional sense at FWD and AFT CG in straight and turning flight at IDLE power. Although for a normal production EFCS and steady full aft stick this angle of attack for C_{LMAX} cannot be achieved, the angle of attack can be obtained momentarily under dynamic circumstances and deliberately in a steady state sense with some EFCS failure conditions.

d. *Stall Warning.* (1) *Normal Operation.* If the conditions of Paragraph b, Capability and Reliability of the High Incidence Protection System, are satisfied, a level of safety equivalent to that intended by § 25.207, Stall Warning, must be considered to have been met without provision of an additional, unique warning device.

(2) *Failure Cases.* Following failures of the high incidence protection system not shown to be extremely improbable, if the system no longer satisfies Paragraph b, Capability and Reliability of the High Incidence Protection System, parts (1), (2), and (3), stall warning must be provided in accordance with § 25.207. The stall warning should prevent inadvertent stall under the following conditions:

(a) Power off straight stall approaches to a speed 5 percent below the warning onset.

(b) Turning flight stall approaches at entry rates up to 3 knots per second when recovery is initiated not less than one second after the warning onset.

Note: "Unless angle of attack (AOA) protection system (high incidence protection system, stall warning and stall identification) production tolerances are acceptably small, so as to produce insignificant changes in performance determinations, the flight test settings for the high incidence protection system, stall warning and stall identification should be set at the low AOA tolerance limit. High AOA tolerance limits should be used for characteristics evaluations."

e. *High Incidence Handling Demonstrations.* In lieu of the requirements of § 25.201, the following Special Conditions apply:

Maneuvers to the limit of the longitudinal control in the nose up direction must be demonstrated in straight flight and in 30 degree banked turns under the following conditions:

(1) The high incidence protection system operating normally.

(2) Initial power condition of:

(a) Power off.

(b) The power necessary to maintain level flight at 1.5 V_{SR1}, where V_{SR1} is the reference stall speed with the flaps in the approach position, the landing gear retracted, and the maximum landing weight. The flap position to be used to determine this power setting is that position in which the stall speed, V_{SR1}, does not exceed 110% of the stall speed, V_{SRO}, with the flaps in the most extended landing position.

(3) Alpha-floor system operating normally, unless more severe conditions are achieved with alpha-floor inhibited.

(4) Flaps, landing gear and deceleration devices in any likely combination of positions.

(5) Representative weights within the range for which certification is requested, and

(6) The airplane trimmed for straight flight at a speed achievable by the automatic trim system.

f. *High Incidence Handling Characteristics.* In lieu of the requirements of § 25.203, the following Special Conditions apply:

(1) In demonstrating the handling characteristics specified in paragraphs (2), (3), (4), and (5) below, the following procedures must be used:

(a) Starting at a speed sufficiently above the minimum steady flight speed to ensure that a steady rate of speed reduction can be established, apply the longitudinal control so that the speed reduction does not exceed one knot per second until the control reaches the stop.

(b) The longitudinal control must be maintained at the stop until the airplane has reached a stabilized flight condition and must then be recovered by normal recovery techniques.

(c) The requirements for turning flight maneuver demonstrations must also be met with accelerated rates of entry to the incidence limit, up to the maximum rate achievable.

(2) Throughout maneuvers with a rate of deceleration of not more than 1 knot per second, both in straight flight and in 30 degree banked turns, the airplane's characteristics must be as follows:

(a) There must not be any abnormal airplane nose-up pitching.

(b) There must not be any uncommanded nose-down pitching that would be indicative of stall. However, reasonable attitude changes associated with stabilizing the incidence at alpha limit as the longitudinal control reaches the stop would be acceptable. Any reduction of pitch attitude associated with stabilizing the incidence at the alpha limit should be achieved smoothly and at a low pitch rate, such that it is not likely to be mistaken for natural stall identification.

(c) There must not be any uncommanded lateral or directional motion, and the pilot must retain good lateral and directional control by conventional use of the cockpit controllers throughout the maneuver.

(d) The airplane must not exhibit buffeting of a magnitude and severity

that would act as a deterrent to completing the maneuver.

(3) In maneuvers with increased rates of deceleration, some degradation of characteristics is acceptable, associated with a transient excursion beyond the stabilized alpha-limit. However, the airplane must not exhibit dangerous characteristics or characteristics that would deter the pilot from holding the longitudinal controller on the stop for a period of time appropriate to the maneuvers.

(4) It must always be possible to reduce incidence by conventional use of the controller.

(5) The rate at which the airplane can be maneuvered from trim speeds associated with scheduled operating speeds, such as V_2 and V_{REF}, up to alpha-limit must not be unduly damped or significantly slower than can be achieved on conventionally controlled transport airplanes.

g. *Atmospheric Disturbances.* Operation of the high incidence protection system and the alpha-floor system must not adversely affect aircraft control during expected levels of atmospheric disturbances or impede the application of recovery procedures in case of windshear. Simulator tests and analysis may be used to evaluate such conditions but must be validated by limited flight testing to confirm handling qualities at critical loading conditions.

h. *Alpha-floor.* The alpha-floor setting must be such that the aircraft can be flown at normal landing operational speed and maneuvered up to bank angles consistent with the flight phase, including the maneuver capabilities. specified in 25.143(g), without triggering alpha-floor. In addition, there must be no alpha-floor triggering, unless appropriate, when the airplane is flown in usual operational maneuvers and in turbulence.

i. *Proof of Compliance:* In addition to the requirements of § 25.21, the following Special Conditions apply:

The flying qualities must be evaluated at the most unfavorable center of gravity position.

j. *Longitudinal Control:* (1) In lieu of the requirements of § 25.145(a) and 25.145(a)(1), the following Special Conditions apply:

It must be possible—at any point between the trim speed for straight flight and V_{min}—to pitch the nose downward, so that the acceleration to this selected trim speed is prompt, with:

The airplane trimmed for straight flight at the speed achievable by the automatic trim system and at the most unfavorable center of gravity;

(2) In lieu of the requirements of § 25.145(b)(6), the following Special Conditions apply:

With power off, flaps extended and the airplane trimmed at 1.3 V_{SR1}, obtain and maintain airspeeds between V_{min} and either 1.6 V_{SR1} or V_{FE}, whichever is lower.

k. *Airspeed Indicating System:* (1) In lieu of the requirements of subsection 25.1323(c)(1), the following Special Conditions apply:

V_{MO} to V_{min} with the flaps retracted.

(2) In lieu of the requirements of subsection 25.1323(c)(2), the following Special Conditions apply:

V_{min} to V_{FE} with flaps in the landing position.

14. High Intensity Radiated Fields (HIRF) Protection

a. *Protection from Unwanted Effects of High-intensity Radiated Fields.* Each electrical and electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields external to the airplane.

b. *For the purposes of this Special Conditions, the following definition applies: Critical Functions:* Functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

15. Operation Without Normal Electrical Power

In lieu of the requirements of § 25.1351(d), the following Special Condition applies:

It must be demonstrated by test or combination of test and analysis that the airplane can continue safe flight and landing with inoperative normal engine and APU generator electrical power (*i.e.*, electrical power sources, excluding the battery and any other standby electrical sources). The airplane operation should be considered at the critical phase of flight and include the ability to restart the engines and maintain flight for the maximum diversion time capability being certified.

Issued in Renton, Washington, on March 30, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3359 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No.: FAA–2004–18775; Amendment No. 25–119]

RIN 2120–AI41

Safety Standards for Flight Guidance Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the airworthiness standards for new designs and significant product changes for transport category airplanes concerning flight guidance systems. The standards address the performance, safety, failure protection, alerting, and basic annunciation of these systems. This rule is necessary to address flight guidance system vulnerabilities and to consolidate and standardize regulations for functions within those systems. In addition, this rule updates the current regulations regarding the latest technology and functionality. Adopting this rule eliminates significant regulatory differences between the U.S. and European airworthiness standards.

DATES: Effective Date: This amendment becomes effective May 11, 2006.

FOR FURTHER INFORMATION CONTACT: Gregg Bartley, FAA, Airplane and Flight Crew Interface Branch (ANM–111), Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2889; facsimile 425–227–1320; e-mail *gregg.bartley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

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

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

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

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

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety for the design and performance of aircraft; regulations and minimum standards in the interest of safety for inspecting, servicing, and overhauling aircraft; and regulations for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it prescribes—New safety standards for the design of transport category airplanes, and New requirements that are necessary for safety for the design, production, operations, and maintenance of those airplanes, and for other practices, methods and procedures relating to those airplanes.

I. Executive Summary

This rule revises the airworthiness standards for transport category airplanes to improve the performance of flight guidance systems in assisting the flightcrew in the basic control and guidance of the airplane. As discussed in more detail later, for purposes of this rulemaking, a "flight guidance system" consists of equipment providing autopilot, autothrust, flight director, and related functions. This rule adopts requirements to provide workload relief to the flightcrew and a means to fly an intended flight path more accurately. This rule responds to a series of incidents and accidents that have highlighted difficulties for flightcrews interacting with the increasing automation of flight decks.

Accident History

The National Transportation Safety Board (NTSB) issued the following safety recommendations that are addressed by this rule:

- NTSB Safety Recommendation A–92–035 is a result of the Airbus Industries A300 accident in Nagoya, Japan, on April 26, 1994, where 264 people died. Contributing to that accident were conflicting actions taken by the flightcrew and the airplane's autopilot. The NTSB recommended that the FAA "revise Advisory Circular 25.1329–1A to add guidance regarding autopilot failures that can result in changes in attitude at rates that may be imperceptible to the flightcrew and thus remain undetected until the airplane reaches significant attitude deviations."
- NTSB Safety Recommendation A–98–098 is a result of an accident on November 12, 1995. A Boeing MD–80 operated by American Airlines descended below the minimum descent altitude, clipped some trees, and landed short of the runway in what was very nearly a fatal accident. The NTSB recommended that the FAA "require all manufacturers of transport-category airplanes to incorporate logic into all new and existing transport-category airplanes that have autopilots installed to provide a cockpit aural warning to alert pilots when the airplane's bank and/or pitch exceeds the autopilot's maximum bank and/or pitch command limits."
- NTSB Safety Recommendation A–99–043 is a result of an accident on July 13, 1996. A Boeing MD–11 operated by American Airlines experienced an in-flight upset during the descent to 24,000 feet by means of the autopilot. During the descent, the captain instructed the first officer to slow the rate of descent. Flight data recorder data show the airplane experienced an immediate 2.3 G pitch upset followed by more oscillations, resulting in four injuries. The NTSB recommended that the FAA "require all new transport category airplane autopilot systems to be designed to prevent upsets when manual inputs to the flight controls are made."

In response to these NTSB safety recommendations and several incidents and accidents that highlight difficulties for flightcrews interacting with the increasing automation of flight decks, the FAA formed a Human Factors Team (HFT). The HFT issued a report on June 18, 1996, titled "The Interfaces Between Flightcrews and Modern Flight Deck Systems."

Past Regulatory Approach

Currently, § 25.1329, "Automatic pilot system" addresses only the autopilot system, and § 25.1335, "Flight director systems" addresses the flight director switch position. Not addressed is the autothrust system and how it relates to flight guidance. The existing regulations need to be updated to match technology advances. Current regulations do not fully address the latest technology or newly available functionality. In addition, proposed and recent rulemaking activity regarding the interaction of systems and structure, flight test, and human factors will make certain aspects of the existing flight guidance systems regulations redundant, in conflict with other regulations, or confusing and difficult to understand.

Summary of the Rule

This rule adopts new airworthiness standards specifically to address potential pilot confusion about various aspects of the operation of flight guidance systems (FGS), including automatic mode reversions, hazardous disengagement transients, speed protection, and potential hazards during an autopilot override. These new standards will apply to new designs and some design changes (as required under 14 CFR 21.101) for transport category airplanes.

This rule revises, reorganizes, and adds additional material to address the performance, safety, failure protection, alerting, and basic annunciation of these systems. This rule addresses the autopilot, autothrust, and flight director in a single section. This rule covers the portion of the head up display (HUD) that contains flight-guidance information displayed to the pilot while manually flying the airplane.

Finally, this rule harmonizes the regulations for FGS between the FAA

and the European Airworthiness Authorities. This harmonization will not only benefit the aviation industry economically, but also maintain the necessary high level of aviation safety.

Summary of the Regulatory Evaluation

The FAA's analysis of the economic impacts of this final rule is consistent with various Federal directives and orders. The FAA determined that this rule:

- Has benefits that justify its costs;
- Is not a significant regulatory action;
- Will not have a significant impact on a substantial number of small entities;
- Is in compliance with the Trade Agreements Act; and
- Will not impose an unfunded mandate of $100 million or more, in any one year, on state, local, or tribal governments, or on the private sector.

This rule affects manufacturers of small part 25 airplanes and the occupants of these airplanes. The manufacturers may incur costs; however, the occupants in the affected airplanes will receive safety benefits.

This rule incorporates the FAA and European Aviation Safety Agency's (EASA) harmonized standards that result in the assessed improvements in the operation of autopilot systems and has potential cost savings.

The FAA has determined that this rule will be cost-beneficial if seven accidents are averted over a 34-year benefits period.[1] Although it is not certain that earlier events could have been prevented by these autopilot changes (or, how many of any potential future accidents would be catastrophic), the expected prevalence of more sophisticated autopilot systems in business jets, combined with the occurrence of serious accidents involving large transport category airplanes, mandates regulatory action. For these reasons, the FAA finds this rule to be cost-beneficial.

II. Background

A. General Discussion of the Rule

This amendment is based on notice of proposed rulemaking (NPRM), Notice No. 04–11, which was published in the **Federal Register** on August 13, 2004 (69 FR 50240). In the Notice, you will find the background material and a discussion of the safety considerations supporting our course of action. You also will find a discussion of the current requirements and why they do not adequately address the problem. We refer to the recommendations of the Aviation Rulemaking Advisory Committee (ARAC) and the NTSB that we relied on in developing the final rule. The ARAC report is available at the following Web address: *http://dms.dot.gov.* The NTSB recommendations No. A–98–098 and A–99–043 are available at the following Web address: *http://www.ntsb.gov/Recs/letters/letters.htm.* The FAA Human Factors Report and NTSB recommendation No. A–92–035 are available in the public docket for this rulemaking. The NPRM also discusses each alternative that we considered and the reasons for rejecting the ones we did not propose.

The background material in the NPRM contains the basis and rationale for this rule and, except where we have specifically expanded on the background elsewhere in this preamble, supports this final rule as if it were contained here. The table in the NPRM describing non-normal conditions has been updated. Refer to the table in Advisory Circular (AC) 25.1329–1B, "Approval of Flight Guidance Systems" for the newest language. We refer inquiries regarding the intent of the requirements to the background in the NPRM as though it was in the final rule itself. It is therefore not necessary to repeat the background in this document.

B. Overview of the Flight Guidance System

The FGS is intended to assist the flightcrew in the basic control and guidance of the airplane. The FGS provides workload relief to the flightcrew and a means to fly an intended flight path more accurately. The following functions make up the flight guidance system:

1. *Autopilot*—automated airplane maneuvering and handling capabilities.
2. *Autothrust*—automated propulsion control.
3. *Flight Director*—the display of steering commands that provide vertical and horizontal path guidance, whether displayed "head down" or "head up." A head up display is a flight instrumentation that allows the pilot of an airplane to watch the instruments while looking ahead of the airplane for the approach lights or the runway.

Flight guidance system's functions also include flight deck alerting, status, mode annunciations (instrument displays), and any situational information required by those functions displayed to the flightcrew. Also included are those functions necessary to provide guidance and control with an approach and landing system, such as:

- Instrument landing system (ILS).
- Microwave landing system (MLS) (an instrument landing system operating in the microwave spectrum that provides lateral and vertical guidance to airplanes having compatible avionics equipment).
- Global navigation satellite system landing system (GLS).

The FGS definition does not include flight planning, flight path construction, or any other function normally associated with a flight management system (FMS).

C. Authorities

In addition to the FAA and JAA, a new aviation regulatory body, the EASA, was established recently by the European community to develop standards to ensure the highest level of safety and environmental protection, oversee their uniform application across Europe, and promote them internationally. The EASA formally became operational for certification of aircraft, engines, parts, and appliances on September 28, 2003. The EASA will eventually absorb all of the functions and activities of the JAA, including its efforts to harmonize the European airworthiness certification regulations with those of the U.S.

The Joint Aviation Regulation (JAR)-25 standards have been incorporated into the EASA's "Certification Specifications for Large Aeroplanes," (CS)–25, in similar if not identical language. The EASA's CS–25 became effective October 17, 2003.

The standards in this amendment were developed before the EASA began operations. They were developed in coordination with the JAA and JAR–25. However, since the JAA's JAR–25 and the EASA's CS–25 are essentially the same, all of the discussions relative to JAR–25 also apply to CS–25.

D. Harmonization of U.S. and European Regulatory Standards

When airplanes are type certificated to both sets of standards, the differences between part 25 and JAR–25 can result in substantial added costs to manufacturers and operators. These added costs, however, frequently do not bring about an increase in safety.

Representatives of the FAA and JAA, proposed an accelerated process to reach harmonization, the "Fast Track Harmonization Program." The FAA initiated the Fast Track Harmonization Program on November 26, 1999.

For "fast track harmonization" projects, the FAA and the JAA agreed that, "During the development of the NPRM, the rulemaking team should coordinate closely with the JAA HWG [Harmonization Working Group]

[1] A copy of the full regulatory evaluation is available in the Docket.

representative to ensure continued harmonization of approaches between the NPRM and JAA NPA [Notice of Proposed Amendment]. During these discussions, it should be emphasized that harmonization means that the regulations *would have the same effect*, thereby allowing single certification/validation, *rather than be worded identically*. To the extent necessary, the rulemaking team will have cooperation from other HWG members to ensure a full understanding of the issues." [2] This rulemaking has been identified as a "fast track" project.

Further details on ARAC, and its role in harmonization rulemaking activity, and the Fast Track Harmonization Program can be found in the tasking statement (64 FR 66522, November 26, 1999) and the first NPRM published under this program, "Fire Protection Requirements for Powerplant Installations on Transport Category Airplanes" (65 FR 36978, June 12, 2000).

III. Disposition of Comments

Safety Standards for Flight Guidance Systems

In response to the NPRM request for comments, ten commenters responded (with one commenter sending a duplicate). The commenters include one foreign regulatory authority, foreign and domestic airplane operators and manufacturers and the aviation organizations representing them, and individuals. One supportive comment finds the level of safety significantly improved. A number of comments, while generally supporting the proposal, suggest changes. Two comments ask for clarification of a term or definition. A few comments suggest rulemaking actions not addressed by the proposal, and several comments concern changes to the proposed AC. No substantive changes were made to the proposed rule; however, we revised the rule text in paragraph (h) to clarify our intent. The comments and our responses are below.[3]

1. Significant Transient, Paragraph (e)

Transport Canada, Canada's airworthiness authority, stated that the proposed rule's definition of a "significant transient" is inappropriate, as it includes criteria containing an injury level (*i.e.*, "non-fatal injuries") to crew and passengers. Transport Canada believes that the term could be open to considerable individual interpretation, and needlessly complicates the issue. In addition, this commenter argued that both the rule and the guidance material allow for a significant transient following autopilot disengagement during non-normal and rare-normal events. The more logical approach would be to delete any reference to injury level, and allow for the discretion of the certification specialist to determine whether any transients, be they minor or significant, are acceptable.

As discussed in the NPRM, the reference to "non-fatal injuries" was made for several reasons. The terms "significant transient" and "minor transient" are used in § 25.1329(c), (d), and (e). These terms are defined using AC 25.1309–1A language for "major failure condition" and "minor failure condition," respectively. The FAA intends a strong correlation between the terms used in these rule paragraphs regarding allowable transient conditions and the hazard classifications of failures of AC 25.1309–1A. Therefore, identical language is used so there would be no confusion about the hazard classification of the different transient levels defined in § 25.1329. This is consistent with the ARAC recommendation regarding the meaning of these terms and their relationship to acceptable means of compliance with § 25.1309. One reason for establishing this close relationship is to enhance standardization in the application of these terms and to make this application less dependent on the judgment of individual certification specialists. No changes were made to the rule due to this comment.

2. Changed Product Rule (CPR), § 21.101

The NPRM addressed the applicability of this rule given the intent behind the CPR, in depth, under the section entitled "Discussion of Proposal." In its comment, Boeing neither raised any questions regarding this explanation, nor identified issues for which this explanation was inadequate, although it did request further clarification of the inter-relationship between the two rules generally. To summarize the NPRM discussion, the CPR must be considered when updating or adding a flight guidance system. If a proposed change to a FGS is part of a "significant" product change, then § 21.101(a) is applicable unless one of the other exceptions of § 21.101(b) applies. For changes that are limited to the FGS itself, the only time a change may be considered a "significant change" is when a substantially new function is included in an already certified product. Advisory Circular 21.101–1, Change 1, further discusses how to evaluate whether a change made to a previously certified product is significant or not significant.

In accordance with § 21.101(b)(3), an applicant proposing a significant change would not be required to comply with this amendment if compliance were determined to be impractical. So, applicants for design changes, even if they are significant, will not be required to comply with this amendment if they show that it is impractical to comply. The determination of whether compliance is impractical is made for each amendment on a requirement-by-requirement basis. For example, in this rule it may be determined that it is impractical to comply with certain paragraphs of § 25.1329, but practical to comply with others. The applicant and the FAA may consider the question of whether or not complying with the latest amendment of the rule is impractical during the certification of a changed product. No change was made due to this comment.

3. Pilot Override, Paragraph (d), and Preamble Changes

Dassault Aviation disagreed with the statement made in the NPRM that an autopilot override and subsequent disengagement is considered to be a normal event. This topic is discussed in the NPRM under the heading, "What Are The Specific Proposed Changes?" for proposed § 25.1329(c), (d), and (e).

Dassault believes that part 25 aircraft certified to the current standards have an excellent safety record. However, it recognized that part 25 aircraft are becoming increasingly automated. The commenter further recognized that recent technological improvements make it feasible to include a level of protection against override events, thus making future part 25 aircraft and their flight guidance systems even safer.

Consequently, the commenter supports reasonable and feasible steps to provide additional protection against a manual override of an engaged autopilot. Nevertheless, Dassault emphasized that the primary responsibility for proper operation of the FGS (or any other system) rests with the pilot in command and the only way for the pilot to fulfill that responsibility is to possess adequate knowledge of aircraft systems and to use proper operational procedures, especially those that pertain to the FGS.

The FAA included the explanation regarding a pilot override as a normal event in the NPRM due to a comment received during discussions among the

[2] See Fast Track Harmonization Program (ANM–99–356–A) referred to in FAA Order 1100.160, and the NPRM mentioned above.

[3] The full text of each commenter's submission is available in the Docket.

FGS working group. The comment, that a pilot override of an engaged FGS should be a "non-normal condition," was made because the commenter believed that, since an override is not the primary means to disengage an engaged FGS, it must, therefore, be a non-normal condition.

As discussed in the NPRM, the FAA disagrees with that assessment.

The current generation of FGS has flown for millions of flight hours and is safe. However, there have been several accidents and incidents in the past 15 years whose initiating event was a pilot override of an engaged FGS. This specific scenario, a pilot override of an engaged FGS, is one of the known "vulnerabilities" of current FGS systems, and one that was addressed by ARAC's proposed rule language and accompanying AC.

We disagree with the commenter's implication that the pilot will always disconnect the FGS before making a manual input to the flight controls. History has shown that the pilots may not always follow this training, sometimes resulting in the accidents and incidents discussed in the NPRM. Whether a pilot chooses to override an engaged FGS because of an immediate need to maneuver the airplane, such as a need to avoid oncoming traffic, or a desire to "assist" the FGS because the pilot does not believe the FGS is performing as desired, the results of this pilot action must be safe and must not put the crew or passengers in jeopardy. This is the effect of treating pilot override of the FGS as a "normal" event under this rule. No change was made due to this comment.

4. Minor Transient Used in the Icing Table and in the Definition of Icing Conditions in Paragraph (c)

An individual commented on the preamble explanatory material of proposed § 25.1329(c), (d), and (e); the discussion of transients and their definition; and the explanatory text in proposed paragraph (c) that reads: "For purposes of this section, a minor transient is an abrupt change in the flight path of the airplane that would not significantly reduce airplane safety, and which involves flightcrew actions that are well within their capabilities involving a slight increase in flightcrew workload or some physical discomfort to passengers or cabin crew."

This commenter disagreed with the definition in paragraph (c) of "minor transient," stating that the definition conveys that it is necessarily abrupt, that it does involve an increase in crew workload, and that it does involve physical discomfort. Even though paragraphs (c) and (d) do state "* * * may not cause * * * any greater than a minor transient," the commenter thinks it would be helpful if the ensuing definition incorporated the same concept. This commenter recommended changing paragraph (c) to read "For the purposes of this section, a minor transient is a response that produces no greater than an abrupt change * * *"

The FAA does not agree with the suggested revision and has made no rule language change due to this comment. The rule defines the minimum performance safety requirements for an FGS. The FAA agrees that any transient, regardless of the duration or abruptness, is not desirable in a modern FGS. However, the purpose of the rule is not to address nuisance performance issues that are not safety critical.

Rule paragraphs (c) and (d) state that, for the conditions described in each paragraph, the resultant response may not be any greater than a minor transient. This addresses the commenter's concern that is reflected in the suggested revision. The definition of a "minor transient" does not need to reflect the possible range of response from "no response at all" to the maximum allowable transient that can be categorized as a minor transient.

5. Icing Definitions Listed in the Table

The same individual also stated that the definitions for icing conditions given under the description of "normal conditions" in the NPRM preamble should include "icing, (trace, light and moderate)." The commenter suggested that the current text may "possibly constitute a significant regulatory difference (SRD) between § 25.1329 and the corresponding JAR regulations, without referring to the AC or ACJ, which is only one means of compliance." Additionally, the commenter suggested that the wording in the proposed rule text and NPRM preamble is not as stringent as the ARAC working group recommendation.

The commenter suggested adding another sentence in the table for "normal conditions " icing" that conveys the concept that "Operationally, normal icing conditions include trace, light, and moderate icing levels."

The FAA disagrees with the statement that the proposal would create an SRD, and made no change. As recommended by ARAC, the proposed rule text uses the terms "normal conditions," "rare normal conditions," and "non-normal conditions" to distinguish the types of conditions under which the FGS must be evaluated. As explained in the "Discussion" section of the NPRM, these terms are not subject to precise definition. However, the Discussion section includes a table providing extensive examples of each category of conditions. In particular, the table states that "normal conditions" include "All icing conditions covered by 14 CFR part 25, appendix C, with the exception of "asymmetric icing" discussed under "Rare Normal Conditions" below." While appendix C does not use the terms trace, light, and moderate icing levels, appendix C clearly encompasses those terms. Therefore, we have retained the intent of the ARAC recommendations, and the rule is no less stringent.

6. Icing and Autopilot

One individual stated that, although the NRPM and AC contain significant discussions of the effects of icing upon FGS operations, there is not enough discussion to conclude that "icing can mask or impair the handling qualities of an autopilot."

The FAA believes that this issue has been covered adequately. The NPRM proposed requirements regarding the allowable transients during a disengagement of the FGS system in normal conditions and rare normal conditions, both of which contain icing conditions. An FGS would have to meet these requirements despite any "masking" effect or impairment of handling qualities of the autopilot. Likewise, the proposed AC 25.1329–1X, that accompanied the proposed rule contains discussions of many different aspects of this issue, such as the functions of a new flight deck alert and how the effects of icing upon autopilot performance should be evaluated.

7. Autopilot Disengagement Clarification in Paragraph (b)

The same individual also expressed concern that the rule language does not adequately address the need for a positive FGS disengagement (autopilot or autothrottle). The commenter stated that most current mechanically controlled systems uncouple from the system they are controlling, and will leave some mechanical connections attached to the system. These components increase the probability for control jams, as they can never be removed from the system.

Based on ARAC's recommendation, the FGS, as the term is used in this rule, does not include the mechanical connections. The accompanying AC to this rule states, in the "Overview of FGS" section, that anything that remains attached to the primary flight controls or propulsion controls when the FGS is not in use is regarded as part

of the primary flight controls and propulsion system, and the airworthiness standards for those systems are applicable. This means that the concerns stated by the commenter fall under the requirements that govern those systems, such as §§ 25.571, 25.671, 25.689, 25.901, and 25.1309. Specifically, §§ 25.671(c), 25.901(c), and 25.1309(b) cover the possibility of mechanical jams of the flight controls and propulsion systems. The FAA's position is that these regulations adequately cover the concerns described by the commenter.

This rulemaking action does not propose any changes to the regulations governing those systems. Therefore, no change to was made.

8. New Functions and Control Directions, Paragraph (f)

Dassault Aviation stated that § 25.1329(f) and § 25.1329(i) are redundant, and that paragraph (i) is worded more in terms of design than regulation. Section 25.1329(f) has to do specifically with the marking and labeling of the FGS controls, while § 25.1329(i) deals generally with the controls being designed to minimize confusion regarding FGS operations. While related, these two paragraphs deal with different aspects of the flightcrew interface with the FGS. The FAA disagrees with the commenter's assertion that the two paragraphs are redundant, and has made no change to the proposed rule text due to this comment. Rule paragraph (f) is the FGS specific regulation analogous to § 25.1555(a), "Control Markings." Rule paragraph (i) is the FGS specific regulation analogous to § 25.777, "Cockpit Controls," which addresses a broad range of human factors design issues. Both of these paragraphs are necessary to achieve this rule's safety objectives, and were recommended by ARAC.

9. Speed Protection Domain, new Paragraph (h)

Dassault Aviation stated that the rule text of § 25.1329(h) is more restrictive than the NPRM preamble discussion. The draft rule text states: "* * * the flight guidance system must not provide guidance or control to an unsafe speed." The NPRM discussion stated, "[H]owever, an implementation providing increased awareness of airspeed and/or alerts for immediate crew recognition and intervention of a potential airspeed excursion may also be an acceptable means of complying with this regulation." The commenter stated that FGS designs that would comply with the option discussed in the NPRM preamble would not be compliant with the formal regulation. The commenter then suggested the following revision to § 25.1329(h): "* * *the flight guidance system must not provide guidance or control to an unsafe speed unless an implementation providing increased awareness of airspeed and/or alerts for immediate crew recognition is provided."

The FAA partially concurs with Dassault's comment. While it was not our intent, we recognize that the proposed rule language could be interpreted as requiring the FGS itself to prevent operation at an unsafe speed, without pilot intervention. To clarify that such intervention is an acceptable means of compliance with this standard, we have revised the paragraph to state, "a means must be provided to prevent the flight guidance system from providing guidance or control to an unsafe speed." This means may consist of either an automated means of preventing such guidance or pilot intervention. This philosophy was used elsewhere in this proposed rule and accompanying proposed AC. The NPRM discusses the use of another flight deck alert (sometimes referred to as "Bark Before Bite") to mitigate transients in the flight path of the airplane that occur immediately after the disengagement of the autopilot system. This alert to ensure awareness of the pilot to the speed of the airplane is similar to this example. The proposed rule, accompanying preamble material, and proposed AC are consistent in that the use of a flight deck alert to ensure pilot action is considered to be an acceptable means of compliance to the rule. This approach is also fully harmonized with that of JAA/EASA.

10. General Comments

The General Aviation Manufacturers Association (GAMA) supports the FAA's and ARAC's effort in generating this proposed rule. The GAMA noted several specific NPRM preamble paragraphs that explain the intent and interpretation of the several proposed rule paragraphs that its organization supports.

Boeing, while making a comment on the proposed AC accompanying this proposed rule, included the following statement concerning the NPRM, "The NPRM has been changed from the JAA [Joint Aviation Authority] NPA product * * *" Boeing noted all instances of differences between the rule language contained in the NPRM and NPA.

The NPRM, in the section entitled "Discussion of the Proposal," explained editorial instances where the FAA proposed rule language was different than the JAA NPA rule language. For further information on harmonization, refer to section II, paragraph D, Harmonization of U.S. and European Regulatory Standards, of this final rule.

Because of the differences in the rulemaking processes and requirements of the two Agencies, it is common that slight differences exist between their harmonized regulations. The FAA believes the rule text is harmonized between the FAA and JAA/EASA even though some terms used are different. Since the FAA and JAA/EASA versions of the final rule are harmonized—meaning the effect of both rules is identical—no changes were made due to these comments.

11. Comments and Suggestions for Rulemaking Actions Not Addressed by This NPRM

The FAA received several comments on subject areas that are not addressed in the proposed rule, and therefore, no comments were requested on these subjects. These comments are discussed below.

Adding Flight Testing Criteria

One commenter suggested that flight testing criteria be included in the rule if an FGS is to be certified based on its similarity to a previously approved design. The FAA disagrees with this approach. The commenter's suggestion is more appropriate for an AC in that it would define one (but not the only) method to show compliance to the regulations. However, in this case, the FAA disagrees with making this change to the accompanying AC. The AC represents the most detailed approach of demonstrating compliance. To use similarity as a method of compliance, the applicant would need to propose this method, instead of the method in the AC, to the FAA aircraft certification office (ACO) in charge of that project. The FAA believes that it would be extremely problematic, due to the numerous possibilities of systems, aircraft, and aerodynamic differences between a system to be certified and a previously certified system, to try to define a prescriptive method that would be acceptable. This evaluation is best left to the ACO engineer evaluating the project.

Current Systems or Component Items

Another comment by the same individual made several observations regarding "known frailties of current systems or components as they are implemented." The examples given concerned mechanical flight controls issues, such as control surface servo actuators, rudder boost pumps, and

worn and out of tolerance flow control valves.

Under the definition of an FGS given in the NPRM, these items are not considered to be part of the FGS. They are part of the primary flight control system of the airplane. Therefore, no changes were made due to this comment. Additionally, the commenter made no specific recommendations to address the concerns. The FAA considers that § 25.1309 adequately covers the concerns listed.

Autopilot and Flight Standards Issue, § 121.579

One commenter reminded the FAA that the FGSHWG report recommended updating § 121.579, "Minimum Altitudes for Use of Autopilot." The proposed AC 25.1329–1X included an updated method for calculating the autopilot Minimum Use Height (MUH). The method contained in the proposed AC was harmonized with the JAA/EASA method. The working group recommended that the part 121 rule be revised so there would be no confusion about making the MUH calculation or placing the correct method in the Airplane Flight Manual (AFM).

While we acknowledged the ARAC recommendation, we did not propose to revise § 121.579 as part of this rulemaking, and we have not provided the public an opportunity to comment on the proposal. No changes were made due to this comment. We may consider this recommendation in future rulemaking.

Helicopter Autopilot, Part 27 and 29

Rowan Companies, Inc., as the parent company of Era Aviation, Inc., provided detailed input on helicopter autopilot design and specific suggestions to include these considerations. This commenter suggested that the § 25.1329 rulemaking and advisory material be expanded to include helicopters. Several specific suggestions were made to address what the commenter regarded as deficiencies in current rotorcraft regulations.

The activity to revise part 25 material is, by its nature, applicable to transport category airplanes only. Part 27 of 14 CFR covers normal category rotorcraft, and part 29 covers transport category rotorcraft. Revisions to the regulations contained in parts 27 and 29 are not covered in the proposed rulemaking for the FGS on transport category airplanes. However, these comments may be considered in future rulemaking applicable to rotorcraft.

IV. Editorial Change

For clarification only, we have moved the definitions of "minor transient" and "significant transient" from paragraphs (c) and (e), respectively, to a new paragraph (n).

V. Rulemaking Analyses and Notices

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA to consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this final rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Executive Order 13132, Federalism

The FAA analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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 and, therefore, would not have federalism implications.

Summaries of the Regulatory Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Executive Order 12866 and DOT Regulatory Policies and Procedures

This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which has been placed in the docket for this rulemaking.

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this rule: (1) Has benefits that justify its costs; (2) is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (3) will not have a significant economic impact on a substantial number of small entities; (4) will reduce barriers to international trade; and (5) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

Total Costs and Benefits of This Rulemaking

This rulemaking affects manufacturers of small part 25 airplanes that incur costs and occupants in affected airplanes that receive safety benefits.

Assumptions and Standard Values

- Discount rates: Base case 7%; sensitivity case 3%.
- Period of analysis: Overall, 2006–2041. Costs, 2006–2016 (consist of design, testing, and production costs). Benefits, 2008–2041 (based on 25-year operating lives of newly-certificated aircraft, all of which will be produced between 2007–2016).
- Value of statistical fatality avoided: $3 million.

Basis of Costs

As noted in the regulatory evaluation, the revised requirements will affect part 25 smaller transport airplanes (turboprops and regional jets) and business jets; part 25 larger commercial airplanes either already meet the new requirements or will have only minor costs in complying. Since part 25 turboprops and regional jets are not currently manufactured in the United States, the final rule will directly affect only U.S.-manufactured business jets.

The relevant changes and associated incremental costs are as follows:

1. *Autopilot Override*—Nonrecurring costs (design, development, and testing) related to installation of a force sensor (new force transducer) on control column totals $200,000 for a new type certificate. Recurring costs (per unit) for a new force transducer equal $12,000.

2. *Speed Protection*—Nonrecurring costs total $210,000; recurring costs (per unit) equal $40,000 (this amount may include new or modified components, such as sensors).

3. *Pilot Awareness/Flight Deck Annunciation*—Nonrecurring costs total $120,000; recurring costs per unit are minimal (essentially no new costs).

Non-recurring and recurring costs total $116,520,000, or $76,592,390, and $96,553,992 in present values at 7% and 3% discount rates, respectively.

Basis of Benefits

Since current type certificates for part 25 larger commercial airplanes already voluntarily meet the key provisions of the rule, future averted accidents (benefits) attributable to the rule must be limited to part 25 business jets.

Although there were no directly-aligned accidents involving autopilots in part 25 business jets in a recent 20-year period, there were four incidents that involved autopilot disconnect and/or improper pilot procedures; the FAA expects this rule to prevent such events. Autopilot disruptions are serious occurrences, and it is reasonable to postulate that such incidents could just as easily have been accidents. Furthermore, given that part 25 business jets increasingly incorporate more sophisticated autopilot systems, the risk of future accidents intensifies. As previously noted, difficulties for flightcrews interacting with the increasing automation of flight decks in part 25 larger commercial airplanes prompted this rulemaking. (There were at least two accidents and several serious incidents involving large commercial airplanes).

Accordingly, the FAA has estimated the minimum levels of averted losses, in terms of avoided fatalities and airplane damage (each accident is valued at $40 million) that will be necessary to offset the estimated compliance costs.

Applying the base case 7% interest rate, the FAA has determined that approximately seven catastrophic accidents are necessary in the 34-year benefits period to make the rule cost-beneficial (note that four events in the 20-year period examined mathematically equates to seven events in the future 34-year benefits period in this analysis). Alternatively, using a 3% interest rate as a sensitivity case, only four accidents are necessary to make the rule cost-beneficial.

Based on the history of accidents and incidents in large commercial airplanes, and the occurrence of incidents concomitant with the increasing complexity of flight guidance systems in large business jets, the FAA finds this rule to be cost-beneficial. A summary of costs and benefits is shown below.

Base Case—Use of 7% Discount Rate

- Estimated present value costs (11-year analysis period)—part 25 certificated smaller airplanes (large business jets): $76.592 million.
- Estimated present value benefits (34-year period)—part 25 certificated smaller airplanes (large business jets): As discussed above, with seven potential averted accidents, the present value of benefits is equivalent to present value costs of $76.592 million, and the rule is cost-beneficial.

Sensitivity Case—Use of 3% Discount Rate

- Estimated present value costs (11-year period)—part 25 certificated smaller airplanes (large business jets): $96.554 million.
- Estimated present value benefits (34-year period)—part 25 certificated smaller airplanes (large business jets): As discussed above, with four potential averted accidents, the present value of benefits is equivalent to present value costs of $96.554 million, and the rule is cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rule will affect manufacturers of part 25 airplanes produced under future new type-certificates. For manufacturers, a small entity is one with 1,500 or fewer employees. None of the part 25 manufacturers has 1,500 or fewer employees; consequently, none is considered a small entity.

Based on the above, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, they be the basis for U.S. standards. In accordance with the above statute, the FAA has assessed the potential effect of this rule for part 25 airplanes. This rulemaking is consistent with the Trade Agreements Act since it eliminates significant regulatory differences between the U.S. and European airworthiness standards.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. In the NPRM, we requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. We did not receive any comments, and we have determined, based on the administrative record of this rulemaking, that there is no need to make any regulatory distinctions applicable to intrastate aviation in Alaska.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements, Safety, Transportation.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Part 25 of Chapter 1 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ 1. The authority citation for part 25 continues to read as follows:

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

■ 2. Revise § 25.1329 to read as follows:

§ 25.1329 Flight guidance system

(a) Quick disengagement controls for the autopilot and autothrust functions must be provided for each pilot. The autopilot quick disengagement controls must be located on both control wheels (or equivalent). The autothrust quick disengagement controls must be located on the thrust control levers. Quick disengagement controls must be readily accessible to each pilot while operating the control wheel (or equivalent) and thrust control levers.

(b) The effects of a failure of the system to disengage the autopilot or autothrust functions when manually commanded by the pilot must be assessed in accordance with the requirements of § 25.1309.

(c) Engagement or switching of the flight guidance system, a mode, or a sensor may not cause a transient response of the airplane's flight path any greater than a minor transient, as defined in paragraph (n)(1) of this section.

(d) Under normal conditions, the disengagement of any automatic control function of a flight guidance system may not cause a transient response of the airplane's flight path any greater than a minor transient.

(e) Under rare normal and non-normal conditions, disengagement of any automatic control function of a flight guidance system may not result in a transient any greater than a significant transient, as defined in paragraph (n)(2) of this section.

(f) The function and direction of motion of each command reference control, such as heading select or vertical speed, must be plainly indicated on, or adjacent to, each control if necessary to prevent inappropriate use or confusion.

(g) Under any condition of flight appropriate to its use, the flight guidance system may not produce hazardous loads on the airplane, nor create hazardous deviations in the flight path. This applies to both fault-free operation and in the event of a malfunction, and assumes that the pilot begins corrective action within a reasonable period of time.

(h) When the flight guidance system is in use, a means must be provided to avoid excursions beyond an acceptable margin from the speed range of the normal flight envelope. If the airplane experiences an excursion outside this range, a means must be provided to prevent the flight guidance system from providing guidance or control to an unsafe speed.

(i) The flight guidance system functions, controls, indications, and alerts must be designed to minimize flightcrew errors and confusion concerning the behavior and operation of the flight guidance system. Means must be provided to indicate the current mode of operation, including any armed modes, transitions, and reversions. Selector switch position is not an acceptable means of indication. The controls and indications must be grouped and presented in a logical and consistent manner. The indications must be visible to each pilot under all expected lighting conditions.

(j) Following disengagement of the autopilot, a warning (visual and auditory) must be provided to each pilot and be timely and distinct from all other cockpit warnings.

(k) Following disengagement of the autothrust function, a caution must be provided to each pilot.

(l) The autopilot may not create a potential hazard when the flightcrew applies an override force to the flight controls.

(m) During autothrust operation, it must be possible for the flightcrew to move the thrust levers without requiring excessive force. The autothrust may not create a potential hazard when the flightcrew applies an override force to the thrust levers.

(n) For purposes of this section, a transient is a disturbance in the control or flight path of the airplane that is not consistent with response to flightcrew inputs or environmental conditions.

(1) A minor transient would not significantly reduce safety margins and would involve flightcrew actions that are well within their capabilities. A minor transient may involve a slight increase in flightcrew workload or some physical discomfort to passengers or cabin crew.

(2) A significant transient may lead to a significant reduction in safety margins, an increase in flightcrew workload, discomfort to the flightcrew, or physical distress to the passengers or cabin crew, possibly including non-fatal injuries. Significant transients do not require, in order to remain within or recover to the normal flight envelope, any of the following:

(i) Exceptional piloting skill, alertness, or strength.

(ii) Forces applied by the pilot which are greater than those specified in § 25.143(c).

(iii) Accelerations or attitudes in the airplane that might result in further hazard to secured or non-secured occupants..

§ 25.1335 [Removed]

■ 3. Amend part 25 by removing § 25.1335.

Issued in Washington, DC, on April 5, 2006.

Marion C. Blakey,

Administrator.

[FR Doc. 06–3467 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM344; Special Conditions No. 25–314–SC]

Special Conditions: McDonnell Douglas DC–8–72F Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for McDonnell Douglas DC–8–72F airplanes modified by Avionics and Systems Integration Group, LLC. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of Universal Avionics Systems Corporation EFI–600 Electronic Flight Instruments that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is March 17, 2006.

We must receive your comments by May 11, 2006.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM343, 1601 Lind Avenue SW., Renton, Washington 98055–4056. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM343. You can inspect comments in the Rules Docket weekdays, except Federal Holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance; however, we invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You may inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late, if it is possible to do so without incurring expense or delay. We may change these special conditions, based on the comments we receive.

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

Background

On September 2, 2005, Avionics and Systems Integration Group, LLC, 2734 Burbank St., Dallas, Texas 75235, applied for a Supplemental Type Certificate (STC) to modify McDonnell Douglas DC–8–72F airplanes. These models are currently approved under Type Certificate No. 4A25. The McDonnell Douglas DC–8–72F is a transport category airplane. The airplanes are powered by 4 CFM International Turbofan CFM56–2–C1, CFM56–2–C3, CFM56–2–C5, or CFM56–2–C6 engines and have a maximum takeoff weight of 335,000 pounds. This airplane operates with a pilot, co-pilot, and flight engineer and can hold up to 201 passengers. The modification incorporates installation of Universal Avionics Systems Corporation EFI–600 Electronic Flight Instruments. The EFI–600 displays are replacements for the mechanical heading (HSI) and attitude (ADI) instruments. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under 14 CFR 21.101, Avionics and Systems Integration Group, LLC, must show that the DC–8–72F, as modified, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. 4A25, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the DC–8–72F airplanes includes provisions from both the Civil Air Regulations Part 4B and 14 CFR part 25, as listed on Type Certificate No. 4A25. The certification basis also includes special conditions, additional requirements, and exemptions listed in the type certificate data sheet that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the McDonnell Douglas DC–8–72F airplanes because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the DC–8–72F airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued under § 11.38 and become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant subsequently apply for an STC to modify any other model included on Type Certificate No. 4A25 to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

As noted earlier, the McDonnell Douglas DC–8–72F airplanes modified by Avionics and Systems Integration Croup, LLC, will incorporate dual Electronic Primary Flight Displays that perform critical functions. This system may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the McDonnell Douglas DC–8–72F airplanes modified by Avionics and Systems Integration Group, LLC. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters and the advent of space and satellite communications coupled with electronic command and control of airplanes, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

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

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to McDonnell Douglas DC–8–72F airplanes modified by Avionics and Systems Integration Group, LLC. Should the applicant subsequently apply for an STC to modify any other model included on Type Certificate No. 4A25 to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under § 21.101.

Conclusion

This action affects only certain novel or unusual design features on McDonnell Douglas DC–8–72F airplanes modified by Avionics and Systems Integration Group, LLC. It is not a rule of general applicability and affects only the applicant which applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has undergone the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these

special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the McDonnell Douglas DC–8–72F airplanes modified by Avionics and Systems Integration Group, LLC.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of the system to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on March 17, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3423 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22471; Directorate Identifier 2005–NM–142–AD; Amendment 39–14550; AD 2006–07–23]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 757 airplanes. This AD requires repetitive measurements of the freeplay of each of the three power control units (PCUs) that move the rudder; repetitive lubrication of rudder components; and corrective actions if necessary. This AD results from a report of freeplay-induced vibration of the rudder. The potential for vibration of the control surface should be avoided because the point of transition from vibration to divergent flutter is unknown. We are issuing this AD to prevent excessive vibration of the airframe during flight, which could result in divergent flutter and loss of control of the airplane.

DATES: This AD becomes effective May 16, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 16, 2006.

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

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

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6450; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Boeing Model 757 airplanes. That NPRM was published in the **Federal Register** on September 21, 2005 (70 FR 55321). That NPRM proposed to require repetitive measurements of the freeplay of each of the three power control units (PCUs) that move the rudder; repetitive lubrication of rudder components; and corrective actions if necessary.

Comments

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

Request To Revise Discussion Section's Reference to Freeplay-Induced Flutter

Boeing requests that we revise the wording in the first sentence of the Discussion section of the NPRM to replace the phrase "freeplay-induced flutter" with the phrase "freeplay-induced vibration." Boeing states that the event noted in the Discussion section was not divergent flutter, but was a constant amplitude event induced by excessive freeplay. Boeing states that the service event is consistently described as freeplay-induced vibration elsewhere in the NPRM. Boeing points out that using the phrase "freeplay-induced flutter" in relation to the service event may lead readers to the incorrect conclusion that the service event was divergent flutter.

We agree that the Discussion section incorrectly stated that there has been one report of "freeplay-induced flutter," rather than "freeplay-induced vibration." Since the Discussion section of the preamble does not reappear in the final rule, we have not changed that section. However, we have changed the unsafe condition in the Summary paragraph and in paragraph (d) of this AD to include clarification about freeplay-induced vibration.

Request To Clarify Paragraph (e), "Compliance"

Boeing also requests that we change paragraph (e), "Compliance," which states, "* * * unless the actions have already been done." Boeing requests that we clarify the sentence by stating, "* * * unless the actions have already been done per the appropriate service bulletin referenced in paragraph (f) below." Boeing requests that we give credit for lubrications accomplished previously in accordance with the airplane maintenance manual (AMM). Boeing also states that the service bulletins specified in paragraph (f) of the NPRM institute significant improvements in the freeplay measurements and procedures over those in the AMM. Boeing would like to ensure that freeplay checks performed per the AMM are not considered

equivalent to the service bulletin procedures.

We partially agree with Boeing. We disagree with the request to change paragraph (e), "Compliance," of this AD. Paragraph (e) is written specifically in reference to the actions in this AD and not in reference to the actions performed in accordance with any document that is not specifically referenced in this AD; the actions must be accomplished exactly as prescribed by the AD. Paragraph (e) of this AD allows for compliance only when the required actions have already been done in accordance with the required service information. Therefore, the freeplay measurement must be done in accordance with the procedures specified in the service bulletins referenced in the AD. For the lubrication, the service bulletins reference the AMM for the procedures. The AMM is not referenced in the AD. Compliance with any revision of the AMM is acceptable for compliance with the lubrication requirements of this AD. We have not changed the AD in this regard. However, the operators may request approval of an alternative method of compliance (AMOC) in accordance with the procedures in paragraph (k) of this AD.

Request To Shorten Compliance Time for Lubrication

The Airline Pilot's Association (ALPA) agrees with the actions in the NPRM; however, ALPA states that the proposed implementation period is too long, considering the possible results. ALPA states that the lubrication requirement, in particular, should be required in as little as 90 days. ALPA recommends that we consider shortening the required compliance time for each element of the AD.

We disagree. ALPA did not provide technical data to support the requests. The compliance time for the lubrication is 9 months after the effective date of the AD. This compliance time agrees with the manufacturer's recommendation. In addition, service history shows that the lubrication is not an urgent issue that requires action within 90 days. We have not changed the AD in this regard.

Request To Express Repetitive Interval in Terms of Flight Hours

US Airways and the Air Transport Association (ATA) request that we specify the repetitive intervals for both the freeplay measurement and the rudder lubrication only in terms of flight hours so that both requirements can be accomplished, to the greatest extent possible, during compatible, scheduled maintenance visits. The commenters explain that expressing the compliance times only in terms of flight hours would allow for completing both requirements during the heavy maintenance C-check, which U.S. Airways does at the earlier of 6,000 flight hours or 592 days. The proposed rule would require repetitive freeplay measurements at the earlier of 12,000 flight hours or 36 months; and repetitive lubrications at the earlier of 6,000 flight hours or 18 months. U.S. Airways states that it would like to complete both actions at the same time during the heavy maintenance visit because the environment, away from the elements with a tail stand set up, would better facilitate these actions. The commenters state that the rule, as proposed, would require the lubrication to be accomplished during special line maintenance visits, and the rudder freeplay measurement to be done twice as frequently to fit into its existing C-checks.

We disagree with the commenters' request to state the compliance times only in terms of flight hours. The lubrication is required at intervals not to exceed the earlier of 3,000 flight hours or 9 months for airplanes on which BMS 3–33 grease is not used; and the earlier of 6,000 flight hours or 18 months for airplanes on which BMS 3–33 grease is used. U.S. Airways did not indicate which grease it uses. In addition, the commenters did not provide technical substantiation allowing the calendar time to exceed 9 months or 18 months, depending on the type of grease used. The compliance times in the NPRM are consistent with the manufacturer's recommendations. We have determined that the compliance times in the AD represent the maximum interval of time allowable for the affected airplanes to continue to safely operate before the actions are done. Since maintenance schedules vary among operators, there would be no assurance that the actions would be done during that maximum interval. We have not changed the AD in this regard. However, the commenters may request approval of an AMOC in accordance with the procedures in paragraph (k) of this AD.

Request To Include Procedures for Rudder Lubrication

Northwest Airlines and the ATA request that we specify in the AD the procedures required for rudder lubrication, or require that those procedures be specified in the applicable service bulletins. The commenters explain that the AMMs referenced in the service bulletins are not identified by date, and that there could be subsequent revisions by Boeing or an airplane operator, unaware that the procedure is mandated by an AD. The commenters add that AMMs are not subject to FAA approval. If the FAA is concerned that future AMM revisions could change the intent of the NPRM, Northwest Airlines states that the FAA should identify the lubrication procedures in the NPRM or the service bulletin so that FAA approval is required before the procedures are revised.

We disagree with including specific lubrication procedures in the AD. The unsafe condition is caused by excessive freeplay, which allows control surfaces to vibrate. The lubrication minimizes wear and corrosion in all critical mechanical joints in the rudder control surfaces. The service bulletins contain specific procedures for measuring the freeplay. The AMMs referred to in the service bulletins show where to apply grease and specify which grease to use. These AMMs give lubrication procedures that follow industry standard practices. In addition, the AD specifies that using one grease (BMS 3–33) maximizes the repetitive interval for the lubrications. We have not changed the AD in this regard.

Request To Extend Initial Threshold

American Airlines and the ATA request that we revise paragraphs (g) and (i) to account for operators who use BMS 3–33 grease. The commenters request that the interval for the initial freeplay measurement be extended from 18 months to 36 months, and that the interval for the initial lubrication be extended from 9 months to 18 months. The commenters state that these changes would be consistent with the proposed repetitive intervals. American Airlines explains that the safety of flight issue with the rudder load loop is the lack of rudder component lubrication. The lack of lubrication allows metal-to-metal contact and infiltration of water and contaminants into the bearing surfaces, causing corrosion and inducing freeplay into the rudder system. The commenters point out that the recommended changes to the proposed AD would allow operators that currently use BMS 3–33 grease every 18 months or 6,000 flight hours to extend the initial intervals.

We disagree. The commenters do not account for the fact that flight hours, particularly at cruise, exacerbate the wear of all the critical joints; the freeplay in the flight control surface is cause by control-system wear and corrosion. In addition, the commenters do not provide technical justification for extending the interval for the initial freeplay measurement. The initial

freeplay measurement done in accordance with the AD is critical to establish a baseline for the entire fleet. Service history for these airplanes has shown that the initial intervals for the freeplay measurement and lubrication are adequate. We have not changed the AD in this regard.

Clarification of AMOC Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Clarification of Service Bulletin Reference

We have included in paragraph (f) of this AD a reference to Appendix A of Boeing Special Attention Service Bulletin 757–27–0148, dated June 16, 2005; and Boeing Special Attention Service Bulletin 757–27–0149, dated June 16, 2005. The appendixes contain reference information for doing the actions in the Accomplishment Instructions. The NPRM referred only to the Accomplishment Instructions and excluded mention of the appendixes.

Conclusion

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

Costs of Compliance

There are about 1,040 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD. No parts are necessary to accomplish either action.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Freeplay measurement	4	$65	$260, per measurement cycle	679	$176,540, per measurement cycle.
Lubrication	8	65	$520, per lubrication cycle	679	$353,080, per lubrication cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–07–23 BOEING: Amendment 39–14550. Docket No. FAA–2005–22471; Directorate Identifier 2005–NM–142–AD.

Effective Date

(a) This AD becomes effective May 16, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of freeplay-induced vibration of the rudder. The potential for vibration of the control surface should be avoided because the point of transition from vibration to divergent flutter is unknown. We are issuing this AD to prevent excessive vibration of the airframe during flight, which could result in divergent flutter and loss of control of the airplane.

Compliance

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

Service Bulletin References

(f) The term "service bulletin," as used in this AD, means the Accomplishment Instructions and Appendix A of the following service bulletins, as applicable:

(1) For Model 757–200, –200PF, –200CB series airplanes: Boeing Special Attention Service Bulletin 757–27–0148, dated June 16, 2005; and

(2) For Model 757–300 series airplanes: Boeing Special Attention Service Bulletin 757–27–0149, dated June 16, 2005.

Repetitive Measurements

(g) Within 18 months after the effective date of this AD: Measure the freeplay for each of the three power control units that move the rudder. Repeat the measurement thereafter at intervals not to exceed 12,000 flight hours or 36 months, whichever occurs first. Do all actions required by this paragraph in accordance with the applicable service bulletin.

Related Investigative and Corrective Actions

(h) If any measurement found in paragraph (g) of this AD is outside certain limits specified in the service bulletin: Before further flight, do the applicable related investigative and corrective actions in accordance with the service bulletin.

Repetitive Lubrication

(i) Within 9 months after the effective date of this AD: Lubricate the rudder components specified in the applicable service bulletin. Repeat the lubrication thereafter at the applicable interval in paragraph (i)(1) or (i)(2) of this AD. Do all actions required by this paragraph in accordance with the applicable service bulletin.

(1) For airplanes on which BMS 3–33 grease is not used: 3,000 flight hours or 9 months, whichever occurs first.

(2) For airplanes on which BMS 3–33 grease is used: 6,000 flight hours or 18 months, whichever occurs first.

Concurrent Repetitive Cycles

(j) If a freeplay measurement required by paragraph (g) of this AD and a lubrication cycle required by paragraph (i) of this AD are due at the same time or will be accomplished during the same maintenance visit, the freeplay measurement and applicable related investigative and corrective actions must be done before the lubrication is accomplished.

Alternative Methods of Compliance (AMOCs)

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

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

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

Material Incorporated by Reference

(l) You must use Boeing Special Attention Service Bulletin 757–27–0148, dated June 16, 2005; or Boeing Special Attention Service Bulletin 757–27–0149, dated June 16, 2005; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 30, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3378 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20688; Directorate Identifier 2004–NM–165–AD; Amendment 39–14551; AD 2006–07–24]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 and –300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 757–200 and -300 series airplanes. This AD requires replacing certain electrical panels with certain new panels. This AD results from a report of some loose wire terminations in the P50 panel that caused intermittent indications in the flight deck. We are issuing this AD to prevent intermittent indications in the flight deck, incorrect circuitry operation in the panels, and airplane system malfunctions that may adversely affect the alternate flaps, alternate gear extension, and fire extinguishing.

DATES: This AD becomes effective May 16, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 16, 2006.

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

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

FOR FURTHER INFORMATION CONTACT: Louis Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6478; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 757–200 and -300 series airplanes. That NPRM was published in the **Federal Register** on March 23, 2005 (70 FR 14592). That NPRM proposed to require replacing certain electrical panels with certain new panels.

Comments

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

Support for the NPRM

The Boeing Company and American Airlines support the NPRM.

Request to Address Defective Parts Manufacturer Approval (PMA) Parts

The Modification and Replacement Parts Association (MARPA) requests that the NPRM be revised to cover possible defective PMA alternative parts and to identify the manufacturer of the defective electrical panels, so that those defective PMA parts also are subject to the NPRM. MARPA states that the electrical panels are identified in the

NPRM by certain cryptic numbers such as P1–1, P54, etc. MARPA is not clear whether these are vendor part numbers or some other designation such as location or function.

MARPA also states that there are a number of electrical panels known to have been approved via the PMA route. However, MARPA adds that it is not possible to determine if such alternatives exist in this case without knowing the name of the actual manufacturer and its part number and/or the corresponding type certificate holder part number. In addition, MARPA states that, in general, service bulletins almost exclusively refer to the original equipment manufacturer's components and exclude possible PMA alternatives. MARPA further states that suppliers or repair facilities usually do not have access to the proprietary service bulletins and may not be able to identify defective components. In such cases, defective units could be returned to service or supplied to operators.

We partially agree. We agree with MARPA's general request that, if we know that an unsafe condition also exists in PMA parts, an AD should address those parts, as well as the original parts. However, in the case of this AD, the unsafe condition is the result of a manufacturing error at The Boeing Company, not a design deficiency and thus, this AD does not affect PMA parts.

MARPA's remarks are timely in that the Transport Airplane Directorate currently is in the process of reviewing this issue as it applies to transport category airplanes. We acknowledge that there may be other ways of addressing this issue to ensure that unsafe PMA parts are identified and addressed. Once we have thoroughly examined all aspects of this issue, including input from industry, and have made a final determination, we will consider whether our policy regarding addressing PMA parts in ADs needs to be revised.

We do not agree with MARPA's request to identify the manufacturer and part numbers of the subject electric panels. As explained previously, we have determined that the identified unsafe condition is the result of a manufacturing error, not a design deficiency. Since the AD does not affect PMA parts, and The Boeing Company's part numbers of the affected P1–1, P1–3, P3–1, P3–3, P50, and P54 panels are identified in paragraph 2., "MATERIAL INFORMATION," of the applicable Boeing special attention service bulletin listed in table 1 of the AD, it is unnecessary to specify PMA part numbers in the AD. Therefore, we have made no change to the AD in this regard.

Request To Revise Work Hour Estimate

The Air Transport Association (ATA) of America, on behalf of one of its members (Northwest Airlines, Inc.,), states that the work hours necessary to do the proposed replacement are substantially more than the 12 work hours specified in the NPRM. The ATA indicates that this disparity may cause some affected operators to accomplish the proposed replacement during unplanned, dedicated maintenance visits. Northwest Airlines, Inc., notes that the service bulletins in table 1 of the NPRM specify 84 total hours to do the proposed replacement. They also notes that it took 162 hours to modify one of their airplanes. They also state that the main driver for the long hours was the enormous functional check for all of the disturbed systems and signals when replacing certain panels.

We infer that the ATA and Northwest Airlines, Inc., are requesting that we revise the work hour estimate under "Costs of Compliance" in the NPRM. We do not agree. The work hour estimate describes only the direct costs of the replacement required by this AD. Based on the best data available, the manufacturer provided the number of work hours (12) necessary to do the required replacement. This number represents the time necessary to perform only the replacement actually required by this AD. We recognize that, in doing the actions required by an AD, operators may incur other costs in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include those costs (such as the time required to gain access and close up, time necessary for planning and scheduling, tests, and time necessitated by other administrative actions). Those costs, which may vary significantly among operators, are almost impossible to calculate. Therefore, we have not changed this AD regarding this issue.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

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

Costs of Compliance

There are about 19 airplanes of the affected design in the worldwide fleet. This AD will affect about 13 airplanes of U.S. registry. The required actions will take about 12 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost about $252,834 per airplane. Based on these figures, the estimated cost of this AD for U.S. operators is $3,296,982, or $253,614 per airplane. However, we have confirmed with the airplane manufacturer that warranty remedies may be available for all affected airplanes. The manufacturer may cover the cost of replacement parts and labor costs associated with this AD, subject to warranty conditions. As a result, the costs attributable to this AD may be less than stated above.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–07–24 Boeing: Amendment 39–14551. Docket No. FAA–2005–20688; Directorate Identifier 2004–NM–165–AD.

Effective Date

(a) This AD becomes effective May 16, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to airplanes listed in Table 1 of this AD, certificated in any category.

TABLE 1.—APPLICABILITY

Boeing model	As listed in Boeing Special Attention Service Bulletin—
(1) 757–200 series airplanes	757–24–0092, dated January 9, 2003.
(2) 757–300 series airplanes	757–24–0095, dated January 9, 2003.

Unsafe Condition

(d) This AD was prompted by a report of some loose wire terminations in the P50 panel that caused intermittent indications in the flight deck. We are issuing this AD to prevent intermittent indications in the flight deck, incorrect circuitry operation in the panels, and airplane system malfunctions that may adversely affect the alternate flaps, alternate gear extension, and fire extinguishing.

Compliance

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

Replacements

(f) Within 24 months after the effective date of this AD, replace the P1–1; P1–3, P3–1, P3–3, P50, P51, and P54 panels with new P1–1, P1–3, P3–1, P3–3, P50, P51, and P54 panels, in accordance with the Accomplishment Instructions of the applicable service bulletin listed in Table 1 of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Material Incorporated by Reference

(h) You must use Boeing Special Attention Service Bulletin 757–24–0092, dated January 9, 2003; or Boeing Special Attention Service Bulletin 757–24–0095, dated January 9, 2003; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on March 31, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3377 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23840; Directorate Identifier 2005–NM–232–AD; Amendment 39–14549; AD 2006–07–22]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146-RJ Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146–RJ airplanes. This AD requires modifying the control cable duct on the left bulkhead structure at frame 12, and, for certain airplanes, the forward toilet bulkhead structure. This AD results from a structural analysis by the manufacturer that revealed that rapid decompression of the flight compartment with the door closed could cause structural deformation of the left bulkhead structure at frame 12, and of the attached cable duct structure. The duct structure protects the cables for the primary flight controls. We are issuing this AD to prevent deformation of the cable duct structure in the event of a rapid decompression, which could result in restriction of the primary flight controls and consequent reduced controllability of the airplane.

DATES: This AD becomes effective May 16, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 16, 2006.

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

Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for service information identified in this AD.

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain BAE Systems (Operations) Limited Model BAe 146 and Model Avro 146-RJ airplanes. That NPRM was published in the **Federal Register** on February 9, 2006 (71 FR 6681). That NPRM proposed to require modifying the control cable duct on the left bulkhead structure at frame 12, and, for certain airplanes, the forward toilet bulkhead structure.

Comments

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

Conclusion

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

Costs of Compliance

This AD affects about 19 airplanes of U.S. registry.

The modification specified in Part 1 of the service bulletin will take about 21 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will be free of charge. Based on these figures, the estimated cost of the AD is $1,365 per airplane.

The modification specified in Part 2 of the service bulletin will take about 5 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will be free of charge. Based on these figures, the estimated cost of the AD is $325 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–07–22 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–14549. Docket No. FAA–2006–23840; Directorate Identifier 2005–NM–232–AD.

Effective Date

(a) This AD becomes effective May 16, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A series airplanes, and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category; as identified in BAE Systems (Operations) Limited Modification Service Bulletin SB.25–459–36241A, Revision 1, dated March 30, 2005.

Unsafe Condition

(d) This AD results from a structural analysis by the manufacturer which revealed that rapid decompression of the flight compartment with the door closed could cause structural deformation of the left bulkhead structure at frame 12, and of the attached cable duct structure. The duct structure protects the cables for the primary flight controls. We are issuing this AD to prevent deformation of the cable duct structure in the event of a rapid decompression, which could result in restriction of the primary flight controls and consequent reduced controllability of the airplane.

Compliance

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

Modification

(f) Within 9 months after the effective date of this AD: Do the actions specified in either paragraph (f)(1) or (f)(2) of this AD by doing all the applicable actions specified in the Accomplishment Instructions of BAE Systems (Operations) Limited Modification Service Bulletin SB.25–459–36241A, Revision 1, dated March 30, 2005.

(1) For airplanes on which BAE Modification HCM50303C has been installed, but on which BAE Modification HCM30033E, HCM30033F, HCM30033G, or HCM30033N has not been installed: Modify the control cable duct on the left bulkhead structure at frame 12 in accordance with Part 1 of the Accomplishment Instructions of the service bulletin.

(2) For airplanes on which BAE Modification HCM50303C has been installed, and on which BAE Modification HCM30033E, HCM30033F, HCM30033G, or

HCM30033N has also been installed: Modify the control cable duct on the left bulkhead structure at frame 12 and the forward toilet bulkhead structure in accordance with Parts 1 and 2 of the Accomplishment Instructions of the service bulletin.

Modifications Accomplished According to Previous Issue of Service Bulletin

(g) Modifications accomplished before the effective date of this AD in accordance with BAE Systems (Operations) Limited Modification Service Bulletin SB.25–459–36241A, dated July 22, 2004, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(i) British airworthiness directive G–2005–0026, dated September 21, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use BAE Systems (Operations) Limited Modification Service Bulletin SB.25–459–36241A, Revision 1, dated March 30, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 30, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3379 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20797; Directorate Identifier 2004–NM–256–AD; Amendment 39–14552; AD 2006–07–25]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 Airplanes; Model DC–8F–54 and DC–8F–55 Airplanes; Model DC–8–50, –60, –60F, –70, and –70F Series Airplanes; Model DC–9–10, –20, –30, –40, and –50 Series Airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) Airplanes; and Model MD–88 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain McDonnell Douglas airplanes, as listed above. That AD currently requires an initial general visual or dye penetrant inspection, repetitive dye penetrant inspections, and replacement, as necessary, of the rudder pedal bracket. This new AD also requires, for certain airplanes, replacing the rudder pedal bracket assemblies with new, improved parts, which terminates the repetitive inspections. This AD results from a report of numerous cracked rudder pedal brackets found during inspections of certain affected airplanes. We are issuing this AD to prevent failure of the rudder pedal bracket assembly, which could result in the loss of rudder and braking control at either the captain's or first officer's position.

DATES: This AD becomes effective May 16, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 16, 2006.

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

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

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 89–14–02, amendment 39–6245 (54 FR 27156, June 28, 1989). The existing AD applies to certain McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; Model DC–8F–54 and DC–8F–55 airplanes; and Model DC–8–50, –60, –60F, –70, and –70F series airplanes (hereafter referred to as DC–8 airplanes). The existing AD also applies to McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes (hereafter referred to as DC–9/MD–80 airplanes). That NPRM was published in the **Federal Register** on April 5, 2005 (70 FR 17216). That NPRM proposed to continue to require an initial general visual or dye penetrant inspection, repetitive dye penetrant inspections, and replacement, as necessary, of the rudder pedal bracket. That NPRM also proposed to require, for certain airplanes, replacing the rudder pedal bracket assemblies with new, improved parts, which would terminate the repetitive inspections.

Comments

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

Request To Reference Previous Service Bulletins

Boeing requests that we reference Revisions 4, 5, and 6 of McDonnell Douglas DC–9 Alert Service Bulletin A27–307 for accomplishing the actions in this AD. Revisions 4, 5, and 6 of the service bulletin were approved previously as alternative methods of compliance (AMOCs) for paragraphs A and B of AD 89–14–02, which correspond to paragraphs (f) and (g) of this AD. Therefore, we infer the commenter would like us to add references to Revisions 4 and 5 of the service bulletin to paragraph (h) of this AD.

We agree to reference Revision 4, dated June 3, 1991, and Revision 5, dated February 14, 1992, of McDonnell Douglas DC–9 Alert Service Bulletin A27–307 in paragraph (h) of this AD, since the procedures in those revisions are essentially the same as those in Revision 6. As a result, we have not retained paragraph (i) of the NPRM, Credit for Previous Service Bulletins, in this AD.

Request To Revise the Cost of Compliance

Alaska Airlines requests that we increase the estimated cost of parts to $9,882. The commenter states that the captain's rudder pedal bracket assembly (part number (P/N) 5962903–501) costs $4,769, and that the first officer's rudder pedal bracket assembly (P/N 5962904–501) costs $5,113. The commenter also states that these are the current prices quoted by the manufacturer, and that the prices may be considerably higher when an airplane has accumulated 75,000 total flight cycles (the compliance time for the replacements).

We agree. We have confirmed with Boeing that since issuance of McDonnell Douglas DC–9 Alert Service Bulletin A27–307, Revision 6, dated December 19, 1994, the cost of the parts has increased as quoted by the commenter. Therefore, we have revised the Estimated Costs table in this AD accordingly.

Request To Terminate AD 89–14–02

Boeing also requests that we terminate AD 89–14–02 instead of supersede it. Boeing proposes that we revise paragraph (b) of the NPRM to state that first accomplishment of paragraphs (f)(1) and (f)(2) constitutes terminating action for the repetitive inspections of AD 89–14–02. As justification, Boeing asserts that this change will make it easier for operators to track compliance.

We do not agree to revise paragraph (b) of this AD. Since this AD supersedes AD 89–14–02, the requirements of this AD replace the requirements of that existing AD. After the effective date of this AD, operators would be required to show compliance with this AD, not AD 89–14–02. Furthermore, we have carried over the repetitive inspections and compliance times from AD 89–14–02 into this AD because those inspections continue to be required until the terminating action in this AD is accomplished for certain airplanes. To revise this AD as the commenter proposes would necessitate revising the compliance times in paragraphs (f) and (g) of this AD to account for operators who are currently inspecting in accordance with AD 89–14–02. Therefore, no change to this AD is necessary in this regard.

Request To Address Defective Parts Manufacturer Approval (PMA) Parts

The Modification and Repair Parts Association (MARPA) requests we revise the NPRM to cover possible defective PMA alternative parts, rather than just the parts identified in the NPRM, so that those defective PMA parts also are subject to the NPRM. MARPA states that there are existing PMA parts for the rudder pedal brackets. MARPA also states that PMA manufacturers are encouraged—and in some cases, required—to identify PMA parts by alternative designations.

We concur with the MARPA's general request that, if we know that an unsafe condition also exists in PMA parts, the AD should address those parts, as well as the original parts. However, we are not aware of other PMA parts that are equivalent to the defective rudder pedal bracket assemblies. In the event PMA equivalent parts are identified, we will consider further rulemaking.

The MARPA's remarks are timely in that the Transport Airplane Directorate currently is in the process of reviewing this issue as it applies to transport category airplanes. We acknowledge that there may be other ways of addressing this issue to ensure that unsafe PMA parts are identified and addressed. Once we have thoroughly examined all aspects of this issue, including input from industry, and have made a final determination, we will consider whether our policy regarding addressing PMA parts in ADs needs to be revised. We consider that to delay this AD action would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. Therefore, no change has been made to this AD in this regard.

Request To Reference PMA Parts

MARPA also requests that we revise language in the NPRM to permit installation of PMA equivalent parts. MARPA states that the mandated installation of a certain part number "is at variance with FAR 21.303," which permits the installation of other (PMA) parts.

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

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

The AD provides a means of compliance for operators to ensure that the identified unsafe condition is addressed appropriately. For an unsafe condition attributable to a part, the AD normally identifies the replacement parts necessary to obtain that compliance. As stated in section 39.7 of the Federal Aviation Regulations (14 CFR 39.7): "Anyone who operates a product that does not meet the requirements of an applicable airworthiness directive is in violation of this section." Unless an operator obtains approval for an AMOC, replacing a part

with one not specified by the AD would make the operator subject to an enforcement action and result in a civil penalty. No change to this AD is necessary in this regard.

Change To Certain Service Bulletin References

We referenced McDonnell Douglas DC–8 Alert Service Bulletin A27–273 and McDonnell Douglas DC–9 Alert Service Bulletin A27–307, both dated May 16, 1989, as applicable, as the appropriate source of service information for accomplishing the actions required by AD 89–14–02. However, we inadvertently omitted the revision level of those service bulletins in AD 89–14–02. We have corrected those references in paragraph (f) and Note 2 of this AD.

Clarification of AMOC Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

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

Costs of Compliance

There are about 2,025 airplanes of the affected design in the worldwide fleet. This AD affects about 1,381 airplanes of U.S. registry; about 250 of those airplanes are Model DC–8 airplanes and about 1,131 are Model DC–9/MD–80 airplanes. The new replacements of this AD are applicable only to Model DC–9/MD–80 airplanes. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
General visual inspection (required by AD 89–14–02)	3	$65	None	$195	1,381	$269,295
Dye penetrant inspection (required by AD 89–14–02)	5	65	None	$325, per inspection cycle	1,381	$448,825, per inspection cycle
Replacements (new action)	9	65	$9,882	$10,467	1,131	$11,838,177

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–6245 (54 FR 27156, June 28, 1989) and by adding the following new airworthiness directive (AD):

2006–07–25 McDonnell Douglas: Amendment 39–14552. Docket No. FAA–2005–20797; Directorate Identifier 2004–NM–256–AD.

Effective Date

(a) This AD becomes effective May 16, 2006.

Affected ADs

(b) This AD supersedes AD 89–14–02.

Applicability

(c) This AD applies to the airplanes listed in Table 1 of this AD, certificated in any category.

TABLE 1.—APPLICABILITY

McDonnell Douglas	As identified in-
Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; Model DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes; Model DC–8F–54 and DC–8F–55 airplanes; Model DC–8–61, DC–8–62, and DC–8–63 airplanes; Model DC–8–61F, DC–8–62F, and DC–8–63F airplanes; Model DC–8–71, DC–8–72, and DC–8–73 airplanes.	McDonnell Douglas DC–8 Alert Service Bulletin A27–273, dated May 16, 1989.
Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; Model DC–9–21 airplanes; Model DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B) airplanes; Model DC–9–41 airplanes; Model DC–9–51 airplanes; DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes.	McDonnell Douglas DC–9 Alert Service Bulletin Model A27–307, Revision 6, dated December 19, 1994.

Unsafe Condition

(d) This AD was prompted by a report of numerous cracked rudder pedal brackets found during inspections of certain affected airplanes. We are issuing this AD to prevent failure of the rudder pedal bracket assembly, which could result in the loss of rudder and braking control at either the captain's or first officer's position.

Compliance

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

Requirements of AD 89–14–02

(f) Prior to the accumulation of 40,000 total landings or within 30 days after July 5, 1989 (the effective date of AD 89–14–02), whichever occurs later, perform either a general visual inspection or dye penetrant inspection for cracks of the captain's and first officer's rudder pedal bracket, part numbers (P/N) 5616067 and 5616068, respectively, in accordance with McDonnell Douglas DC–8 Alert Service Bulletin A27–273 (for Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; Model DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes; Model DC–8F–54 and DC–8F–55 airplanes; Model DC–8–61, DC–8–62, and DC–8–63 airplanes; Model DC–8–61F, DC–8–62F, and DC–8–63F airplanes; Model DC–8–71, DC–8–72, and DC–8–73 airplanes), or McDonnell Douglas DC–9 Alert Service Bulletin A27–307 (for Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; Model DC–9–21 airplanes; Model DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B) airplanes; Model DC–9–41 airplanes; Model DC–9–51 airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes), both Revision 1, both dated May 16, 1989, as applicable.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 2: McDonnell Douglas DC–8 Alert Service Bulletin A27–273 and McDonnell Douglas DC–9 Alert Service Bulletin A27–307, both Revision 1, both dated May 16, 1989, are hereinafter referred to as ASB A27–273 and ASB A27–307, respectively.

(1) If an initial general visual inspection is accomplished, and no cracks are found, perform a dye penetrant inspection of the rudder pedal bracket assembly within 180 days after the general visual inspection, and thereafter accomplish dye penetrant inspections at intervals not to exceed 12 months or 2,500 landings, whichever occurs earlier.

(2) If an initial dye penetrant inspection is accomplished, and no cracks are found, accomplish repetitive dye penetrant inspections at intervals not to exceed 12 months or 2,500 landings, whichever occurs earlier.

(g) If cracks are detected, prior to further flight, remove and replace the rudder pedal bracket assembly in accordance with ASB A27–273 or A27–307, as applicable. Prior to the accumulation of 40,000 total landings after replacement with the new part, resume the repetitive inspections in accordance with paragraph (f) in this AD.

New Requirements of This AD

Terminating Action for Certain Airplanes

(h) For McDonnell Douglas Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; Model DC–9–21 airplanes; Model DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B) airplanes; Model DC–9–41 airplanes; Model DC–9–51 airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes: Do the actions in paragraphs (h)(1) and (h)(2) of this AD in accordance with the Accomplishment Instructions of McDonnell Douglas DC–9 Alert Service Bulletin A27–307, Revision 4, dated June 3, 1991; Revision 5, dated February 14, 1992; or Revision 6, dated December 19, 1994.

(1) Before the accumulation of 75,000 total landings on the captain's rudder pedal bracket assembly, P/N 5616067–501, or within 60 months after the effective date of this AD, whichever occurs later: Remove the rudder pedal bracket assembly and replace it with new, improved P/N 5962903–501. Accomplishment of the replacement terminates the repetitive inspections of the captain's rudder pedal bracket assembly required by paragraphs (f) and (g) of this AD.

(2) Before the accumulation of 75,000 total landings on the first officer's rudder pedal bracket assembly, P/N 5616068–501, or within 60 months after the effective date of this AD, whichever occurs later: Remove the rudder pedal bracket assembly and replace it with new, improved P/N 5962904–501. Accomplishment of the replacement terminates the repetitive inspections of the first officer's rudder pedal bracket assembly required by paragraphs (f) and (g) of this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) AMOCs, approved previously in accordance with AD 89–14–02, amendment 39–6245, are approved as AMOCs for the corresponding requirements of this AD.

Material Incorporated by Reference

(j) You must use the applicable service information identified in Table 2 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Service bulletin	Revision level	Date
McDonnell Douglas DC–8 Alert Service Bulletin A27–273	1	May 16, 1989.

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE—Continued

Service bulletin	Revision level	Date
McDonnell Douglas DC–9 Alert Service Bulletin A27–307	1	May 16, 1989.
McDonnell Douglas DC–9 Alert Service Bulletin A27–307	4	June 3, 1991.
McDonnell Douglas DC–9 Alert Service Bulletin A27–307	5	February 14, 1992.
McDonnell Douglas DC–9 Alert Service Bulletin A27–307	6	December 19, 1994.

McDonnell Douglas Alert Service Bulletin A27–307, Revision 6, dated December 19, 1994, contains the following effective pages:

Page Number	Revision level shown on page	Date shown on page
1–24	6	December 19, 1994.
25–36	5	February 14, 1992.

The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 31, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3380 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23816; Directorate Identifier 2005–NM–247–AD; Amendment 39–14553; AD 2006–07–26]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Aerospatiale Model ATR42 airplanes. This AD requires one-time inspections to detect discrepancies (e.g., cracking, loose/sheared fasteners, distortion) of the upper skin and rib feet of the outer wing boxes, and repair if necessary. This AD results from a report of cracking on the upper skin and ribs of the outer wing box on an in-service airplane. We are issuing this AD to detect and correct these discrepancies, which could result in reduced structural integrity of the airplane.

DATES: This AD becomes effective May 16, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 16, 2006.

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

Contact Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Aerospatiale Model ATR42 airplanes. That NPRM was published in the **Federal Register** on February 8, 2006 (71 FR 6413). That NPRM proposed to require one-time inspections to detect discrepancies (*e.g.*, cracking, loose/sheared fasteners, distortion) of the upper skin and rib feet of the outer wing boxes, and repair if necessary.

Comments

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

Clarification of Reporting

In the preamble of the NPRM we stated that although "the French airworthiness directive and the service bulletin specify to submit certain information to the manufacturer, this proposed AD does not include that requirement." However, we did not include this exception in the body of the NPRM. We have added paragraph (h) to clarify that reporting is not required.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither

increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD will affect about 14 airplanes of U.S. registry. The actions will take about 6 work hours per airplane if the internal borescopic inspection method is chosen, and about 44 work hours per airplane if the internal detailed inspection method (with the leading edge removed) is chosen. Both estimates include the time necessary for the external detailed inspection. The average labor rate is $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is between $5,460 and $40,040, or either $390 or $2,860 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–07–26 Aerospatiale: Amendment 39–14553. Docket No. FAA–2006–23816; Directorate Identifier 2005–NM–247–AD.

Effective Date

(a) This AD becomes effective May 16, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Aerospatiale Model ATR42–200, –300, –320, and –500 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of cracking on the upper skin and ribs of the outer wing box on an in-service airplane. We are issuing this AD to detect and correct discrepancies (*e.g.*, cracking, loose/sheared fasteners, distortion) of the upper skin and rib feet of the outer wing boxes, which could result in reduced structural integrity of the airplane.

Compliance

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

External Inspection and Repair

(f) Before the accumulation of 4,000 total flight cycles, or within 3 months after the effective date of this AD, whichever is later: Do an external detailed inspection for discrepancies of the upper skin panels of the outer wing box on the left and right wing, from rib 24 to rib 29. Do the inspection in accordance with Part A of the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR42–57–0064, dated December 16, 2004.

(1) If any discrepancy is found: Before further flight, do the actions in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD.

(i) Repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

(ii) Do the internal inspection in accordance with paragraph (g) of this AD.

(2) If no discrepancy is found: Within 4 months after doing the external detailed inspection, do the internal inspection in accordance with paragraph (g) of this AD.

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

Internal Inspection and Repair

(g) At the applicable time specified in paragraph (f)(1)(ii) or (f)(2) of this AD: Inspect for discrepancies of the rib feet from rib 24 to rib 29 using one of the inspection methods specified in paragraph (g)(1) or (g)(2) of this AD. Do the inspection in accordance with Part B of the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR42–57–0064, dated December 16, 2004. If any discrepancy is found during any inspection required by this paragraph: Before further flight, repair using a method approved by either the Manager, International Branch, ANM–116, FAA, or the DGAC (or its delegated agent).

(1) A borescopic inspection through access doors.

(2) A detailed inspection after removing the leading edge of the wing.

No Reporting

(h) Although Avions de Transport Regional Service Bulletin ATR42–57–0064, dated December 16, 2004, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(j) French airworthiness directive F–2004–191, dated December 22, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use Avions de Transport Regional Service Bulletin ATR42–57–0064,

dated December 16, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 31, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3382 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19140; Directorate Identifier 2004–NM–84–AD; Amendment 39–14548; AD 2006–07–21]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Airplanes Powered by Pratt & Whitney Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 757 airplanes. This AD requires repetitive inspections for corrosion and cracking of the midspar fittings in the nacelle struts, and corrective actions if necessary. This AD also provides an optional terminating action for the repetitive inspections. This AD results from reports of corrosion and cracking on midspar fittings on the nacelle struts of several Boeing Model 757 airplanes. We are issuing this AD to detect and correct cracking in the midspar fittings of the nacelle struts, consequent reduced structural integrity of the struts, and possible separation of an engine and strut from the airplane.

DATES: This AD becomes effective May 16, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 16, 2006.

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

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

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6450; fax (425) 914–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 757 series airplanes. That NPRM was published in the **Federal Register** on September 21, 2004 (69 FR 56375). That NPRM proposed to require repetitive inspections for corrosion and cracking of the midspar fittings in the nacelle struts, and corrective actions if necessary. That NPRM also proposed to provide an optional terminating action for the repetitive inspections.

Explanation of Revised Service Information

Since we issued the NPRM, Boeing revised Special Attention Service Bulletin 757–54–0042, dated May 13, 1999, which was specified in the NPRM as the appropriate source of service information for accomplishing the proposed requirements of this AD. We have reviewed Boeing Service Bulletin 757–54–0042, Revision 1, dated July 7, 2005, which, among other changes, incorporates the information specified in Boeing Information Notices 757–54–0042 IN 01, dated July 22, 1999; 757–54–0042 IN 02, dated January 6, 2000; and 757–54–0042 IN 03, dated November 21, 2000; revises incorrect part number references; and contains a revised Figure 6.

Figure 6 of Service Bulletin 757–54–0042, Revision 1, specifies an optional action to replacing any cracked or corroded midspar fitting. That option involves one-time high-frequency eddy current (HFEC) and borescope inspections to detect corrosion or cracking within the fitting bolt holes. Revision 1 also describes the related repair of any cracked or corroded bolt hole; and repetitive detailed inspections and general visual inspections for recurrent corrosion or cracking of the repaired fitting until the fitting is replaced. We have determined that these new inspections and corrective actions are adequate to maintain airplane operational safety, and we have revised the AD to refer to Service Bulletin 757–54–0042, Revision 1, as the appropriate source of service information for accomplishing the requirements of the AD, except as discussed under "Difference Between Service Information and This AD."

Difference Between Service Information and This AD

Service Bulletin 757–54–0042, Revision 1, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this AD requires repairing those conditions in one of the following ways:

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

Comments

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

AD Not Applicable

One commenter, American Airlines, states that none of its airplanes are affected by this AD.

Request To Correct Errors in Service Information

Two commenters, ATA and UPS, request that we revise the service information. The commenters state that Boeing has released 3 INs that correct errors in the service bulletins, but that the INs are not FAA-approved. Therefore, the commenters assert that

the INs should be incorporated in the service bulletin before the AD is released.

We agree with this request, as Boeing has revised the service bulletin to incorporate the INs as previously discussed. The AD has been changed to specify the revised service bulletin as the appropriate source of service information.

Request for Delayed Replacement of Fittings

One commenter, Boeing, requests that we allow up to 18 months to replace any midspar fitting following the detection of corrosion of that fitting. The commenter states that the additional inspections and actions specified in Service Bulletin 757–54–0042, Revision 1, will allow the airplane to operate safely for up to 18 months without replacing the corroded midspar fitting.

We agree with this request, as we have agreed to update the service information reference as previously discussed. We have revised paragraphs (h) and (i) of the NPRM and added new paragraph (j) to describe the corrective actions. We have added new paragraph (k) to describe optional investigative actions which would allow up to 18 months to replace any midspar fitting discovered with signs of corrosion or cracking; and to clarify the fitting repair, repetitive inspection, and replacement instructions of Service Bulletin 757–54–0042, Revision 1. We added new paragraph (m) to give credit for actions accomplished prior to the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 757–54–0042, dated May 13, 1999. Consequently, we have re-identified existing paragraphs (j), (k), and (l) of the NPRM as paragraphs (l), (n), and (o) in this AD.

Request To Develop Non-Destructive Test for Cracking

One commenter, ATA, requests that a non-destructive testing (NDT) procedure for cracking be developed prior to the release of the final rule. This NDT procedure would apply to holes that display evidence of corrosion. The commenter states that, though such a procedure does not exist for Model 757 airplanes, such procedures do exist and are required for Model 767 airplanes.

We agree with this request. As discussed previously, Service Bulletin 757–54–0042, Revision 1, specifies new NDT procedures for HFEC and borescope inspections of the midspar fitting bolt holes, and we have revised the AD to require these inspections, if corrosion or cracking is found and the fitting is not immediately replaced with a new, improved fitting.

Request To Permit Continued Operation After Staining Discovered

One commenter, UPS, requests that continued operation be permitted after the discovery of staining on the fittings. The commenter states that fittings discovered to have corrosion stains after multiple repetitions of the 300-flight-cycle inspection should be inspected in greater detail to determine the extent of the corrosion. The commenter gives no technical justification for this request.

We do not agree with this request. The commenter asserts the service bulletin states that, after the discovery of staining, no corrective actions need be taken until several repetitions of the 300 flight cycle inspection have been accomplished, at which time further investigative actions would be appropriate. However, staining is evidence of active corrosion and stress corrosion cracking (SCC) is time dependent; the longer a corroded fitting remains in service with no corrective action, the more likely it becomes that a crack will start and propagate, with possible consequent failure of the fitting. We have not changed this AD in this regard.

Request To Reinstate 300-Flight-Cycle Inspection and Lubrication Interval

Two commenters, ATA and United Airlines, request that the 300-flight-cycle interval for inspection and lubrication originally specified by Special Attention Service Bulletin 757–54–0042 be reinstated. One commenter states that a general visual inspection of the midspar fittings revealed no corrosion or cracking. The commenters feel that inspection and lubrication performed every 300 flight cycles should permit airplane operation with adequate safety.

We do not agree with this request. We examined a midspar fitting, which showed major corrosion at the faying surface around one bolt hole with a crack emanating from that bolt hole. Further, another crack emanated from a second bolt hole. Therefore, we do not agree that inspection and lubrication as suggested by the commenters would provide adequate airplane safety. However, as previously discussed, Service Bulletin 757–54–0042, Revision 1, specifies HFEC and borescope inspections of the bolt holes of any cracked or corroded midspar fitting and, provided necessary corrective action is taken after those inspections, permits continued operation of the airplane as long as repetitive detailed inspections of any repaired fitting are performed until the fitting is replaced, and we have revised the AD to reflect this.

Request To Withdraw Proposed AD

One commenter, ATA, requests that we withdraw the proposed AD. The commenter states that the AD is not necessary, since only one midspar fitting has been found with cracking, and asserts operators should be able to wait to inspect, repair, and replace any subject midspar fittings until the Model 757 Strut Improvement Program (SIP) can be accomplished.

We do not agree. While the threshold for the SIP program is at twenty years (240 months) or 37,500 flight cycles, whichever occurs first, the cracked midspar fitting was discovered on an airplane that was about 17 years old and had accumulated less than 30,000 total flight cycles. Further, the damaged fitting showed two cracks that had propagated from SCC, and, as the suspect fittings are made of heat-treated 4330M stock, all mounting holes of such fittings are susceptible to SCC. The actions specified in this AD are necessary to ensure adequate airplane safety prior to accomplishing the SIP; therefore, the AD will not be withdrawn.

Request To Correct Threshold Limits

Two commenters, United Airlines and UPS, state that the threshold limits specified in the "Other Related Rulemaking" paragraph of the NPRM are incorrect. Though the commenters do not make a request or provide data to support this position, it appears the commenters wish us to revise those limits.

We do not agree. Although paragraph (d) of AD 2003–18–05, amendment 39–13296 (68 FR 53496, September 11, 2003), requires replacing the upper link of the strut in accordance with Boeing Service Bulletin 757–54–0036, dated May 14, 1998, prior to the accumulation of 27,000 total flight cycles for Model 757–200 airplanes or 29,000 total flight cycles for Model 757–200PF airplanes, the threshold for the entire SIP remains at 20 years or 37,000 flight cycles, whichever occurs first. Our intent was to give credit to operators who have already accomplished the SIP, but we acknowledge that discussing these threshold limits could have caused confusion. However, as the "Other Related Rulemaking" paragraph of the NPRM is not repeated in the final rule, no change is needed to this AD in this regard.

Explanation of Change to Applicability

We have revised the applicability of the existing AD to identify model

designations as published in the most recent type certificate data sheet for the affected models.

Clarification of AMOC Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

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

Costs of Compliance

This AD will affect about 410 airplanes worldwide. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registerred airplanes	Fleet cost
Inspection, per inspection cycle	3	$65	None	$195, per inspection cycle	338	$65,910, per inspection cycle

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–07–21 Boeing: Amendment 39–14548. Docket No. FAA–2004–19140; Directorate Identifier 2004–NM–84–AD.

Effective Date

(a) This AD becomes effective May 16, 2006.

Affected ADs

(b) This AD is related to AD 2003–18–05.

Applicability

(c) This AD applies to Boeing Model 757–200, and –200PF airplanes, certificated in any category; having line numbers 1 through 639 inclusive; powered by Pratt & Whitney engines.

Unsafe Condition

(d) This AD results from reports of corrosion and cracking on midspar fittings on the nacelle struts of several Boeing Model 757 airplanes. We are issuing this AD to detect and correct cracking in the midspar fittings of the nacelle struts, consequent reduced structural integrity of the struts, and possible separation of an engine and strut from the airplane.

Compliance

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

Inspections for Group 1 Airplanes

(f) For airplanes identified as Group 1 in Boeing Service Bulletin 757–54–0042, Revision 1, dated July 7, 2005—which is referred to after this paragraph as "the service bulletin": Within 18 months after the effective date of this AD, do general visual and detailed inspections for evidence of corrosion and/or cracking of the midspar fittings located in the nacelle struts, in accordance with the Accomplishment Instructions of the service bulletin. Repeat the inspections thereafter at intervals not to exceed 18 months until the requirements of paragraph (l) of this AD are accomplished.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 2: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation,

or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

Inspections for Group 2 Airplanes

(g) For airplanes identified as Group 2 in the service bulletin: Within 18 months after the effective date of this AD, identify the type of material used to make the midspar fittings, in accordance with Figure 4 of the Accomplishment Instructions of the service bulletin.

(1) If all four midspar fittings are made of 15–5PH CRES material, no further action is required by this AD.

(2) If any midspar fitting is made of 4330M material, do the inspections required by paragraph (h) of this AD.

(h) For Group 2 airplanes with any fittings made of 4330M material: After identifying the fitting material as required by paragraph (g) of this AD, but before further flight: Do a general visual inspection and a detailed inspection of the 4330M midspar fittings for evidence of corrosion and/or cracking, in accordance with the Accomplishment Instructions of the service bulletin. Repeat the inspections for corrosion and/or cracking thereafter at intervals not to exceed 18 months until the requirements of paragraph (l) of this AD are accomplished.

Cracking or Corrosion

(i) For Group 1 and Group 2 airplanes: If any evidence of corrosion or cracking is found during any action required by paragraph (f) or (h) of this AD, before further flight, perform the corrective actions of paragraph (j) of this AD or the optional investigative actions of paragraph (k) of this AD.

Corrective Actions

(j) Replace the affected midspar fitting with a new midspar fitting by accomplishing all of the applicable actions in accordance with the Accomplishment Instructions of the service bulletin. Replacement of an affected midspar fitting terminates the repetitive inspections required by paragraphs (f) and (h) of this AD for that fitting only.

Optional Investigative Actions

(k) Perform one-time high-frequency eddy current (HFEC) and borescope inspections of any cracked or corroded bolt hole; and, before further flight, perform the applicable actions of paragraph (k)(1) or (k)(2) of this AD; in accordance with the Accomplishment Instructions of the service bulletin.

(1) Repair corrosion damage or cracking of any bolt hole as specified in Figure 6 of the Accomplishment Instructions of the service bulletin; then accomplish paragraph (k)(1)(i) or (k)(1)(ii) of this AD as applicable.

(i) Perform repetitive detailed inspections of any repaired bolt hole in accordance with Figure 7 of the service bulletin, at intervals not to exceed 300 flight cycles or 75 days, whichever occurs first, until the fitting is replaced as specified in paragraph (l) of this AD. Replace the repaired fitting with a new, improved fitting no later than 18 months after the repair of the bolt hole, or prior to further flight if any further evidence of corrosion or cracking is found in that fitting during any inspection required by this paragraph. Replacement of any fitting terminates the inspections required by paragraphs (f), (h), and (k)(1)(i) of this AD for that fitting only.

(ii) Replace the midspar fitting with a new, improved fitting, in accordance with paragraph (j) of this AD. Replacement of any fitting terminates the inspections required by paragraph (f), (h), and (k)(1)(i) of this AD for that fitting only.

(2) If any corrosion damage or cracking found during any inspection required by this AD cannot be repaired in accordance with paragraph (k)(1) of this AD, and the service bulletin specifies to contact Boeing for appropriate action, before further flight, perform the actions in paragraph (k)(2)(i) or (k)(2)(ii) of this AD, as applicable.

(i) Repair the corrosion damage or cracking using a method approved in accordance with the procedures specified in paragraph (o) of this AD.

(ii) Replace the midspar fitting with a new, improved fitting, in accordance with paragraph (l) of this AD.

Optional Terminating Action

(l) Replacement of all of the midspar fittings with new, improved midspar fittings in accordance with the Accomplishment Instructions of the service bulletin terminates the repetitive inspections required by paragraphs (f), (h), and (k)(1)(i) of this AD.

Actions Accomplished Using Prior Version of Service Information

(m) Replacement of the midspar fitting(s) with new, improved fittings before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 757–54–0042, dated May 13, 1999, is considered acceptable for compliance with the applicable action specified in this AD. Inspection of any fitting accomplished in accordance with Boeing Special Attention Service Bulletin 757–54–0042, dated May 13, 1999, before the effective date of this AD, with no findings of cracking or corrosion, are considered acceptable for compliance with the inspection required by paragraph (f) or (h) of this AD, as applicable, for that fitting only.

Previous Nacelle Strut and Wing Modification

(n) Accomplishment of the nacelle strut and wing modification required by AD 2003–18–05 is considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) An AMOC that provides an acceptable level of safety may be used for any replacement required by this AD, if it is approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make those findings.

Material Incorporated by Reference

(p) You must use Boeing Service Bulletin 757–54–0042, Revision 1, dated July 7, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on March 30, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3381 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24409; Directorate Identifier 2005–NM–057–AD; Amendment 39–14555; AD 2005–05–20]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747–400, 747–400D, 747SP, 747SR, 767–200, 767–300, 777–200, 777–300, and 777–300ER Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2005–05–20 that was sent previously to all known affected U.S. operators of certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–

200F, 747–300, 747–400, 747–400D, 747SP, 747SR, 767–200, 767–300, 777–200, 777–300, and 777–300ER series airplanes by individual notices. This AD requires modification of certain flight deck door electronic equipment. This AD results from a report indicating that this equipment is defective. We are issuing this AD to prevent failure of this equipment, which could jeopardize flight safety.

DATES: This AD becomes effective April 17, 2006 to all persons except those persons to whom it was made immediately effective by AD 2005–05–20, issued April 14, 2005, which contained the requirements of this amendment.

We must receive comments on this AD by June 12, 2006.

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

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

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

Docket: The AD docket contains this AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2006–24409; the directorate identifier for this docket is 2005–NM–057–AD.

FOR FURTHER INFORMATION CONTACT: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6482; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

On April 14, 2005, we issued AD 2005–05–20, which applies to certain Boeing 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747–400, 747–400D, 747SP, 747SR, 767–200, 767–300, 777–200, 777–300, and 777–300ER series airplanes. AD 2005–05–20 was sent to affected operators having airplanes that have certain affected flight deck door electronic equipment.

Background

We have received a report indicating that certain flight deck door electronic equipment is defective. The defect, if not corrected, could result in a failure of the equipment, which could jeopardize flight safety.

Relevant Service Information

We have reviewed the Boeing service bulletins listed in the table below. These service bulletins describe procedures for correcting the defect in the flight deck door electronic equipment. Accomplishing the actions specified in the applicable service information is intended to adequately address the unsafe condition.

BOEING SERVICE BULLETINS

Affected Boeing model and series	Boeing service bulletin	Date
747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747–400, 747–400D, 747SP, 747SR.	747–52–2274	February 21, 2005.
767–200, 767–300	767–52–0087	February 21, 2005
777–200, 777–300, 777–300ER	777–52–0035	February 21, 2005

The Boeing service bulletins refer to Northwest Aerospace Technologies Service Bulletin 44N00004–52–01, dated March 1, 2005, as an additional source of service information.

FAA's Determination and Requirements of This AD

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, we issued AD 2005–05–20 to prevent a failure of certain flight deck door electronic equipment. The AD requires modifying the equipment using a method approved by the Manager, Seattle Aircraft Certification Office, FAA. The Boeing service information previously described has been approved for this purpose.

We found that immediate corrective action was required; therefore, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on April 14, 2005, to all known affected U.S. operators of certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747–400, 747–400D, 747SP, 747SR, 767–200, 767–300, 777–200, 777–300, and 777–300ER series airplanes. These conditions still exist, and this AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons. We are publishing this AD to ensure that, in the event that persons who did not receive an individual notice acquire an affected airplane that has not been modified, these persons are aware of the AD, so they can make the necessary modifications.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include "Docket No.

FAA–2006–24409; Directorate Identifier 2005–NM–057–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

Authority for This Rulemaking

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

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

Regulatory Findings

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If this emergency regulation is later deemed significant under DOT Regulatory Policies and Procedures, we will prepare a final regulatory evaluation and place it in the AD Docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation, if filed.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–05–20 Boeing: Amendment 39–14555. Docket No. FAA–2006–24409; Directorate Identifier 2005–NM–057–AD.

Effective Date

(a) This AD becomes effective April 17, 2006, to all persons except those persons to whom it was made immediately effective by AD 2005–05–20, issued on April 14, 2005, which contained the requirements of this amendment.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1.—APPLICABILITY

Boeing model and series	As identified in Boeing service bulletin	Date
747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–300, 747–400, 747–400D, 747SP, and 747SR.	747–52–2274	February 21, 2005.
767–200 and 767–300	767–52–0087	February 21, 2005.
777–200, 777–300, and 777–300ER	777–52–0035	February 21, 2005.

Unsafe Condition

(d) This AD results from a report indicating that certain flight deck door electronic equipment is defective. The FAA is issuing this AD to prevent failure of this equipment.

Compliance

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

Modification

(f) Within 30 days after the effective date of this AD: Modify the flight deck door electronic equipment in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Doing all actions in the Accomplishment Instructions of the applicable Boeing service bulletin identified in Table 1 of this AD is one approved method.

Note 1: The Boeing service bulletins identified in Table 1 of this AD refer to Northwest Aerospace Technologies Service Bulletin 44N00004–52–01, dated March 1, 2005, as an additional source of service information.

Note 2: This AD retains certain requirements of AD 2005–05–20. The corresponding paragraph identifiers for these requirements have changed in this AD, as listed in the following table:

TABLE 2.—REVISED PARAGRAPH IDENTIFIERS

Requirement in SSAD 2005–05–20	Corresponding requirement in this AD
Paragraph (g)	Paragraph (f).
Paragraph (i)	Paragraph (g).

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Issued in Renton, Washington, on April 4, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3437 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22472; Airspace Docket No. 05–AGL–08]

Establishment of Class D Airspace; Camp Ripley, MN; Establishment of Class E Airspace; Camp Ripley, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Camp Ripley, MN, and establishes Class E airspace at Camp Ripley, MN. This action establishes a radius of Class D airspace, and establishes a radius of Class E airspace for Ray S. Miller Army Airfield.

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

FOR FURTHER INFORMATION CONTACT: Steve Davis, FAA Terminal Operations, Central Service Office, Airspace and Procedures Branch, AGL–530, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7131.

SUPPLEMENTARY INFORMATION:

History

On Monday, October 31, 2005, the FAA proposed to amend 14 CFR part 71 to establish Class D airspace, and establish Class E airspace at Camp Ripley, MN (70 FR 62257). The proposal was to establish Class D airspace, and establish Class E airspace extending upward from the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000, and Class E airspace areas designated as surface areas in paragraph 6002, 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 and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class D airspace at Camp Ripley, MN, and establishes Class E airspace at Camp Ripley, MN, to accommodate aircraft executing instrument flight procedures into and out of Ray S. Miller Army Airfield. The area will be depicted on appropriate aeronautical charts.

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 curent. 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 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 certifield that this rule 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, 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 95665, 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 16, 2005, is amended as follows:

* * * * *

Paragraph 5000 Class D airspace.

* * * * *

AGL MN D Camp Ripley, MN [New]

Camp Ripley, Ray S. Miller Army Airfield, MN

(Lat. 46°05′28″ N., long. 94°21′38″ W.)

That airspace extending upward from the surface to and including 3,700 feet MSL within a 3.9-mile radius of the Ray S. Miller Army Airfield. 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.

* * * * *

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AGL MN E2 Camp Ripley, MN [New]

Camp Ripley, Ray S. Miller Army Airfield, MN

(Lat. 46°05′28″ N., long. 94°21′38″ W.)

Within a 3.9-mile radius of the Ray S. Miller Army Airfield. 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.

* * * * *

Issued in Des Plaines, Illinois, on March 22, 2006.

Nancy B. Kort,

Area Director, Central Terminal Operations.

[FR Doc. 06–3426 Filed 4–10–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–06–007]

RIN 1625–AA08

Special Local Regulations for Marine Events; Severn River, College Creek, Weems Creek and Carr Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is permanently modifying the regulated area defined in 33 CFR 100.518, and is temporarily amending 33 CFR 100.518

to accommodate 2006 date changes for the Safety at Sea Seminar, U.S. Naval Academy Crew Races and the Blue Angels Air Show. This rule is intended to restrict vessel traffic in portions of the Severn River, to provide for safety of life on navigable waters during these events.

DATES: The suspension of § 100.518 and the addition of temporary § 100.35–T05–007 are effective from March 25, 2006 through June 1, 2006. The amendments to § 100.518 are effective on June 2, 2006.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD05–06–007] and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis M. Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 9, 2006, we published a notice of proposed rulemaking (NPRM) entitled "Special Local Regulations for Marine Events; Severn River, College Creek, Weems Creek and Carr Creek, Annapolis, MD" in the **Federal Register** (71 FR 6715). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held. No other documents were published as part of this rulemaking.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because the first event will take place on March 25, 2006 and because the former boundaries of the regulated area are inadequate to protect the public. These regulations are needed to provide for the safety of life on navigable waters during the events.

Background and Purpose

For 2006, the Coast Guard is temporarily amending 33 CFR 100.518 to accommodate changes to the enforcement period for U.S. Naval Academy sponsored marine events. The dates for the marine events for 2006 will be: the Safety at Sea Seminar on April 1, 2006, the U.S. Naval Academy crew races on March 25, April 15, April 22, April 23, May 12 and May 28, 2006; and the Blue Angels air show on May 23 and May 24, 2006. The events will be enforced from 5 a.m. to 6 p.m. on those days and if the event's daily activities should conclude prior to 6 p.m., enforcement of this regulation may be terminated earlier on that day at the discretion of the Patrol Commander.

The U.S. Naval Academy, who is the sponsor for all of these events, intends to hold them annually on the dates provided in 33 CFR 100.518; however, in 2006 this is not possible. To accommodate the availability of the various marine event participants, new dates were necessary to conduct the events. The Coast Guard will temporarily amend 33 CFR 100.518 to reflect the 2006 schedule.

33 CFR 100.518 will also be permanently amended to reflect changes in the regulated area. The northwest boundary of the regulated area is bounded by a line approximately 1300 yards north and parallel with the U.S. 50 Severn River Bridge. The southeast boundary of the regulated area is extended approximately 1100 yards to the south to a point 700 yards east of Chinks Point, MD. The adjustments to the regulated area have been made to accommodate the aerobatic maneuvering area for the Blue Angels Air Show and encompass the rowing course for Naval Academy Crew Races. The temporary rule also reflects these new regulated area boundaries.

Discussion of Comments and Changes

No comments were received in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Minor stylistic changes have been made and the modified boundaries have been made permanent.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This action merely establishes the dates on which the existing regulations would be enforced and modifies the boundaries of the regulated area. It does not impose any additional restrictions on vessel traffic.

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 would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Severn River during the event.

This rule would not have a significant economic impact on a substantial number of small entities for the following reasons. It merely changes the dates on which the existing regulations will be enforced and modifies the boundaries of the regulated area. It does not impose any additional restrictions on vessel traffic.

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 offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

This rule calls for no new collection of information under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

Under figure 2–1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard will amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 100.518, paragraphs (a)(1) and (c)(1) introductory text to read as follows:

§ 100.518 Severn River, College Creek, Weems Creek and Carr Creek, Annapolis, Maryland.

(a) *Regulated area.* (1) The regulated area is established for the waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00′38.9″ N., longitude 076°31′05.2″ W. thence to the north shoreline at latitude 39°00′54.7″ N., longitude 076°30′44.8″ W., this line is approximately 1300 yards northwest of the U.S. 50 fixed highway bridge. The regulated area is bounded to the southeast by a line drawn from the Naval Academy Light at latitude 38°58′39.5″ N., longitude 076°28′49″ W. thence southeast to a point 700 yards east of Chinks Point, MD at latitude 38°58′1.9″ N., longitude 076°28′1.7″ W. thence northeast to Greenbury Point at latitude 38°58′29″ N., longitude 076°27′16″ W. All coordinates reference Datum NAD 1983.

* * * * *

(c) *Enforcement period.* (1) This section will be enforced during, and 30 minutes before each of the following annual events:

* * * * *

§ 100.518 [Suspended]

■ 3. From March 25, 2006 through June 1, 2006, suspend § 100.518.

■ 4. From March 25, 2006 through June 1, 2006, add temporary § 100.35–T05–007 to read as follows:

§ 100.35–T05–007 Severn River, College Creek, Weems Creek and Carr Creek, Annapolis, Maryland.

(a) *Regulated area.* (1) The regulated area is established for the waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00′38.9″ N., longitude 076°31′05.2″ W. thence to the north shoreline at latitude 39°00′54.7″ N., longitude 076°30′44.8″ W., this line is approximately 1300 yards northwest of the U.S. 50 fixed highway bridge. The regulated area is bounded to the

southeast by a line drawn from the Naval Academy Light at latitude 38°58′39.5″ N., longitude 076°28′49″ W. thence southeast to a point 700 yards east of Chinks Point, MD at latitude 38°58′1.9″ N., longitude 076°28′1.7″ W. thence northeast to Greenbury Point at latitude 38°58′29″ N., longitude 076°27′16″ W. All coordinates reference Datum NAD 1983.

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

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

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

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

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

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

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of this section but may not block a navigable channel.

(d) *Enforcement period.* (1) This section will be enforced from 5 a.m. to 6 p.m. on the following days and if the event's daily activities should conclude prior to 6 p.m., enforcement of this section may be terminated for that day at the discretion of the Patrol Commander. Enforcement will be during, and 30 minutes before each of the following annual events:

(i) Safety at Sea Seminar, April 1, 2006;

(ii) Naval Academy Crew Races, March 25, April 15, April 22, April 23, May 12 and May 28, 2006;

(iii) Blue Angels Air Show, May 23 and May 24, 2006.

(2) The Commander, Fifth Coast Guard District will publish a notice in the Fifth Coast Guard District Local Notice to Mariners announcing the specific event times.

(e) *Effective period.* This section is effective from March 25, 2006 through June 1, 2006.

Dated: March 23, 2006.

Larry L. Hereth,

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

[FR Doc. 06–3422 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0171; FRL–8053–2]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern particulate matter (PM–10) emissions from open burning and volatile organic compound (VOC) emissions from gasoline storage and transfer. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on June 12, 2006 without further notice, unless EPA receives adverse comments by May 11, 2006. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0171, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions.
- E-mail: *steckel.andrew@epa.gov*.
- Mail or deliver: Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail.

WWW.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Al Petersen, EPA Region IX, (415) 947–4118, *petersen.alfred@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we" "us" and "our" refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that the amended rules were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES FOR DIRECT FINAL APPROVAL

Local agency	Rule #	Rule title	Amended	Submitted
SJVUAPCD	4103	Open Burning	05/19/05	10/20/05
SCAQMD	461	Gasoline Storage and Transfer	06/03/05	10/20/05

On November 22, 2005, these rule submittals were found to meet the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We approved a version of SJVUAPCD Rule 4103 into the SIP on April 25, 2005 (70 FR 21151). We approved a version of SCAQMD Rule 461 into the SIP on February 22, 2005 (70 FR 8520).

C. What Is the Purpose of the Submitted Rule Revisions?

Section 110(a) of the Clean Air Act (CAA) requires states to submit regulations that control volatile organic compounds, nitrogen oxides, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of the local air district's programs to control these pollutants.

The primary purpose of the SJVUAPCD Rule 4103 revisions relative to the SIP rule is to add provisions to the rule in order to be consistent with California Health and Safety Code sections 41855.5 and 41855.6 as follows:

- *4103.5.5.1.1:* As of June 1, 2005 no permit shall be issued for the burning waste from the field crops of alfalfa, asparagus, barley stubble, beans, corn, cotton, flower straw, hay, lemon grass, oat stubble, pea vines, peanuts, safflower, sugar cane, vegetable crops, and wheat stubble.
- *4103.5.5.1.2:* As of June 1, 2005 no permit shall be issued for the burning of prunings from apricot crops, avocado crops, bushberry crops, cherry crops, Christmas trees, citrus crops, date crops, eucalyptus crops, kiwi crops, nectarine crops, nursery prunings, olive crops, pasture or corral trees, peach crops, persimmon crops, pistachio crops, plum crops, pluot crops, pomegranate crops, prune crops, and rose crops.
- *4103.5.5.1.3:* As of June 1, 2005 no permit shall be issued for weed abatement from berms, fence rows, pasture, grass, and Bermuda grass.
- *4103.5.5.2:* Between June 1, 2005 and June 1, 2008 permits may be issued for the burning of rice stubble up to 100% of the rice acreage farmed and between June 1, 2008 and June 1, 2010 for the burning of rice stubble up to 70% of the rice acreage farmed.
- *4103.5.5.3:* Until June 1, 2010 permits may be issued for the burning of prunings from apple crops, pear crops, fig crops, and quince crops and for weed abatement affecting surface waterways, including pond and levee banks.
- *4103.5.5.4:* As of June 1, 2005 owner/operators shall use at least one of fourteen Best Management Practices listed in attachment 1 of Rule 4103 for the control of star thistle, dodder weeds, tumble weeds, noxious weeds, and weeds located along ditch banks or canal banks and shall use one of three listed Best Management Practices for disposal of pesticide or fertilizer sacks. The APCO may approve any alternative practice that is demonstrated to be at least as effective in controlling emissions as the listed practices.

The purposes of SCAQMD Rule 461 revisions relative to the SIP rule are as follows:

- *461(c)(1)(B) and 461(c)(2)(B):* The rule adds the requirements for training of installer/contractors in a manufacturer's program for Phase I and II vapor recovery equipment by June 30, 2006.
- *461(c)(3)(M):* The rule adds the requirement for a non-retail transfer and dispensing facility to have an operating and maintenance manual with manufacturer required maintenance procedures delineated.
- *461(e)(2)(A) and 461(f):* The rule adds the requirement for additional reverification tests and test procedures, as applicable, for static torque of rotatable adaptors, leak rate of the drop tube/drain valve assembly, leak rate of the drop tube overfill protection device and spill container drain valve, and the leak rate and cracking pressure of pressure/vacuum vent valves.
- *461(e)(7)(E):* The rule adds the requirement for a record of training for the installer/contractor for installation of Enhanced Vapor Recovery Equipment.
- *461(g)(1):* The rule deletes after July 1, 2007 the exemption for a storage tank with more than 75% of its throughput used for implements of husbandry.
- *461(g)(2):* The rule adds an exemption for fueling the Tournament of Roses Parade floats.

EPA's technical support document (TSD) has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193).

SIP rules must require for major sources reasonably available control measures (RACM), including reasonably available control technology (RACT), in moderate PM–10 nonattainment areas (see section 189(a)) or must require for major sources best available control measures (BACM), including best available control technology (BACT), in serious PM–10 nonattainment areas (see section 189(b)). SJVUAPCD regulates a serious PM–10 nonattainment area (see 40 CFR part 81), so SJVUAPCD Rule 4103 must fulfill the requirements of BACM/BACT.

SIP rules in ozone nonattainment areas must require RACT for major sources of VOC (see section 182(a)(2)(A)). The SCAQMD regulates a 1-hour ozone nonattainment area (see 40 CFR part 81), so Rule 461 must fulfill the requirements of RACT. SIP rules regulating gasoline storage and transfer must also provide for vapor recovery from the fueling of motor vehicles (see section 182(a)(3)).

Guidance and policy documents that we use to help evaluate specific enforceability and RACT requirements consistently include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.
- *PM–10 Guideline Document* (EPA–452/R–93–008).
- Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987).
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,* EPA (May 25, 1988) (the Bluebook).
- *Guidance Document for Correcting Common VOC & Other Rule Deficiencies,* EPA Region IX (August 21, 2001) (the Little Bluebook).
- Draft *Model Rule, Gasoline Dispensing Facility—Stage II Vapor Recovery,* EPA (August 17, 1992).

• *Gasoline Vapor Recovery Guidelines,* EPA Region IX (April 24, 2000).

B. Do the Rule Revisions Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, BACM/BACT, RACT, and the special requirements for gasoline vapor recovery from fueling motor vehicles. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted SJVUAPCD Rule 4103 and SCAQMD Rule 461 because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by May 11, 2006, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on June 12, 2006. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, 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 reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 12, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 7, 2006.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(342)(i)(B) and (C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(342) * * *

(i) * * *

(B) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4103, adopted on June 18, 1992 and amended on May 19, 2005.

(C) South Coast Air Quality Management District.

(*1*) Rule 461, adopted on January 9, 1976 and amended on June 3, 2005.

[FR Doc. 06–3401 Filed 4–10–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2005–0557d; FRL–8052–9]

Partial Removal of Direct Final Rule Revising the California State Implementation Plan, Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial removal of direct final rule.

SUMMARY: On February 1, 2006 (71 FR 5172), EPA published a direct final approval of a revision to the California State Implementation Plan (SIP). This revision concerned Yolo-Solano Air Quality Management District (YSAQMD) Rule 2.21, Organic Liquid Storage and Transfer. The direct final action was published without prior proposal because EPA anticipated no adverse comment. The direct final rule stated that if adverse comments were received by March 3, 2006, EPA would publish a timely withdrawal in the **Federal Register**. EPA received timely adverse comments. Consequently, with this action we are removing the direct final approval of YSAQMD rule 2.21. EPA will either address the comments in a subsequent final action based on the parallel proposal also published on February 1, 2006 (71 FR 5211), or propose an alternative action. As stated in the parallel proposal, EPA will not institute a second comment period on a subsequent final action.

On February 1, 2006 (71 FR 5174), EPA also published an interim final determination to stay CAA section 179 sanctions associated with YSAQMD Rule 2.21 based on our concurrent proposal to approve the State's SIP revision as correcting deficiencies that initiated sanctions. This interim final determination and its stay of sanctions is not affected by this partial removal of the direct final action.

Ventura County Air Pollution Control District Rule 74.14, the other rule approved in the February 1, 2006 direct final action, is not affected by this partial removal and is incorporated into the SIP as of the effective date of the February 1, 2006 direct final action.

DATES: This action is effective April 11, 2006.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2005–0557 for this action. The index to the docket is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, at either (415) 947–4111, or *wamsley.jerry@epa.gov*.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 21, 2006.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

§ 52.220 [Amended]

■ 2. Section 52.220 is amended by removing and reserving paragraph (c)(342)(i)(A).

[FR Doc. 06–3403 Filed 4–10–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2005–0131; FRL–8157–5]

RIN 2060–AM46

Protection of Stratospheric Ozone: Recordkeeping and Reporting Requirements for the Import of Halon-1301 Aircraft Fire Extinguishing Vessels

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to exempt entities that import aircraft fire extinguishing spherical pressure vessels containing halon-1301 ("aircraft halon bottles") for hydrostatic testing from the import petitioning requirements for used controlled substances. The petitioning requirements compel importers to submit detailed information to the Administrator concerning the origins of the substance at least forty working days before a shipment is to leave a foreign port of export. This direct final rule reduces the administrative burden on entities that are importing aircraft halon bottles for the purpose of maintaining these bottles to commercial safety specifications and standards set forth in Federal Aviation Administration airworthiness directives. This direct final rule does not exempt entities that wish to import bulk quantities of halon-1301 in containers that are not being imported for purposes of hydrostatic testing.

DATES: The direct final rule is effective on June 12, 2006 without further notice, unless EPA receives adverse comments by May 11, 2006, or by May 26, 2006 if a hearing is requested. If adverse comments are received, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. If anyone contacts the EPA requesting to speak at a public hearing by April 21, 2006, a public hearing will be held on April 25, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2005–0131, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *A-and-R-docket@epa.gov.*
- Fax: 202–343–2337, attn: Hodayah Finman.
- Mail: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery or Courier. Deliver your comments to: EPA Air Docket, EPA West, 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2005–0131. 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 Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Hodayah Finman, EPA, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 343–9246.

SUPPLEMENTARY INFORMATION: EPA is publishing this amendment without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comment. The Agency does not anticipate any adverse comment because of the importance of testing aircraft halon bottles for safety purposes and the environmental benefit resulting from the preventative maintenance of these containers. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. Should EPA receive adverse comments, the Agency would consider and address all public comments received on this direct final rulemaking in any subsequent final rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Table of Contents

I. General Information

A. Regulated Entities

The aircraft halon bottle exemption will affect the following categories:

Category	NAICS code	Examples of regulated entities
Hydrostatic testing laboratories or services.	541380	Halon aircraft bottle testing facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA believes could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, or other entity is regulated by this action, you should carefully examine these regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider When Preparing My Comments?

1. *Confidential Business Information.* Do not submit this information to EPA through *http://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:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at

your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

A. Stratospheric Protection

The stratospheric ozone layer protects the Earth from penetration of harmful ultraviolet (UV–B) radiation. International consensus exists that releases of certain man-made halocarbons, including chlorofluorocarbons (CFCs), halons, carbon tetrachloride, methyl chloroform, and methyl bromide, contribute to the depletion of the stratospheric ozone layer and should be controlled. Ozone depletion harms human health and the environment through increased incidence of certain skin cancers and cataracts, suppression of the immune system, damage to plants including crops and aquatic organisms, increased formation of ground-level ozone, and increased weathering of outdoor plastics. Under the Clean Air Act Amendments of 1990 (CAAA of 1990), the domestic implementing legislation for ozone layer protection, ozone-depleting substances (ODSs) have been designated as either class I or class II controlled substances (see 40 CFR part 82, appendices A and B to subpart A). Class I controlled substances are CFCs, halons, carbon tetrachloride, methyl chloroform, methyl bromide, hydrobromofluorocarbons and chlorobromomethane; class II controlled substances are hydrochlorofluorocarbons (HCFCs).

B. Halons

Halons are gaseous or easily vaporized halocarbons used primarily for extinguishing fires, and for explosion protection. The two halons most widely used in the United States are halon-1211 and halon-1301. Halon-1211 is used primarily in streaming applications while halon-1301 is typically used in total flooding applications. Some limited use of halon-2402 also exists in the United States, but only as an extinguishant in engine nacelles (the streamlined enclosure surrounding the engine) on older aircraft and in the guidance system of Minuteman missiles. The action in this direct final rule is not expected to affect the supply of unblended halons for these uses.

Halons are used in a wide range of fire protection applications because they combine four characteristics. First, they are highly effective against solid, liquid/gaseous, and electrical fires (referred to as Class A, B, and C fires, respectively). Second, they dissipate rapidly, leaving no residue, and thereby avoid secondary damage to the property they are protecting. Third, halons do not conduct electricity and can be used in areas containing live electrical equipment where they can penetrate to and around physical objects to extinguish fires in otherwise inaccessible areas. Finally, halons are generally safe for limited human exposure when used with proper exposure controls.

Despite these advantages, halons have a significant drawback; they are among the most ozone-depleting substances in use today. With an ozone depleting potential (ODP) of 0.2 representing the threshold for classification as a class I substance, halon-1301 has an estimated ODP of 10.0 and an atmospheric lifetime of 65 years. Halon-1211 has an estimated ODP of 3.0 and an atmospheric lifetime of 16 years. As an illustration of the significance of halons as ODSs, while total halon production (measured in metric tons) consisted of just 2 percent of the total production of class I substances in 1986, halons represented 23 percent of the total estimated ozone depletion attributable to class I substances produced during that year. Prior to the early 1990s, the greatest releases of halon into the atmosphere occurred not in extinguishing fires, but during testing and training, service and repair, and accidental discharges. Data generated as part of the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol) technology assessment indicated that only 15 percent of annual halon-1211 emissions and 18 percent of annual halon-1301 emissions occur as a result of use to extinguish actual fires. These figures indicated that significant gains could be made in protecting the ozone layer by revising testing and training procedures and by limiting unnecessary discharges through better detection and dispensing systems for halon and halon alternatives.

The fire protection community began to conserve halon reserves in response to the impending ban of the production and consumption of halons 1211, 1301, and 2402, which became effective January 1, 1994. In the context of the regulatory program, the use of the term consumption may be misleading. Consumption does not mean the "use" of a controlled substance, but rather is defined as production plus imports minus export of controlled substances (Article I of the Protocol and Section 601 of the CAAA of 1990).

C. Statutory Authority

The current regulatory requirements of the Stratospheric Ozone Protection Program that limit production and consumption of ODSs can be found at 40 CFR part 82. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol. The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 21, 1988. Congress then enacted, and President Bush signed into law, the CAAA of 1990, which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, to ensure that the United States could satisfy its obligations under the Protocol. EPA issued new regulations to implement this legislation and has made several amendments to the regulations since that time.

Since January 1, 1994, in accordance with the Montreal Protocol and the CAAA of 1990's accelerated phaseout provision, U.S. production and consumption of halon-1301 has been prohibited (40 CFR 82.4(c)(1), 58 FR 65018). The Montreal Protocol mandated a freeze in the production and consumption of halon-1211, halon-1301, and halon-2402 in 1992 at the 1986 baseline levels and, as subsequent adjustments adopted by the Parties at their Fourth Meeting in 1992, required a 100 percent phaseout by January 1, 1994. EPA issued regulations under authority of sections 604 and 606 of the CAAA of 1990 reflecting this phaseout schedule. Section 604 of the CAAA of 1990 sets forth initial phaseout dates for certain Class I substances, including halons, while section 606 states that EPA shall promulgate an accelerated phaseout schedule if the Agency determines that it may be necessary to protect human health and the environment; if the Agency determines that is practicable based on the availability of substitutes; or if the Montreal Protocol is modified to include a more stringent schedule. EPA found that all of these criteria were met with respect to the accelerations adopted at the Parties' Fourth Meeting (58 FR 65024).

Although the regulations phased out the production and consumption of class I, Group II substances (halons) on January 1, 1994, most other class I controlled substances on January 1,

1996, and methyl bromide on January 1, 2005, a very limited number of exemptions exist, consistent with U.S. obligations under the Protocol. The regulations allow for the manufacture of phased-out class I controlled substances, provided the substances are either transformed or destroyed (40 CFR 82.4(b)). They also allow limited manufacture if the substances are (1) exported to developing countries listed under Article 5 of the Protocol to meet basic domestic needs, or (2) produced for essential or critical uses as authorized by the Protocol and the regulations (40 CFR 82.4 (b)).

The regulations allow for the import of phased-out class I controlled substances provided the substances are either transformed or destroyed (40 CFR 82.4(d)). Limited exceptions to the ban on the import of phased-out class I controlled substances also exist if the substances are: (1) Previously used, recycled, or reclaimed and the importer files a petition and receives a non-objection notice from the Administrator (40 CFR 82.4(j)); (2) imported for essential or critical uses as authorized by the Protocol and the regulations, or (3) a transhipment or a heel (40 CFR 82.4(d)).

When the Stratospheric Ozone Protection Program was first implemented in the U.S., EPA did not make a distinction between the import of new and used controlled substances. In 1992, Decision IV/24 taken by the Parties to the Montreal Protocol interpreted Article 2 of the treaty as allowing a country to import a used ODS beyond the phaseout date of that substance. Specifically, the decision indicates the Parties' interpretation that import of a "used" substance does not constitute "consumption" of a substance. The Parties took this decision to promote the use of banks of ODS and thus facilitate the transition to ozone-safe alternatives. Following Decision IV/24, EPA added a regulatory provision to allow for the import of previously used or recycled controlled substances without allowances (December 10, 1993, 58 FR 65018). Prior to that time, all imports of controlled substances, whether new or used, could only occur if the importing entity held and expended sufficient allowances for the transaction (July 30, 1992, 57 FR 33754).

The Agency found, however, that the December 1993 rule was too permissive and that containers of virgin ODS could be, and in fact were, easily imported as fraudulently labeled used material. Other countries also experienced a rise in the illegal shipment of fraudulently labeled ODS following the reclassification of used ODS in Decision IV/24. Therefore, in 1994, EPA proposed to revise its regulations and require all importers to petition the Agency prior to importing a used ODS (November 10, 1994, 59 FR 56275). This petition process would allow the Agency to verify that a shipment in fact contained a used controlled substance and thus reduce, although not eliminate, the potential for illegal trade. In addition, the Agency also proposed to amend the definition of "used and recycled controlled substances" to include only the term "used." In its description of the proposed changes to the definition of used controlled substances, the Agency further stated that: "[i]n this manner, a controlled substance is defined as used if it was recovered from a use system, regardless of whether it was subsequently recycled or reclaimed" (59 FR 56285). These proposed changes, with minor adjustments based on comments, were finalized by the Agency and the petition process for the import of used ODS was codified into EPA regulation (May 10, 1995, 60 FR 24970).

The Agency later addressed the petition process in a direct final rulemaking (August 4, 1998, 63 FR 41626). This rule made several modifications to the petition process including changing the amount of time the Administrator has to review transactions and reducing the de minimis threshold for the petition process from 150 pounds of ODS to 5 pounds. Some of the changes associated with the import petition process received adverse comment and were withdrawn (October 5, 1998, 63 FR 53290). A subsequent final rule issued by the Agency established the requirements that are currently in effect for the import petition process (December 31, 2002, 67 FR 79861).

Additional authority for the amendments in this direct final rule is found in section 608(a)(2) of the CAAA of 1990, which directs EPA to establish standards and requirements regarding use and disposal of class I and II substances other than refrigerants. The goal of section 608(a) is to reduce the use and emission of ODS to the lowest achievable level and maximize the recapture and recycling of such substances. EPA previously issued a rule implementing this provision with respect to halon use generally. 63 FR 11084 (March 5, 1998); 40 CFR part 82, subpart H.

In the instance of aircraft halon bottles, EPA believes that this direct final rule will create a further incentive for industry to minimize emissions of halons by exempting certain importers from the up-front petition process in order to facilitate proper maintenance of the bottles and thereby minimize the potential for fissures and leaking of ODS from these bottles.

D. Summary of Direct Final Rule

In this action, EPA is further amending its regulations to exempt the import of aircraft halon bottles for hydrostatic testing from the import petition process.

EPA classifies halon-1301 contained in aircraft halon bottles removed from an on-board fire suppression system as used controlled substances. EPA regulations define "used controlled substances" as "controlled substances that have been recovered from their intended use systems (may include controlled substances that have been, or may be subsequently, recycled or reclaimed)" (40 CFR 82.3). Halon-1301 is placed into aircraft bottles and the bottles are then inserted into a fire suppression system. When the system is dismantled or the bottles are removed from the system, the halon-1301 contained in the bottles is considered used since it was removed from a use system.

In the history of the program, the mechanisms that govern the import of used ODS have ranged from no controls to a detailed up-front petition process. The Agency, to a significant extent, selected implementation mechanisms based on parameters such as practicability and protection of the ozone layer. When EPA believed it was to the benefit of the environment to encourage the import of used ODS, the Agency implemented a nonrestrictive import mechanism. When the Agency discovered a rise in illegal trade of ODS, EPA instituted a thorough petition process to curb the traffic of illicit material.

EPA does not believe that it is economically feasible to illegally import halon-1301 in aircraft bottles due to the size, costs, and uniqueness of the bottles. Thus, part of the basis for EPA's action to establish a rigorous petition process does not apply in this instance. Furthermore, EPA believes that a narrow exemption for aircraft halon bottles is appropriate because it will remove impediments to the proper maintenance of these halon-1301 containing bottles. In the United States and abroad the exclusion of these aircraft bottles from the import petition process will cause transit and testing to occur in a more expeditious fashion, thus promoting proper maintenance of these five suppression devises. Proper maintenance of these bottles is crucial, not only from a safety perspective as described in the following section of this preamble, but from an

environmental point of view as well. Halon-1301 has a high ODP and the Agency supports prevention of accidental emissions through proper maintenance of the storage vessels.

III. Aircraft Halon Bottle Exemption from the Import Petitioning Process

A. Import of Aircraft Halon Bottles for Hydrostatic Testing

Halon-1301 is a gaseous compound used in fire suppression systems and devices. The chemical is used in aircraft halon bottles that are components of larger fire suppression systems used on aircraft. Halon bottles are pressurized containers that typically contain from one to one hundred pounds of a halon-1301/nitrogen mixture. As halon bottles are under high pressure in severe environments, they are at risk of leakage and their effectiveness may decrease over time. Hydrostatic testing of the bottles detects such leakage and determines whether the bottles are functioning properly.

The halon bottles must be tested routinely under Federal Aviation Administration (FAA) and United States Department of Transportation (DOT) regulations. Federal Aviation Regulations (FAR) section 25.851(a)(6) (14 CFR part 25) requires the presence of halon bottles aboard transport category aircraft. The FAA Flight Standards Handbook Bulletin for Airworthiness 02–01B (effective July 16, 2002 and amended February 10, 2003) provides guidance on the maintenance and inspection of the halon bottles and states in paragraph 3(b) that "pressure cylinders that are installed as aircraft equipment will be maintained and inspected in accordance with manufacturer's requirements." Manufacturer's requirements specify periodic testing of aircraft halon bottles.

Halon bottles may be serviced by an on-site facility at an airport or may be removed from the aircraft, shipped to a testing facility at a location in the U.S. or abroad, and then returned to the airline. Once a hydrostatic testing company receives the halon bottles, the used halon-1301 is removed and recovered for future reclamation. The bottles are then hydrostatically tested to ensure durability and effectiveness, after which they are re-filled with halon-1301 and returned to the customer.

EPA is aware of two major service companies and about 15 other companies that provide hydrostatic testing services to the airline industry. Industry experts estimate that approximately 60,000 bottles are in service globally, some portion of which are serviced in U.S. testing facilities. Information provided to the Agency from the two major U.S. companies indicates that each year those companies service about 5,000 bottles, some portion of which are imported. The amount of halon in the aircraft bottles can range from 1 to 100 pounds of halon-1301, although most bottles contain between 5 to 25 pounds. If EPA were to assume that, in total, the smaller companies service half as many bottles as the two major companies do together, and EPA were to assume that each of those bottles contained 25 pounds of halon, that would mean that in a given year the U.S. is servicing bottles containing 187,500 pounds of halon-1301 per year, which is equivalent to 850 ODP weighted metric tons. However, EPA understands that not all aircraft bottles are imported with complete charges, meaning that a bottle capable of holding 25 pounds of halon-1301 may in fact contain less. It is industry practice, however, to export the bottles back to the country of origin with a full charge of halon-1301. Thus, the U.S. is likely a net exporter of used halon in aircraft bottles.

A recent industry estimate on the amount of halon-1301 imported into the U.S. in aircraft bottles indicated that some 2,700 bottles are imported for testing on an annual basis. These bottles are imported containing 24,000 pounds of halon and exported containing 28,000 pounds of halon. These estimates are based on data from seven companies which the industry believes represents 90 percent of the market. This data confirms EPA's understanding of the relatively small amount of halon imported for the purpose of testing aircraft bottles and the practice of exporting more halon than is imported in the process of such routine servicing.

B. Import Petition Requirements for Used Controlled Substances

The final rule published in the **Federal Register** on May 10, 1995 (60 FR 24970), established a petitioning system for the import of class I controlled substances. The system required a person to submit a petition to import used class I controlled substances prior to the import of each shipment over a de minimis amount. A de minimis amount of 150 pounds was initially established in the May 10, 1995 final rule to allow companies to import small samples of material for testing or lab analysis without the requirement to submit a petition to EPA prior to import of the controlled substance; that amount was later lowered to 5 pounds.

As explained in the preamble to the May 10, 1995, final rule, the intent of the petition process is to allow EPA to independently verify whether a class I controlled substance is, in fact, previously used. EPA established the petition process because quantities of class I controlled substances were entering the U.S. mis-identified as "used" when they were, in fact, newly produced. Under the Montreal Protocol, trade in of previously used controlled substances is permitted even after the phaseout dates. To independently verify that a quantity of class I controlled substance was previously used, EPA needs detailed information about the source facility from which the material was recovered.

On August 4, 1998 (63 FR 41625), EPA finalized changes to the petitioning process that included a more comprehensive and detailed list of required information for petitions to import used class I controlled substances, including a requirement to provide information documenting the custody chain of the controlled substance starting from the point of origin and continuing throughout the entire custody chain. Most of these changes were intended to make the regulatory text more explicit regarding the type of information that EPA needs to independently verify the previous use of the controlled substance. One of the amendments affecting importers of halon-1301 bottles was the change in the de minimis amount to five pounds. The de minimis provision was intended to allow companies to import samples of material for laboratory analysis. The de minimis amount was lowered because EPA learned that such samples are generally taken from large tanks in special cylinders that weigh less than 2 pounds.

The import petition requirements are specified at 40 CFR 82.13(g)(2). They state, in part, that 40 days prior to shipment from the foreign port of export, the importer must provide information to the Administrator including, but not limited to the following: Name and quantity of controlled substance to be imported; name and address of the importer along with information for a contact person; name and address of source facility along with information for a contact person; detailed description of the previous use providing documents where possible; a list of the name, make and model of the equipment from which the ODS was recovered; name and address of exporter along with contact information; the U.S. port of entry and expected date of shipment; a description of the intended use of the controlled substance; and the name and address of the U.S. reclamation facility where applicable. EPA may issue an objection

to the petition if the information submitted by the importer lacks or appears to lack any of the information required under 40 CFR 82.13(g)(2). The Agency recognizes that this level of detail is not necessary to control the import of halon-1301 contained in aircraft halon bottles destined for service and is therefore amending its regulations as described in the following section of this preamble.

C. Exemption to the Import Petition Requirements

This direct final rule exempts importers of halon-1301 shipped in aircraft halon bottles from the petition import requirements under 40 CFR 82.13(g)(2), as described in the previous section of this preamble. An importer or exporter of halon-1301 contained in aircraft halon bottles is typically a maintenance and testing facility that is a certified repair station under 14 CFR part 145 or an aircraft halon bottle manufacturer that imports and exports aircraft fire extinguishing pressure vessels for servicing, maintenance, and hydrostatic testing. Under this direct final rule, importers of aircraft halon bottles are no longer required to submit petition data to, and seek approval from, the Administrator prior to individual imports.

D. Reporting and Recordkeeping Requirements for Importers and Exporters

The Agency tracks the amount of used halon-1301 imported and exported annually in aircraft bottles because such movement of halon across U.S. borders constitute import and export as characterized under 40 CFR part 82. EPA reminds importers that they are still required to maintain import records, as set forth in 40 CFR 82.13(g)(1), including but not limited to the following: (i) The quantity of each controlled substance imported, either alone or in mixtures, including the percentage of each mixture which consists of a controlled substance; (ii) The quantity of those controlled substances imported that are used (including recycled or reclaimed) and the information provided with the petition as under § 82.13(g)(2), where applicable; (iii) The quantity of controlled substances other than transhipments or used, recycled or reclaimed substances imported for use in processes resulting in their transformation or destruction and quantity sold for use in processes that result in their destruction or transformation; (iv) The date on which the controlled substances were imported; (v) The port of entry through which the controlled substances passed; (vi) The country from which the imported controlled substances were imported; (vii) The commodity code for the controlled substances shipped, which must be one of those listed in Appendix K to 40 CFR part 82, subpart A; (viii) The importer number for the shipment; (ix) A copy of the bill of lading for the import; (x) The invoice for the import; (xi) The quantity of imports of used, recycled or reclaimed class I controlled substances; and (xii) The U.S. Customs entry form.

EPA is amending the recordkeeping requirement at 40 CFR 82.13(g)(1) to state that information provided through the petition process is only to be maintained "where applicable." No such information will have been provided in the case of aircraft halon bottles. EPA is not amending the remaining reporting and recordkeeping requirements for importers and exporters, found at 40 CFR 82.13(g)(4) and (h)(1) respectively, but is restating them in this preamble for convenience of the public.

EPA reminds importers of aircraft halon bottles that they are required to submit quarterly reports within 45 days of the end of the applicable quarter, in accordance with 40 CFR 82.13(g)(4), that include but are not limited to the following information: (i) A summary of the records required in paragraphs 40 CFR 82(g)(1) (i) through (xvi) for the previous quarter; (ii) the total quantity imported in kilograms of each controlled substance for that quarter; and (iii) the quantity of those controlled substances imported that are used controlled substances.

EPA reminds persons that may test aircraft halon bottles and subsequently export them that they must submit an annual report (45 days after the end of the calendar year, in accordance with 40 CFR 82.13(h). The annual report must includes but is not limited to the following information: (i) The names and addresses of the exporter and the recipient of the exports; (ii) The exporter's Employee Identification Number; (iii) The type and quantity of each controlled substance exported and what percentage, if any, of the controlled substance is used, recycled or reclaimed; (iv) The date on which, and the port from which, the controlled substances were exported from the United States or its territories; (v) The country to which the controlled substances were exported; (vi) The amount exported to each Article 5 country; (vii) The commodity code of the controlled substance shipped.

EPA has provided guidance on the reporting and recordkeeping requirements. The importer quarterly report form and the annual exporter report form may be found on EPA's Web site at *http://www.epa.gov/ozone/record/index.html*. This information is also available via the Ozone Hotline at (800) 296–1996.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines a "significant" regulatory action as one that is likely to result in a rule that may:

(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 government 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 the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this is a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Current recordkeeping and reporting requirements under 40 CFR 82.13 allow EPA to implement the provisions of this direct final rule. This action will reduce the reporting burden that would otherwise be required under 40 CFR 82.13 (g) by removing the requirement to submit information to EPA prior to each import of aircraft halon bottles. OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

and has assigned OMB control number 2060–0170, EPA ICR number 1432.25. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. For purposes of assessing the impacts of this direct final rule on small entities, small entity is defined as: (1) A small business that is primarily engaged in the hydrostatic testing of aircraft halon bottles as defined in NAIC code 541380 with annual receipts less than $10,000,000 (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This final rule will reduce the administrative burden on all entities who import aircraft halon bottles. We have therefore concluded that this direct final rule will relieve regulatory burden for all affected small entities.

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

Section 203 of UMRA requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule. Section 204 requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

This direct final rule contains no Federal mandates (under the regulatory provision of Title II of the UMRA) for State, local, or tribal governments or the private sector. This rule imposes no enforceable duty on any State, local or tribal government or the private sector. Thus, this direct final rule is not subject to the requirements of sections 202 and 205 of UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

E. Executive Order 13132: Federalism

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

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

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. It does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

While this final rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, we nonetheless have reason to believe that the environmental, health, or safety risk addressed by this action may have a disproportionate effect on children. Depletion of stratospheric ozone results in greater transmission of the sun's ultraviolet (UV) radiation to the earth's surface. The following studies describe the effects on children of excessive exposure to UV radiation: (1) Westerdahl J, Olsson H, Ingvar C. "At what age do sunburn episodes play a crucial role for the development of malignant melanoma," Eur J Cancer 1994; 30A: 1647–54; (2) Elwood JM, Jopson J. "Melanoma and sun exposure: an overview of published studies," Int J Cancer 1997; 73:198–203; (3) Armstrong BK. "Melanoma: childhood or lifelong sun exposure" In: Grobb JJ, Stern RS, Mackie RM, Weinstock WA, eds. "Epidemiology, causes and prevention of skin diseases," 1st ed. London, England: Blackwell Science, 1997: 63–6; (4) Whiteman D., Green A. "Melanoma and Sunburn," Cancer Causes Control, 1994: 5:564–72; (5) Kricker A, Armstrong, BK, English, DR, Heenan, PJ. "Does intermittent sun exposure cause basal cell carcinoma? A case control study in Western Australia," Int J Cancer 1995; 60: 489–94; (6) Gallagher, RP, Hill, GB, Bajdik, CD, et. al. "Sunlight exposure, pigmentary factors, and risk of nonmelanocytic skin cancer I, Basal cell carcinoma," Arch Dermatol 1995; 131: 157–63; (7) Armstrong, BK. "How sun exposure causes skin cancer: an epidemiological perspective," Prevention of Skin Cancer. 2004. 89–116.

EPA anticipates that this rule will have a positive impact on the environment and human health by removing a disincentive to preventive maintenance of aircraft halon bottles and reducing the likelihood of accidental emissions. Thus, this rule is not expected to increase the impacts on children's health from stratospheric ozone depletion.

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

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. 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 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). This rule will be effective June 12, 2006.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Chemicals, Exports, Halon, Imports, Ozone Layer, Reporting and recordkeeping requirements.

Dated: April 5, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

■ 2. Section 82.3 is amended by adding a definition for "Aircraft halon bottle" to read as follows:

§ 82.3 Definitions for class I and class II controlled substances.

* * * * *

Aircraft halon bottle means a vessel used as a component of an aircraft fire suppression system containing halon-1301 approved under FAA rules for installation in a certificated aircraft.

* * * * *

■ 3. Section 82.4 is amended by revising paragraph (j) to read as follows:

§ 82.4 Prohibitions for class I controlled substances.

* * * * *

(j) Effective January 1, 1995, no person may import, at any time in any control period, a used class I controlled substance, except for Group II used controlled substances shipped in

aircraft halon bottles, without having received a non-objection notice from the Administrator in accordance with § 82.13(g)(2) and (3).

* * * * *

■ 4. Section 82.13 is amended by revising paragraphs (g)(1)(ii) and (g)(2) introductory text to read as follows:

§ 82.13 Recordkeeping and reporting requirements for class I controlled substances.

* * * * *

(g) * * *

(1) * * *

(ii) The quantity of those controlled substances imported that are used (including recycled or reclaimed) and, where applicable, the information provided with the petition as under paragraph (g)(2) of this section;

* * * * *

(2) Petitioning—Importers of Used, Recycled or Reclaimed Controlled Substances. For each individual shipment over 5 pounds of a used controlled substance as defined in § 82.3, except for Group II used controlled substances shipped in aircraft halon bottles, an importer must submit directly to the Administrator, at least 40 working days before the shipment is to leave the foreign port of export, the following information in a petition:

* * * * *

[FR Doc. 06–3461 Filed 4–10–06; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 051014263–6028–03; I.D. 040506A]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Specifications and Management Measures; Inseason Adjustments

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

ACTION: Inseason adjustments to management measures; request for comments.

SUMMARY: NMFS announces changes to management measures in the recreational Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP) are intended to protect overfished groundfish stocks, to reduce possible confusion in the public over differing state and Federal regulations, and to improve the ability to enforce groundfish regulations.

DATES: Effective 0001 hours (local time) April 11, 2006. Comments on this rule will be accepted through May 11, 2006.

ADDRESSES: You may submit comments, identified by I.D. 040506A, by any of the following methods:

- E-mail: *GroundfishInseason7.nwr@noaa.gov*. Include I.D. number 040506A in the subject line of the message.
- Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070; or Rod McInnis, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213. Attn: Jamie Goen.
- Fax: 206–526–6736, Attn: Jamie Goen.

FOR FURTHER INFORMATION CONTACT: Jamie Goen (Northwest Region, NMFS), phone: 206–526–6150; fax: 206–526–6736; or e-mail: jamie.goen@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office's Web site at: *http://www.gpoaccess.gov/fr/index.html*.

Background information and documents are available at the Pacific Fishery Management Council's (Pacific Council's) Web site at: *http://www.pcouncil.org*.

Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subpart G, regulate fishing for over 80 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Council, and are implemented by NMFS. The specifications and management measures for 2005–2006 were codified in the CFR (50 CFR part 660, subpart G). They were published in the **Federal Register** as a proposed rule on September 21, 2004 (69 FR 56550), and as a final rule on December 23, 2004 (69 FR 77012). The final rule was subsequently amended on March 18, 2005 (70 FR 13118); March 30, 2005 (70 FR 16145); April 19, 2005 (70 FR 20304); May 3, 2005 (70 FR 22808); May 4, 2005 (70 FR 23040); May 5, 2005 (70 FR 23804); May 16, 2005 (70 FR 25789); May 19, 2005 (70 FR 28852); July 5, 2005 (70 FR 38596); August 22, 2005 (70 FR 48897); August 31, 2005 (70 FR 51682); October 5, 2005 (70 FR 58066); October 20, 2005 (70 FR 61063); October 24, 2005 (70 FR 61393); November 1, 2005 (70 FR 65861); December 5, 2005 (70 FR 723850); February 17, 2006 (71 FR 8489); and March 27, 2006 (71 FR 10545).

The changes to current groundfish management measures implemented by this action were recommended by the Pacific Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, at its March 6–10, 2006, meeting in Seattle, WA. At that meeting, the Pacific Council recommended: (1) conforming Federal regulations to protective state measures taken in the Washington recreational groundfish fishery that prohibit retention of rockfish and lingcod in Federal waters from May 22 through September 30, 2006, in the area from the U.S. border with Canada to Queets River, WA (47°31.70′ N. lat.) except on days that halibut fishing is open, and that prohibit retention of rockfish and lingcod seaward of a line approximating the 30–fm (55–m) depth contour from March 18 through June 15, 2006 in the area from the Queets River to Leadbetter Point, WA (46°38.17′ N. lat.); and (2) conforming Federal regulations to protective state measures taken for the Oregon recreational groundfish fishery that set the marine fish bag limit off Oregon at 6 fish. These measures are also needed to conform Federal groundfish regulations with Federal halibut regulations implemented on March 5, 2006 (71 FR 10850, March 3, 2006).

Washington Recreational Fishery Management Measures

At the Pacific Council's March meeting, Washington Department of Fish and Wildlife (WDFW) reported on its recreational fishery management measures in 2005. WDFW had analyzed its 2005 fishery's catch and had found that the 2005 Washington recreational fishery had exceeded its harvest targets for yelloweye and canary rockfish. To ensure that its recreational fishery would not exceed 2006 rockfish harvest targets, WDFW developed state regulations in a series of public meetings held in December 2005 through February 2006. These regulations prohibit retention of rockfish and lingcod in WDFW Marine

Areas 3 and 4 (from the U.S./Canada border to Queets River) in waters seaward of the 20–fm (36.9–m) depth contour from May 22 through September 30, 2006, except on days that the recreational halibut fishery is open. These regulations also prohibit retention of rockfish and lingcod in WDFW Marine Area 2 (from Queets River to Leadbetter Point) in waters seaward of a line approximating the 30–fm (55–m) depth contour from March 18 through June 15, 2006. Yelloweye and canary rockfish are shelf rockfish species and are less abundant in nearshore waters, so these regulations are designed to reduce the take of these species. The bulk of recreational fishing off the Washington coast occurs during spring and summer, with the more severe winter weather discouraging much recreational fishing during the remainder of the year.

All of the West Coast groundfish fisheries, including the recreational fishery, are subject to fishing area closures intended to reduce opportunities for incidental catch of overfished rockfish species. These area closures, known as Rockfish Conservation Areas (RCAs), are bounded by lines approximating fathom depth contours. NMFS provides latitude/longitude coordinates defining the RCA boundary lines at 50 CFR 660.390–660.394. Under Federal regulations at § 660.370, the boundaries of RCAs may be revised inseason, as needed to either increase protection for overfished species, or increase fisheries access to more healthy groundfish species. RCA boundaries may be shifted to any one of the boundary lines provided at §§ 660.391–660.394 using the routine management measure authority provided at § 660.370. Under FMP provisions in section 6.2, however, new routine management measures such as potential RCA boundary lines must be established through a two-meeting Council process and a Federal rulemaking with a public notice-and-comment process.

Federal regulations at § 660.391(b) provide latitude/longitude coordinates to approximate the 30–fm (55–m) depth contour. WDFW and the Pacific Council had recommended prohibiting retention of rockfish and lingcod seaward of the boundary line at § 660.391(b) that approximates the 30–fm (55–m) depth contour, between Queets River and Leadbetter Point, from March 18 through June 15, 2006. NMFS expects that implementing this recommendation would reduce recreational fisheries interactions with overfished rockfish. However, the agency could not complete this **Federal Register** action in time to implement the recommendation by March 18. State regulations may be more restrictive than Federal regulations, and Washington State regulations already in place prohibit fishing in this area seaward of the 30 fm (55 m) boundary line. NMFS nonetheless wishes to implement this protective measure as soon as possible, which is why it is effective in Federal waters beginning with the date of publication of this **Federal Register** document, April 11, 2006 through June 15, 2006.

There is no federally-designated RCA boundary at a line approximating the 20–fm (36.9–m) depth contour. Because the 20–fm (36.9–m) depth contour has not been established as a potential RCA boundary that can be made effective through a routine management measure, NMFS is unable to implement Federal regulations that exactly conform to the state closure. However, there are few areas off Washington where the 20–fm (36.9–m) depth contour is offshore of the 3–nautical mile boundary line between state and Federal waters. Therefore, the Pacific Council recommended that NMFS prohibit recreational fishing for rockfish and lingcod in the EEZ between the U.S./Canada border and the Queets River between May 22 and September 30, 2006, except on days when Pacific halibut fishing is open in that area, knowing that the state regulations would address state waters seaward of the 20–fm (36.9–m) depth contour during that same period. NMFS agrees with this Pacific Council recommendation and is implementing it via this document. NMFS announces open recreational fishing days for Pacific halibut on its halibut hotline, at (206)526 6667 or (800) 662 9825.

Oregon Recreational Fishery Management Measure

The Oregon Department of Fish and Wildlife (ODFW) also reported at the March 2006 Pacific Council meeting on management measures that the state had developed in late 2005 for its 2006 recreational fishery. In December 2005, the Oregon Fish and Wildlife Commission (Commission) refined management measures for the 2006 Oregon recreational groundfish fishery, based on angler effort patterns ODFW had observed in 2005. The 2005 Oregon recreational salmon season had been poor, which led more anglers to participate in the 2005 groundfish fishery than ODFW had expected at the start of 2005. In order to remain within the 2006 Oregon harvest guideline for black rockfish and to provide a 12–month fishing season for 2006, the Commission adopted a 6–fish marine fish bag limit, a reduction from the 10–fish limit previously in place. At the Pacific Council's March meeting, ODFW asked that the Pacific Council recommend to NMFS that Federal groundfish regulations conform to the more restrictive state marine fish bag limit, which the Pacific Council did. NMFS agrees that the 6–fish marine fish bag limit is likely to reduce effort in the Oregon recreational fishery, reduce opportunities for rockfish interception, and help keep the coastwide fisheries within the groundfish OYs. For this reason, and in order to reduce potential public confusion over differing state and Federal regulations and to improve the ability to enforce the regulations, NMFS is implementing the reduced marine fish bag limit via this document.

Conforming Federal Recreational Groundfish Regulations to Federal Recreational Halibut Regulations

The Pacific Council developed 2006 revisions to the Pacific Halibut Catch Sharing Plan and management measures for the 2006 recreational halibut fisheries during its September and November 2005 meetings. On January 30, 2006, NMFS published a proposed rule to implement the Pacific Council's recommended revisions to both the Catch Sharing plan and implementing regulations (71 FR 4876). The International Pacific Halibut Commission held its annual meeting January 16–20, 2006, where it set 2006 halibut catch levels for U.S. and Canadian waters. Following that meeting and the public comment period on the proposed rule for West Coast halibut fisheries, NMFS published a final rule implementing 2006 coastwide Pacific halibut fisheries regulations, for waters off the U.S. West Coast and Alaska (71 FR 10850, March 3, 2006). That final rule on the halibut fisheries included management measures that addressed allowable groundfish retention in the recreational halibut fisheries. Specifically, between Leadbetter Point, WA, and Cape Falcon, OR, no groundfish except sablefish and Pacific cod may be taken and retained, possessed or landed if halibut are onboard the vessel. And, between Cape Falcon and Humbug Mountain, OR, no groundfish except sablefish may be taken and retained, possessed or landed if halibut are onboard the vessel.

At the Pacific Council's March 2006 meeting, their Groundfish Management Team alerted the Council that halibut regulations developed through the halibut rulemaking process conflicted with groundfish regulations, which do not address retention of groundfish

taken with halibut off Oregon. Washington recreational groundfish regulations had a prohibition on the retention of groundfish, except sablefish, if halibut were onboard but did not allow retention of Pacific cod. Therefore, in order to eliminate confusion between Federal halibut and groundfish regulations, the Pacific Council recommended that NMFS modify groundfish regulations to conform to halibut regulations. NMFS agrees that this revision is needed and is implementing the Pacific Council's recommendation for Washington and Oregon via this document.

Classification

These actions are taken under the authority of 50 CFR 660.370(c) and are exempt from review under Executive Order 12866.

These actions are authorized by the Pacific Coast groundfish FMP and its implementing regulations, and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. The data upon which these recommendations were based was provided to the Pacific Council, and the Pacific Council made its recommendations at its March 6–10, 2006 meeting in Seattle, WA. There was not sufficient time after that meeting to draft this notice and undergo proposed and final rulemaking before these actions need to be in effect as explained below. For the actions to be implemented in this notice, prior notice and opportunity for comment would be impracticable and contrary to the public interest because affording the time necessary for prior notice and opportunity for public comment would impede the Agency's function of managing fisheries using the best available science to approach without exceeding the OYs for federally managed species. The adjustments to management measures in this document affect recreational fisheries off Washington and Oregon and must be implemented immediately to eliminate confusion for the public and to improve enforcement by ensuring that Federal and state recreational regulations conform to each other.

Revisions to recreational fishery management measures are needed to protect overfished groundfish species and to keep the harvest of other groundfish species within the harvest levels projected for 2006. Without these measures in place, the fisheries could risk exceeding harvest levels early in the year, causing early and unanticipated fishery closures and economic harm to the communities. It is unnecessary to provide a public notice-and-comment period on the measures that would be implemented to eliminate conflicts between Federal groundfish and halibut regulations because these measures have already been vetted through a public notice-and-comment process for the halibut regulations: proposed rule published January 30, 2006 (71 FR 4876), and final rule published March 3, 2006 (71 FR 10850). Making the groundfish regulations conform to the halibut regulations via this notice is a housekeeping measure and it is needed quickly in order to reduce confusion for the public and enforcement officers. Delaying any of these changes would keep management measures in place that are not based on the best available data and which could lead to early closures of the fishery if harvest of groundfish exceeds levels projected for 2006. This would be contrary to the public interest because it would impair achievement of one of the Pacific Coast Groundfish FMP objectives of providing for year-round harvest opportunities or extending fishing opportunities as long as practicable during the fishing year. Affording an opportunity for prior notice and comment on these regulatory revisions would also be contrary to the public interest because all of the measures implemented by this notice eliminate confusion for the public by removing conflicts between different regulations that affect the same waters and fisheries.

For these reasons, good cause also exists to waive the 30 day delay in effectiveness requirement under 5 U.S.C. 553 (d)(3).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, Fisheries, Fishing, Indians.

Dated: April 5, 2006.

Alan D. Risenhoover,

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

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.384, paragraphs (c)(1) introductory text, (c)(1)(i)(B), and (c)(2)(iii) are revised to read as follows:

§ 660.384 Recreational fishery management measures.

* * * * *

(c) * * *

(1) *Washington.* For each person engaged in recreational fishing off the coast of Washington, the groundfish bag limit is 15 groundfish per day, including rockfish and lingcod, and is open year-round (except for lingcod). In the Pacific halibut fisheries, retention of groundfish is governed in part by annual management measures for Pacific halibut fisheries, which are published in the **Federal Register**. South of Leadbetter Point, WA to the Washington/Oregon border, when Pacific halibut are onboard the vessel, no groundfish may be taken and retained, possessed or landed, except sablefish and Pacific cod. The following sublimits and closed areas apply:

(i) * * *

(B) *Recreational Rockfish Conservation Area.* Fishing for groundfish with recreational gear is prohibited within the recreational RCA. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA. A vessel fishing in the recreational RCA may not be in possession of any groundfish. [For example, if a vessel participates in the recreational salmon fishery within the RCA, the vessel cannot be in possession of groundfish while in the RCA. The vessel may, however, on the same trip fish for and retain groundfish shoreward of the RCA on the return trip to port.]

(*1*) Between the U.S. border with Canada and the Queets River and from May 22 through September 30, 2006, taking and retaining, possessing or landing, any rockfish or lingcod in the EEZ is prohibited, except on days when the Pacific halibut fishery is open in this area. Days open to Pacific halibut recreational fishing off Washington are announced on the NMFS hotline at (206)526–6667 or (800)662–9825.

(*2*) Between the Queets River and Leadbetter Point, recreational fishing for rockfish and lingcod is prohibited seaward of a boundary line approximating the 30 fm (55 m) depth contour from April 11, 2006 through June 15, 2006. Coordinates for the boundary line approximating the 30 fm (55 m) depth contour are listed in § 660.391.

* * * * *

(2) * * *

(iii) *Bag limits, size limits.* The bag limits for each person engaged in recreational fishing in the EEZ seaward of Oregon are two lingcod per day, which may be no smaller than 24 in (61 cm) total length; and 6 marine fish per day, which excludes Pacific halibut, salmonids, tuna, perch species, sturgeon, sanddabs, lingcod, striped bass, hybrid bass, offshore pelagic species and baitfish (herring, smelt, anchovies and sardines), but which includes rockfish, greenling, cabezon and other groundfish species. In the Pacific halibut fisheries, retention of groundfish is governed in part by annual management measures for Pacific halibut fisheries, which are published in the **Federal Register**. Between the Oregon border with Washington and Cape Falcon, when Pacific halibut are onboard the vessel, groundfish may not be taken and retained, possessed or landed, except sablefish and Pacific cod. Between Cape Falcon and Humbug Mountain, during days open to the Oregon Central Coast "all-depth" sport halibut fishery, when Pacific halibut are onboard the vessel, no groundfish may be taken and retained, possessed or landed, except sablefish. "All-depth" season days are established in the annual management measures for Pacific halibut fisheries, which are published in the **Federal Register** and are announced on the NMFS halibut hotline, 1–800–662–9825. The minimum size limit for cabezon retained in the recreational fishery is 16 in (41 cm) and for greenling is 10 in (26 cm). Taking and retaining canary rockfish and yelloweye rockfish is prohibited at all times and in all areas.

* * * * *

[FR Doc. 06–3468 Filed 4–10–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045–6045–01; I.D. 040506C]

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

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2006 second seasonal allowance of the Pacific cod total allowable catch (TAC) specified for catcher vessels using trawl gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 6, 2006, through 1200 hrs, A.l.t., June 10, 2006.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone 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 second seasonal allowance of the Pacific cod TAC specified for catcher vessels using trawl gear in the BSAI is 4,091 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 adjustment on March 14, 2006 (71 FR 13777, March 17, 2006), for the period 1200 hrs, A.l.t., April 1, 2006, through 1200 hrs, A.l.t., June 10, 2006. See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(i)(B).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2006 second seasonal allowance of the Pacific cod TAC specified for catcher vessels using trawl gear in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,041 mt, and is setting aside the remaining 50 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 Pacific cod by catcher vessels using trawl gear in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher 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 April 5, 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: April 5, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–3463 Filed 4–6–06; 2:56 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 69
Tuesday, April 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 AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

RIN 0580–AA92

Fees for Rice Inspection Services

AGENCY: Grain Inspection Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulations governing the sampling, inspection, weighing, and certification for rice by increasing certain fees charged for the services by approximately 18 percent. Further, the rice fees would be increased an additional 3 percent each year through fiscal year 2010 and establish a stowage examination fee. These revisions are necessary in order to recover, as nearly as practicable, the costs of performing these services under the Agricultural Marketing Act of 1946 (AMA).

DATES: Comments must be received on or before June 12, 2006.

ADDRESSES: We invite you to submit comments on this proposed rule. You may submit comments by any of the following methods:

- *E-Mail:* Send comments via electronic mail to *comments.gipsa@usda.gov.*
- *Mail:* Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., room 1647–S, Washington, DC 20260–3604.
- *Fax:* Send comments by facsimile transmission to: (202) 690–2755.
- *Hand Delivery or Courier:* Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All comments should make reference to the date and page number of this issue of the **Federal Register.**

Read Comments: All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: John Giler, Deputy Director, Field Management Division, at his E-mail address: *john.c.giler@usda.gov,* telephone (202) 720–0228.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA); the Grain Inspection, Packers and Stockyards Administration (GIPSA) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The proposed action described herein is being taken because additional user fee revenues are needed to cover the costs of providing current and future program operations and services.

There are approximately 135 applicants who receive rice inspection and weighing services. A small portion of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). There would be no additional reporting, recordkeeping, or other compliance requirements imposed upon small entities as a result of this proposed rule. GIPSA has not identified any other Federal rules which may duplicate, overlap or conflict with this proposed rule.

GIPSA has determined that this proposed rule does not have a significant economic impact on a substantial number of small entities as defined under the RFA. The majority of applicants that apply for services do not meet the requirements of small entities. Rice inspection and weighing services are provided upon request and the fees charged to users of these services vary with usage, However, the impact on all businesses, including small entities, is very similar. Further, the rice industry businesses are under no obligation to use these services, and, therefore, any decision on their part to discontinue the use of the services should not prevent them from marketing their products.

GIPSA regularly reviews its user-fee financed programs to determine if the fees are adequate. GIPSA has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce its costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining the Agency 3-month operating retained earnings. During fiscal year 2004, the rice program revenue was nearly $4.3 million with costs at approximately $4.4 million resulting in an approximate $0.2 million program deficit. Current revenue for GIPSA's rice program during fiscal year 2005 was $4.4 million with costs at $4.7 million resulting in a $0.3 million program deficit. GIPSA's costs of operating the rice program are expected to be approximately $4.4 million during fiscal year 2006 and will gradually escalate to approximately $4.9 million by fiscal year 2010. These cost increases (2006 to 2010) are due to employee salaries and benefits coupled with estimated annual cost of living adjustments, the future costs of $50,000 to replace aging rice inspection equipment in the offices, and the need to fund $300,000 for an information technology upgrade to improve certification efficiency and program management. The current fee structure will not fully fund the rice program this fiscal year or future fiscal years resulting in continued program deficits. GIPSA will also remain below the Agency's 3-month operating retained earnings level.

This proposed 18 percent fee increase will initially increase the revenue of the program; however, this will not cover all of GIPSA's costs. GIPSA will need to continue to increase fees by 3 percent annually through fiscal year 2010 in order to cover the program's operating cost and replenish the 3-month retained earnings balance. GIPSA believes that an initial increase in fees followed by annual incremental increases is appropriate at this time. To minimize the impact of a fee increase, GIPSA has decided to propose fee rates that will collect sufficient revenue over time to

cover operating expenses, while striving to create a 3-month operating reserve by FY 2010. The cost of living projections used in calculating future salary, benefits, and all other non-salary expenses out to FY 2010 were supplied by the Office of Management and Budget (OMB) as set forth in their **Federal Register** publication (69 FR 26900) on May 14, 2004. GIPSA will evaluate the financial status of the rice program on a continuous basis to determine if it is meeting the goal of obtaining a 3-month operating reserve by FY 2010, and to determine if other adjustments are necessary.

GIPSA's financial projections indicate the retained earnings balance will meet the target level by the end of fiscal year 2010 after an initial 18 percent increase in fees followed by the annual 3 percent increases. GIPSA financial projections also considered plans to introduce program changes which will better control increases in long-term costs. These program changes will involve a realignment of staff to better control rising personnel costs in the future.

The following table reflects GIPSA's financial rice program projections through fiscal year 2010.

TABLE 1.—RICE PROGRAM PROJECTIONS

[Million Dollars]*

	FY05	FY06	FY07	FY08	FY09	FY10
Revenue	$4.4	$4.0	$4.7	$4.9	$5.0	$5.2
Obligations	4.7	4.4	4.5	4.6	4.7	4.7
Retained Earnings—Projected	0.4	0	0.3	0.5	0.8	1.2
Retained Earnings—Target (3-months operating obligations)	1.2	1.1	1.1	1.2	1.2	1.2

* Figures may not sum due to rounding.

This proposed rule will initially increase user fees by 18 percent and will follow with subsequent 3 percent increases until fiscal year 2010. GIPSA is also proposing a new fee for stowage examination services which are provided as a service upon request.

This action is authorized under the AMA (7 U.S.C. 1622 (h)) which provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the services rendered. These fees cover the GIPSA administrative and supervisory costs for the performance of official services, including personnel compensation and benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment.

Paperwork Reduction Act and Government Paperwork Elimination Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements included in this proposed rule has been approved by the OMB under control number 0580–0013.

GIPSA is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Proposed Action

The AMA of 1946 authorizes official inspection and weighing services, on a user-fee basis, of rice. The AMA of 1946 provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the costs of the services rendered. This proposed rule would amend the schedule for fees and charges for inspection and weighing services rendered to the rice industry to reflect the costs necessary to operate the program.

GIPSA regularly reviews its user-fee programs to determine if the fees are adequate. While GIPSA continues to search for opportunities to reduce its costs, the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining the Agency 3-month operating retained earnings. During fiscal year 2004, the rice program revenue was nearly $4.3 million with costs at approximately $4.4 million resulting in an approximate $0.2 million program deficit. Current revenue for GIPSA's rice program during fiscal year 2005 was $4.4 million with costs at $4.7 million resulting in a $0.3 million program deficit. GIPSA's costs of operating the rice program are expected to be approximately $4.4 million during fiscal year 2006 and will escalate to approximately $4.9 million by fiscal year 2010. These cost increases (2006 to 2010) are due to employee salaries and benefits coupled with estimated annual cost of living adjustments, the future costs of $50,000 to replace aging rice inspection equipment in the offices, and the need to fund $300,000 for an information technology upgrade to improve certification efficiency and program management. The current fee structure will not fully fund the rice program this fiscal year or future fiscal years resulting in a continued program deficit. GIPSA will also remain below the Agency's 3-month operating retained earnings level.

This proposed 18 percent fee increase will initially increase the revenue of the program; however, this will not cover all of GIPSA's costs. GIPSA will need to continue to increase fees by 3 percent annually through fiscal year 2010 in order to cover the program's operating cost and replenish the 3-month retained earnings balance. GIPSA believes that an initial increase in fees followed by annual incremental increases is appropriate at this time. GIPSA's financial projections indicate the retained earnings balance will meet the target level by the end of fiscal year 2010 after an initial 18 percent increase in fees followed by the annual 3 percent increases (see Table 1 in preceding section of the document). GIPSA financial projections also considered plans to introduce program changes which will better control increases in long-term costs.

This proposed rule will initially increase user fees by 18 percent and will follow with subsequent 3 percent increases until fiscal year 2010. GIPSA is also proposing a new fee for stowage examination services which are provided as a service upon request.

Based on the aforementioned analysis of this program's costs, GIPSA proposes

to increase the fees for services under the rice program. GIPSA will review its cost, revenue, and operating reserve levels to ensure that the fee increases for the noted calendar years are required at the levels specified and sufficient to maintain official rice inspection and weighing services, upon request. In the event a change in the fees is necessary, GIPSA will engage in notice and comment rulemaking before making any changes.

The following table compares current fees and charges with the proposed 18 percent fee increase as found in 7 CFR 868.91. This table also reflects the additional fees for stowage examination services that are provided upon request.

TABLE 2

Hourly rates/unit rate per CWT	Current fees and charges		Proposed fees and charges	
	Regular workday (Monday–Saturday)	Nonregular workday (Sunday–Holiday)	Regular workday (Monday–Saturday)	Nonregular workday (Sunday–Holiday)
Contract (per hour per Service representative)	$46.40	$64.40	$54.80	$76.00
Noncontract (per hour per Service representative)	56.60	78.00	66.80	92.10
Export Port Services (per hundredweight)	.056	.056	0.066	0.066

Unit Rates	Current fees and charges	Proposed fees and charges
Rough Rice:		
Inspection for quality (per lot, sublot, or sample inspection)	$35.50	$41.90
(a) Milling yield (per Sample)	27.50	32.50
(b) All other factors (per factor)	13.20	15.60
Brown Rice for Processing:		
Inspection for quality (per lot, sublot, or sample inspection)	30.50	36.00
(a) Milling yield (per Sample)	27.50	32.50
(b) All other factors 9per factor)	13.20	15.60
Total oil and free fatty acid	43.00	50.80
Milled Rice:		
Inspection for quality (per lot, sublot, or sample inspection)	22.00	26.00
All other factors (per factor)	13.20	15.60
Total oil and free fatty acid	43.00	50.80
Interpretive line samples:		
(a) Milling degree (per set)	94.00	111.00
(b) Parboiled light (per sample)	23.00	27.20
Stowage Examination (service on request):		
Ship (per stowage space) (minimum $252.50 per ship)		50.50
Subsequent ship examinations (same as original) (minimum $151.50 per ship):		
Barge (per examination)		$40.50
All other carriers (per examination)		$15.50

A 60-day comment period is provided for interested persons to comment on this proposed action.

List of Subjects in 7 CFR Part 868

Administrative practice and procedure, Agricultural commodities

For reasons set out in the preamble, 7 CFR Part 868 is proposed to be amended as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

1. The authority citation for part 868 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087 as amended (7 U.S.C. 1621, *et seq.*)

2. Section 868.91 is revised to read as follows:

868.91 Fees for certain Federal rice inspection services.

The fees shown in Tables 1 and 2 apply to Federal rice inspection services.

TABLE 1.—HOURLY RATES/UNIT RATE PER CWT

Service [1]	Regular workday (Monday–Saturday)	Nonregular workday (Sunday–Holiday)
Effective October 1, 2006		
Contract (per hour per Service representative)	$54.80	$76.00
Noncontract (per hour per Service representative)	66.80	92.10
Export Port Services (per hundredweight) [2]	0.066	0.066
Effective October 1, 2007		
Contract (per hour per Service representative)	$56.40	$78.30
Noncontract (per hour per Service representative)	68.80	94.80
Export Port Services (per hundredweight) [2]	0.068	0.068

TABLE 1.—HOURLY RATES/UNIT RATE PER CWT—Continued

Service [1]	Regular workday (Monday–Saturday)	Nonregular workday (Sunday–Holiday)
Effective October 1, 2008		
Contract (per hour per Service representative)	$58.10	$80.70
Noncontract (per hour per Service representative)	70.90	97.70
Export Port Services (per hundredweight) [2]	0.070	0.070
Effective October 1, 2009		
Contract (per hour per Service representative)	$59.90	$83.10
Noncontract (per hour per Service representative)	73.00	100.60
Export Port Services (per hundredweight) [2]	0.072	0.072
Effective October 1, 2010		
Contract (per hour per Service representative)	$61.70	$85.60
Noncontract (per hour per Service representative)	75.20	103.60
Export Port Services (per hundredweight) [2]	0.074	0.074

[1] Original and appeal inspection services include: Sampling, grading, weighing, and other services requested by the applicant when performed at the applicant's facility.
[2] Services performed at export port locations on lots at rest.

TABLE 2.—UNIT RATES SERVICE [1, 3]

Effective October 1, 2006	
Inspection for quality (per lot, sublot, or sample inspection):	
(a) Rough rice	$41.90
(b) Brown rice for processing	36.00
(c) Milled rice	26.00
Factor analysis for any single factor (per factor):	
(a) Milling yield (per sample) (Rough or Brown rice)	32.50
(b) All other factors (per factor) (all rice)	15.60
Total oil and free fatty acid	50.80
Interpretive line samples: [2]	
(a) Milling degree (per set)	111.00
(b) Parboiled light (per sample)	27.20
Faxed and extra copies of certificates (per copy)	3.00
Stowage Examination (service-on-request): [4]	
(a) Ship (per stowage space) (minimum $252.50 per ship)	50.50
(b) Subsequent ship examination (same as original) minimum $151.50 per ship)	
(c) Barge (per examination)	40.50
(d) All other carriers (per examination)	15.50
Effective October 1, 2007	
Inspection for quality (per lot, sublot, or sample inspection):	
(a) Rough rice	$43.20
(b) Brown rice for processing	37.10
(c) Milled rice	26.80
Factor analysis for any single factor (per factor):	
(a) Milling yield (per sample) (Rough or Brown rice)	33.50
(b) All other factors (per factor) (all rice)	16.10
Total oil and free fatty acid	52.30
Interpretive line samples: [2]	
(a) Milling degree (per set)	114.30
(b) Parboiled light (per sample)	28.00
Faxed and extra copies of certificates (per copy)	3.00
Stowage Examination (service-on-request): [4]	
(a) Ship (per stowage space) (minimum $252.50 per ship)	50.50
(b) Subsequent ship examination (same as original) minimum $151.50 per ship)	
(c) Barge (per examination)	40.50
(d) All other carriers (per examination)	15.50
Effective October 1, 2008	
Inspection for quality (per lot, sublot, or sample inspection):	
(a) Rough rice	$44.50
(b) Brown rice for processing	38.20
(c) Milled rice	27.60
Factor analysis for any single factor (per factor):	

TABLE 2.—UNIT RATES SERVICE [1, 3]—Continued

(a) Milling yield (per sample) (Rough or Brown rice)	34.50
(b) All other factors (per factor) (all rice)	16.60
Total oil and free fatty acid	53.90
Interpretive line samples:[2]	
(a) Milling degree (per set)	117.70
(b) Parboiled light (per sample)	28.80
Faxed and extra copies of certificates (per copy)	3.00
Stowage Examination (service-on-request):[4]	
(a) Ship (per stowage space) (minimum $252.50 per ship)	50.50
(b) Subsequent ship examination (same as original) minimum $151.50 per ship)	
(c) Barge (per examination)	40.50
(d) All other carriers (per examination)	15.50

Effective October 1, 2009

Inspection for quality (per lot, sublot, or sample inspection):	
(a) Rough rice	$45.80
(b) Brown rice for processing	39.40
(c) Milled rice	28.40
Factor analysis for any single factor (per factor):	
(a) Milling yield (per sample) (Rough or Brown rice)	35.50
(b) All other factors (per factor) (all rice)	17.10
Total oil and free fatty acid	55.50
Interpretive line samples:[2]	
(a) Milling degree (per set)	121.30
(b) Parboiled light (per sample)	29.70
Faxed and extra copies of certificates (per copy)	3.00
Stowage Examination (service-on-request):[4]	
(a) Ship (per stowage space) (minimum $252.50 per ship)	50.50
(b) Subsequent ship examination (same as original) minimum $151.50 per ship)	
(c) Barge (per examination)	40.50
(d) All other carriers (per examination)	15.50

Effective October 1, 2010

Inspection for quality (per lot, sublot, or sample inspection):	
(a) Rough rice	$47.20
(b) Brown rice for processing	40.60
(c) Milled rice	29.30
Factor analysis for any single factor (per factor):	
(a) Milling yield (per sample) (Rough or Brown rice)	36.60
(b) All other factors (per factor) (all rice)	17.60
Total oil and free fatty acid	57.20
Interpretive line samples:[2]	
(a) Milling degree (per set)	124.90
(b) Parboiled light (per sample)	30.60
Faxed and extra copies of certificates (per copy)	3.00
Stowage Examination (service-on-request):[4]	
(a) Ship (per stowage space) (minimum $252.50 per ship)	50.50
(b) Subsequent ship examination (same as original) minimum $151.50 per ship)	
(c) Barge (per examination)	40.50
(d) All other carriers (per examination)	15.50

[1] Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or in combination at other than at the applicant's facility.

[2] Interpretive line samples may be purchased from the U.S. Department of Agriculture, GIPSA, FGIS, Technical Services Division, 10383 North Ambassador Drive, Kansas City, Missouri 64153–1394. Interpretive line samples also are available for examination at selected FGIS field offices. A list of field offices may be obtained from the Director, Field Management Division, USDA, GIPSA, FGIS, 1400 Independence Avenue, SW., STOP 3630, Washington, D.C. 20250–3630. The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor "Parboiled Light" rice.

[3] Fees for other services not referenced in Table 2 will be based on the noncontract hourly rate listed in § 868.91, Table 1.

[4] If performed outside of normal business hours, 1½ times the applicable unit fee will be charged.

James E. Link,
Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 06–3507 Filed 4–10–06; 8:45 am]
BILLING CODE 3410–EN–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM317; Notice No. 25–05–12–SC]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Airbus A380–800 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. Many of these novel or unusual design features are associated with the complex systems and the configuration of the airplane, including its full-length double deck.

For these design features, the applicable airworthiness regulations do not contain adequate or appropriate safety standards regarding a reinforced flightdeck bulkhead. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish an appropriate level of safety for a reinforced flightdeck bulkhead and are equivalent to the standards established by existing airworthiness regulations for the flightdeck door. Additional special conditions will be issued for other novel or unusual design features of the Airbus Model A380–800 airplane.

DATES: Comments must be received on or before May 26, 2006.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No.NM317, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM317. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this document between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late, if it is possible to do so without incurring expense or delay. We may change the proposed special conditions in light of the comments we receive.

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

Background

Airbus applied for FAA certification/validation of the provisionally designated Model A3XX–100 in its letter AI/L 810.0223/98, dated August 12, 1998, to the FAA. Application for certification by the Joint Aviation Authorities (JAA) of Europe had been made on January 16, 1998, reference AI/L 810.0019/98. In its letter to the FAA, Airbus requested an extension to the 5-year period for type certification in accordance with 14 CFR 21.17(c).

The request was for an extension to a 7-year period, using the date of the initial application letter to the JAA as the reference date. The reason given by Airbus for the request for extension is related to the technical challenges, complexity, and the number of new and novel features on the airplane. On November 12, 1998, the Manager, Aircraft Engineering Division, AIR–100, granted Airbus' request for the 7-year period, based on the date of application to the JAA.

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

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

Type Certification Basis

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

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

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

Special conditions are initially applicable to the model for which they are issued. Should the type certificate

for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101.

Discussion of Novel or Unusual Design Features

The A380 will have a flightdeck bulkhead which is reinforced to resist intrusion and ballistic penetration. On January 15, 2002, the FAA promulgated 14 CFR 25.795(a), which specifies that the flightdeck door installation be designed to resist forcible intrusion by unauthorized persons or penetration by small arms fire and fragmentation devices. The regulation was limited to the flightdeck door to expedite a rapid retrofit of existing airplanes which are required by operating rules to have a flightdeck door.

The FAA intends that the flightdeck bulkhead—and any other accessible barrier separating the flightcrew compartment from occupied areas—also be designed to resist intrusion or penetration. We are in the process of rulemaking to amend § 25.795(a) to make that and other changes pertaining to security.

Meanwhile, the FAA is proposing special conditions for the Airbus Model A380–800 regarding design of the reinforced flightdeck bulkhead separating the flightcrew compartment from occupied areas. The special conditions would require that the flightdeck bulkhead meet the same standards as those specified in § 25.795(a) for flightdeck doors. For the A380, the bulkhead may be comprised of components, such as lavatory and crew rest walls; these components are covered by these special conditions.

Applicability

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

Conclusion

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes the following special condition as part of the type certification basis for the Airbus A380–800 airplane.

In addition to the requirements of 14 CFR 25.795(a) governing protection of the flightdeck door, the following special conditions apply:

The bulkhead, including components that comprise the bulkhead, separating the flightcrew compartment from occupied areas must be designed to meet the following standards:

- It must resist forcible intrusion by unauthorized persons and be capable of withstanding impacts of 300 Joules (221.3 foot-pounds) at critical locations as well as a 1113 Newton (250 pound) constant tensile load on accessible handholds, including the doorknob or handle.
- It must resist penetration by small arms fire and fragmentation devices to a level equivalent to level IIIa of the National Institute of Justice Standard (NIJ) 0101.04.

Issued in Renton, Washington, on April 3, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–5240 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24367; Directorate Identifier 2006–NM–041–AD]

RIN 2120–AA64

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

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

ACTION: Notice of proposed rulemaking (NPRM).

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

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

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

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

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket

number "FAA–2006–24367; Directorate Identifier 2006–NM–041–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 with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

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

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Model A300 F4–600R series airplanes and Model A300 C4–605R Variant F airplanes. The DGAC advises that analysis revealed that airplanes equipped with Airbus Modification 08909 had a concentration of loads higher than expected in the fuselage zone (high stress) at the lavatory venturi installation area between frame (FR) 12 and FR 12A on the left-hand side of the nose section, which could be the origin of cracks that developed in the fuselage skin and propagated from the edge of the air vent hole. This condition, if not corrected, could result in loss of the structural integrity of the fuselage and consequent rapid depressurization of the airplane.

Relevant Service Information

Airbus has issued Service Bulletin A300–53–6151, dated December 2, 2005. The service bulletin describes procedures for modifying certain structure in the fuselage zone at the lavatory venturi installation area between FR 12 and FR 12A on the left-hand side of the nose section, and performing a related investigative action and corrective action if necessary. The related investigative action is a high frequency eddy current inspection of the skin panel cutout for cracking. The corrective action in the service bulletin recommends contacting Airbus for instructions for crack repair.

The DGAC mandated the service information and issued French airworthiness directive F–2006–030, dated February 1, 2006, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Among Proposed AD, French Airworthiness Directive, and Service Information."

Differences Among Proposed AD, French Airworthiness Directive, and Service Information

The service bulletin specifies that you may contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD requires you to repair those conditions using a method that we or the DGAC (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair we or the DGAC (or its delegated agent) approve is acceptable for compliance with this proposed AD.

The applicability of the French airworthiness directive excludes airplanes on which Airbus Service Bulletin A300–53–6151 was accomplished in service. However, we have not excluded those airplanes in the applicability of this proposed AD; rather, this proposed AD includes a requirement to accomplish the actions specified in that service bulletin. This requirement would ensure that the actions specified in the service bulletin and required by this proposed AD are accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this proposed AD unless an alternative method of compliance is approved.

Costs of Compliance

This proposed AD would affect about 86 airplanes of U.S. registry. The proposed modification (including the inspection) would take about 28 work hours per airplane, at an average labor rate of $80 per work hour. Required parts would cost about $1,260 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $301,000, or $3,500 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2006–24367; Directorate Identifier 2006–NM–041–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 11, 2006.

Affected ADs

(b) None.

Applicability

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

Unsafe Condition

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

Compliance

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

Modification/Investigative Action

(f) Before the accumulation of 16,900 total flight cycles since first flight of the airplane: Modify the fuselage zone at the lavatory venturi installation area between frame (FR) 12 and FR 12A on the left-hand side of the nose section and do the related investigative action by accomplishing all the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A300–53–6151, dated December 2, 2005.

Corrective Action

(g) If any crack is found during the inspection required by this AD and Airbus Service Bulletin A300–53–6151, dated December 2, 2005, specifies to contact Airbus for crack repair: Before further flight, repair the crack using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Générale de l'Aviation Civile (or its delegated agent).

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

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

Issued in Renton, Washington, on March 30, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–5246 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24365; Directorate Identifier 2006–NM–022–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier Model DHC–8–400 series airplanes. This proposed AD would require repetitive inspections for cracks of the first fuel access panel outboard of the nacelle on the left- and right-hand wings, and related investigative/corrective actions if necessary. This proposed AD also would require eventual replacement of each access panel with a new access panel having a new part number. The replacement would terminate the repetitive inspection requirements. This proposed AD results from reports of cracks of the fuel access panels. We are proposing this AD to detect and correct cracked fuel access panels, which could lead to arcing and ignition of fuel vapor during a lightning strike, and result in fuel tank explosions and consequent loss of the airplane.

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

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

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

Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: George Duckett, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, New York Aircraft Certification Office, FAA, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7325; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2006–24365; Directorate Identifier 2006–NM–022–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 with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model DHC–8–400 series airplanes. TCCA advises that there have been a number of reports of cracks of the first fuel access panel outboard of the nacelle. Operators found the cracks, some up to 4 inches long, during routine checks. Investigation showed that certain fuel access panels were manufactured with seal grooves that have sharp corner radii. This condition, if not corrected, could lead to arcing and ignition of fuel vapor during a lightning strike, and result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

Bombardier has issued Service Bulletin 84–57–13, dated August 17, 2005. The service bulletin describes procedures for an ultrasonic inspection for cracks of the first fuel access panel outboard of the nacelle on the left- and right-hand wings, and doing the following related investigative and corrective actions, as applicable, before further flight after the inspection:

1. *If there is no crack*, the service bulletin describes procedures for an ultrasonic inspection to see if there is a radius in the seal groove, and the service bulletin describes procedures for one of the following actions, as applicable:

- If there is a radius in all locations inspected, doing a detailed visual inspection for cracks of the external surface of the panel, and repeating the detailed visual inspection thereafter at intervals not to exceed 1,200 flight hours.
- If a radius is not present in all locations, repeating the ultrasonic inspection for cracks thereafter at intervals not to exceed 1,200 flight hours.
- If any crack is found during any inspection, replacing the panel in accordance with paragraph 2 or 3 below, as applicable.

2. *If there is a crack or cracks, and all cracks are inside certain limits* specified in the service bulletin, the service bulletin describes procedures for doing one of the following actions: Doing a temporary repair of the crack, and, within 1,000 flight hours after the temporary repair, replacing the cracked access panel with a new panel having one of two new part numbers (P/N) as identified in the service bulletin; or replacing the cracked panel with a new panel having the same P/N that has had an ultrasonic inspection to determine that it has no crack, and doing the ultrasonic inspection and applicable repetitive inspection as described in paragraph 1 above.

3. *If there is a crack or cracks, and any crack is outside certain limits* specified in the service bulletin, the service bulletin describes procedures for installing a new access panel having a new P/N before further flight.

The service bulletin states that replacing the fuel access panel with a new panel that has a new P/N is terminating action for the repetitive inspections for the replaced fuel access panel; replacing both fuel access panels terminates all repetitive inspections specified in the service bulletin. The service bulletin specifies that both access panels be replaced within 6,000 flight hours after doing the initial ultrasonic inspection.

The service bulletin also describes procedures for reporting the results of the ultrasonic inspections to the manufacturer.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

The service bulletin refers to Bombardier Repair Drawing (RD) 8/4–57–451, dated February 2005, as an additional source of service information for doing the temporary repair.

TCCA mandated the service information and issued Canadian airworthiness directive CF–2005–37, dated October 11, 2005, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in Canada and is 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. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined TCCA's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Clarification of Inspection Terminology

In this proposed AD, the "detailed visual inspection" specified in the Canadian airworthiness directive and the service bulletin is referred to as a "detailed inspection" in the proposed AD. We have included the definition for a detailed inspection in a note in the proposed AD.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection, per inspection cycle.	1	$80	None	$80	5	$400, per inspection cycle.
Replacement (for both wings).	4	80	$8,200	8,520	5	42,600.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket No. FAA–2006–24365; Directorate Identifier 2006–NM–022–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 11, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–400, DHC–8–401, and DHC–8–402 airplanes, certificated in any category; serial numbers 4001, and 4003 through 4106 inclusive.

Unsafe Condition

(d) This AD results from reports of cracks of the fuel access panels. We are issuing this AD to detect and correct cracked fuel access panels, which could lead to arcing and ignition of fuel vapor during a lightning strike, and result in fuel tank explosions and consequent loss of the airplane.

Compliance

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

Inspection and Related Investigative and Corrective Actions

(f) Within 400 flight hours after the effective date of this AD: Do an ultrasonic inspection for cracks of the first fuel access panel, part number (P/N) 85714230–001, outboard of the nacelle, on the left- and right-hand wings, by doing all of the actions specified in the Accomplishment Instructions of Bombardier Service Bulletin 84–57–13, dated August 17, 2005, except as provided by paragraph (i) of this AD. Do all applicable related investigative and corrective actions before further flight in accordance with the service bulletin. Repeat the applicable inspection, including the detailed inspection, thereafter at intervals not to exceed 1,200 flight hours.

Note 1: Bombardier Service Bulletin 84–57–13, refers to Bombardier Repair Drawing (RD) 8/4–57–451, dated February 2005, as an additional source of service information for doing certain corrective actions.

Note 2: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

Terminating Action—Replacement

(g) Within 6,000 flight hours after the initial inspection done in accordance with paragraph (f) of this AD: Replace any access panel P/N 85714230–001, with a new panel P/N 85714230–003 or P/N 85714230–005. Do the replacement in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–57–13, dated August 17, 2005. Replacing one access panel terminates the repetitive inspection requirements of this AD for that panel only. Replacing both access panels terminates all repetitive inspection requirements of this AD.

Parts Installation

(h) As of the effective date of this AD, no person may install a fuel access panel, P/N 85714230–001, on any airplane unless the panel has been inspected, and all applicable related investigative and corrective actions have been accomplished, in accordance with paragraph (f) of this AD.

No Report Required

(i) Although the Accomplishment Instructions of Bombardier Service Bulletin 84–57–13, dated August 17, 2005, specify to report certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(k) Canadian airworthiness directive CF–2005–37, dated October 11, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on March 31, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3439 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24410; Directorate Identifier 2005–NM–261–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 747 airplanes. This proposed AD would require repetitive inspections for cracking of the web of the station (STA) 2360 aft pressure bulkhead around the fastener heads in the critical fastener rows in the web lap joints, from the Y-chord to the inner ring; and repair if necessary. This proposed AD also would require a modification, which would terminate the repetitive inspections. This proposed AD results from analysis by the manufacturer that the radial lap splices of the STA 2360 aft pressure bulkhead are subject to widespread fatigue damage. We are proposing this AD to detect and correct cracking of the bulkhead web at multiple sites along the radial lap splice, which could join together to form cracks of critical length, and result in rapid decompression and loss of control of the airplane.

DATES: We must receive comments on this proposed AD by May 26, 2006.

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

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

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

FOR FURTHER INFORMATION CONTACT: Nicholas Kusz, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6432; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2006–24410; Directorate Identifier 2005–NM–261–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 with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

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

Discussion

We have received a report indicating that the radial lap splices of the station (STA) 2360 aft pressure bulkhead are subject to widespread fatigue damage (WFD), on all Boeing Model 747 airplanes that have exceeded the original Design Service Object of 20,000 total flight cycles. This WFD, if not detected and corrected, could result in cracking of the bulkhead web at multiple sites along the radial lap splice, which could join together to form cracks of critical length, and result in rapid decompression and loss of control of the airplane.

Other Relevant Rulemaking

On July 26, 2000, we issued AD 2000–15–08, amendment 39–11840 (65 FR 74255, August 2, 2000), for certain Boeing Model 747 airplanes. That AD requires repetitive inspections for damage or cracking of the aft pressure bulkhead, and cracking of the web-to-Y-ring lap joint area and the upper segment of the bulkhead web; certain follow-on actions if necessary; and repetitive inspections to detect cracking of the upper and lower segments of the aft bulkhead web, including radial lap joints. That AD was prompted by a report of a crack in the upper portion of the web of the pressure bulkhead at STA 2360 on a Boeing Model 747 airplane. We issued that AD to detect and correct

fatigue cracking of the bulkhead web, which could result in rapid depressurization of the airplane, and consequent reduced controllability of the airplane. Among other actions, AD 2000–15–08 requires inspecting the radial lap joints, which are the subject of this proposed AD; however, this proposed AD would require repetitive inspections at reduced intervals.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–53A2561, dated September 22, 2005. The service bulletin describes procedures for doing repetitive high-frequency eddy current inspections for cracking of the web of the STA 2360 aft pressure bulkhead around the fastener heads in the critical fastener rows in the web lap joints, from the Y-chord to the inner ring. The service bulletin specifies that it is not necessary to inspect areas where production doublers cover the lap joint. If any cracking is found, the service bulletin specifies repairing in accordance with the Structural Repair Manual (SRM), or asking Boeing for repair data. The service bulletin also specifies that if the length of the crack is more than certain specified limits defined in the SRM to contact Boeing for repair instructions. The service bulletin also recommends that a modification be installed when the airplane has flown 35,000 total flight cycles, but does not give procedures for doing that modification. The modification is intended to terminate the repetitive inspections. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and the Service Bulletin."

Differences Between the Proposed AD and the Service Bulletin

Although the service bulletin does not specify a compliance grace period for modifying the airplanes that have accumulated more than 35,000 total flight cycles, this proposed AD would include an 18-month grace period for modifying those airplanes.

Although the service bulletin specifies to contact Boeing for repair data if a damaged area is more than certain specified limits, or if the damage includes corrosion; and although the service bulletin does not specify procedures for installing the modification when the airplane has accumulated 35,000 total flight cycles; this proposed AD would require operators to do the repairs and modification using a method approved by the FAA.

Costs of Compliance

There are about 949 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 153 airplanes of U.S. registry. The proposed inspections would take about 11 work hours per airplane, at an average labor rate of $680 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $134,640, or $880 per airplane, per inspection cycle.

Because the manufacturer has not yet developed a modification that matches the actions specified by this proposed AD, we cannot provide specific information regarding the required number of work hours or the cost of parts to do the proposed modification. In addition, modification costs will likely vary depending on the operator and the airplane configuration.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2006–24410; Directorate Identifier 2005–NM–261–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 26, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from analysis by the manufacturer that the radial lap splices of the station (STA) 2360 aft pressure bulkhead are subject to widespread fatigue damage. We are issuing this AD to detect and correct cracking of the bulkhead web at multiple sites along the radial lap splice, which could join together to form cracks of critical length, and result in rapid decompression and loss of control of the airplane.

Compliance

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

Repetitive Inspections

(f) Before the airplane accumulates 28,000 total flight cycles, or within 18 months after the effective date of this AD, whichever occurs later: Do a high-frequency eddy current inspection for cracking of the web of the STA 2360 aft pressure bulkhead around the fastener heads in the critical fastener rows in the web lap joints, from the Y-chord to the inner ring; in accordance with Part 2, "Access and Inspection," of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2561, dated September 22, 2005. Repeat the inspection thereafter at intervals not to exceed 2,000 flight cycles until the modification in paragraph (h) of this AD is done.

Repair

(g) If any cracking is found during any inspection required by paragraph (f) of this AD: Before further flight, do the applicable action in paragraph (g)(1) or (g)(2) of this AD.

(1) If the cracking is within certain limits specified in Boeing Alert Service Bulletin 747–53A2561, dated September 22, 2005, (referencing the structural repair manual) do the repair in accordance with the Accomplishment Instructions of the alert service bulletin.

(2) If the cracking is more than certain limits specified in Boeing Alert Service Bulletin 747–53A2561, dated September 22, 2005, or if the alert service bulletin specifies to ask Boeing for repair data: Repair the cracking using a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Modification

(h) Before the airplane accumulates 35,000 total flight cycles or within 18 months after the effective date of this AD, whichever occurs later: Modify the aft pressure bulkhead using a method approved by the Manager, Seattle ACO. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD. Doing this modification terminates the repetitive inspection requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on March 31, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3433 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24411; Directorate Identifier 2006–NM–033–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, –314, and –315 Airplanes; Equipped with Certain Cockpit Door Installations

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, –314, and –315 airplanes. This proposed AD would require modifying the hinge attachment for the cockpit door from a single-point attachment to a two-point attachment. This proposed AD results from a report that, during structural testing of the cockpit door, the lower hinge block rotated and caused the mating hinge pin to disengage, and caused excessive door deflection. We are proposing this AD to prevent failure of a door attachment, which could result in uncontrolled release of the cockpit door under certain fuselage decompression conditions, and possible damage to the airplane structure.

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

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

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

Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: George Duckett, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, New York Aircraft Certification Office, FAA, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7325; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2006–24411; Directorate Identifier 2006–NM–033–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 with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

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

the AD docket shortly after the Docket Management System receives them.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, –314, and –315 airplanes. TCCA advises that, during structural testing of the cockpit door, the lower hinge block rotated and caused the mating hinge pin to disengage, and caused excessive door deflection. The rotation of the lower hinge block was caused by an inadequate number of attachment bolts for the hinge block. This condition, if not corrected, could cause failure of a door attachment, which could result in uncontrolled release of the cockpit door under certain fuselage decompression conditions, and possible damage to the aircraft structure.

Relevant Service Information

Bombardier has issued the service bulletins listed in the following table. These service bulletins apply to Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, –314, and –315 airplanes that have the serial numbers specified in the table.

BOMBARDIER SERVICE BULLETINS

Use this Bombardier Service Bulletin—	For serial numbers—
8–52–54, Revision A, dated November 5, 2004	003 through 451 inclusive, 453 through 463 inclusive, 465 through 489 inclusive, 491 through 505 inclusive, and 507.
8–52–58, dated May 12, 2004	452, 464, 490, 506, and 508 through 557 inclusive.

The service bulletins describe procedures for modifying the cockpit door from a single-point attachment to a two-point attachment. The modification involves the following actions, as applicable, depending on the configuration of the airplane: Reworking the door fairing, reworking the door post, installing a new strike plate, installing a new hinge assembly, aligning the hinges, and installing a new label regarding alternate release of the door. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

For certain airplanes, the service bulletins specify doing the modifications listed in the following table prior to or concurrently with the procedures in the service bulletins.

PRIOR/CONCURRENT REQUIREMENTS

For airplanes affected by Bombardier Service Bulletin—	That have these serial numbers—	Do these modifications—	As specified in—
8–52–54, Revision A, dated November 5, 2004.	003 through 407 inclusive, 409 through 412 inclusive, and 414 through 433 inclusive.	Rework the cockpit door emergency release.	De Havilland Aircraft of Canada, Limited, Modification 8/2337.
		Install a new label regarding alternate release of the door.	De Havilland Aircraft of Canada, Limited, Modification 8/3339.
8–52–58, dated May 12, 2004	452, 464, 490, 506, and 508 through 557 inclusive.	Install the cockpit door	Bombardier Modsum 8Q200015.
		Install the cockpit door	Bombardier Modsum 8Q420101.
		Install the cockpit door with a blow-out door panel.	Bombardier Modsum 8Q420143.

TCCA mandated the service information and issued Canadian airworthiness directive CF–3005–34, dated August 29, 2005, to ensure the continued airworthiness of these airplanes in Canada.

Bombardier Service Bulletin 8–52–54 refers to Bombardier Modsum 8Q100859 as an additional source of service information for installing a hinge pin with a two-point attachment. Bombardier Service Bulletin 8–52–58 refers to Bombardier Modsum 8Q900267 as an additional source of service information for reworking and installing the cockpit door, and reworking the lower hinge attachment to provide a downward-facing pin with a two-point attachment.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Canada 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. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined TCCA's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

This proposed AD would affect about 16 airplanes of U.S. registry. The proposed actions would take between 3 and 6 work hours per airplane, depending on the airplane configuration. The average labor rate is $80 per work hour. Required parts would cost about $2,000 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is between $35,840 and $39,680, or between $2,240 and $2,480 per airplane.

Authority for This Rulemaking

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

detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BOMBARDIER, INC. (FORMERLY DE HAVILLAND, INC.): Docket No. FAA–2006–24411; Directorate Identifier 2006–NM–033–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 11, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, –314, and –315 airplanes, certificated in any category; serial numbers 003 through 557 inclusive; equipped with cockpit door installation part numbers (P/Ns) identified in Table 1 of this AD.

TABLE 1.—COCKPIT DOOR INSTALLATIONS AFFECTED BY THIS AD

P/N	Dash nos.
82510074	All.
82510294	All.
82510310	–001.
8Z4597	–001.
H85250010	All.
82510700	All.
82510704	All except –502 and –503.

Unsafe Condition

(d) This AD results from a report that, during structural testing of the cockpit door, the lower hinge block rotated and caused the mating hinge pin to disengage, and caused excessive door deflection. We are issuing this AD to prevent failure of a door attachment, which could result in uncontrolled release of the cockpit door under certain fuselage decompression conditions, and possible damage to the aircraft structure.

Compliance

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

Modification

(f) Within 24 months after the effective date of this AD, modify the cockpit door from a single-point attachment to a two-point attachment in accordance with the Accomplishment Instructions of the applicable service bulletin in Table 2 of this AD.

TABLE 2.—BOMBARDIER SERVICE BULLETINS

Use this Bombardier Service Bulletin—	For serial numbers—
8–52–54, Revision A, dated November 5, 2004.	003 through 451 inclusive, 453 through 463 inclusive, 465 through 489 inclusive, 491 through 505 inclusive, and 507.
8–52–58, dated May 12, 2004.	452, 464, 490, 506, and 508 through 557 inclusive.

Note 1: Bombardier Service Bulletin 8–52–54 refers to Bombardier Modification Summary (Modsum) 8Q100859 as an additional source of service information for installing a hinge pin with a two-point attachment. Bombardier Service bulletin 8–52–58 refers to Bombardier Modsum 8Q900267 as an additional source of service information for reworking and installing the cockpit door, and reworking the lower hinge attachment to provide a downward-facing pin with a two-point attachment.

Prior/Concurrent Requirements

(g) Prior to or concurrently with the modification in paragraph (f) of this AD, do the applicable actions specified in Table 3 of this AD according to a method approved by either the Manager, New York Aircraft Certification (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent). One approved method is the applicable modification or Modsum listed in the "One approved method for doing these actions" column of Table 3 of this AD.

TABLE 3.—BOMBARDIER SERVICE BULLETINS

For airplanes affected by Bombardier Service Bulletin—	That have these serial numbers—	Do these actions—	One approved method for doing these actions—
8–52–54, Revision A, dated November 5, 2004.	003 through 407 inclusive, 409 through 412 inclusive, and 414 through 433 inclusive.	Rework the cockpit door emergency release.	De Havilland Aircraft of Canada, Limited, Modification 8/2337.
		Install a new label regarding alternate release of the door.	De Havilland Aircraft of Canada, Limited, Modification 8/3339.
8–52–58, dated May 12, 2004	452, 464, 490, 506, and 508 through 557 inclusive.	Install the cockpit door	Bombardier Modsum 8Q200015.

TABLE 3.—BOMBARDIER SERVICE BULLETINS—Continued

For airplanes affected by Bombardier Service Bulletin—	That have these serial numbers—	Do these actions—	One approved method for doing these actions—
		Install the cockpit door	Bombardier Modsum 8Q420101.
		Install the cockpit door with a blow-out door panel.	Bombardier Modsum 8Q420143.

Actions Done in Accordance With Previous Revision of Service Bulletin

(h) Actions done before the effective date of this AD in accordance with Bombardier Service Bulletin 8–52–54, dated May 12, 2004, are acceptable for compliance with the corresponding requirements in paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(j) Canadian airworthiness directive CF–2005–34, dated August 29, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on March 31, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3435 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24366; Directorate Identifier 2006–NM–040–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain EMBRAER Model EMB–135BJ airplanes. This proposed AD would require inspecting for missing fire blocking material on the left- and right-hand partitions of the forward baggage compartment door; replacing the seal on both partitions; and performing corrective action if necessary. This proposed AD results from a report indicating that certain airplanes were delivered with the fire blocking material missing and the seal improperly installed on the partitions of the forward baggage compartment door. We are proposing this AD to detect and correct such discrepancies on the partitions of the forward baggage compartment door, which, in the event of a fire in the baggage compartment, could result in smoke propagating into the main cabin.

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

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

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

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos–SP, Brazil, for service information identified in this proposed AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2006–24366; Directorate Identifier 2006–NM–040–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 with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

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

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on certain EMBRAER Model EMB–135BJ airplanes. The DAC advises that certain airplanes were delivered with the fire blocking material missing and the seal improperly installed on the left- and right-hand partitions of the forward baggage compartment door. These

conditions, in the event of a fire in the baggage compartment, could result in smoke propagating into the main cabin.

Relevant Service Information

EMBRAER has issued Service Bulletin 145LEG–25–0060, dated November 18, 2005. The service bulletin describes procedures for doing a visual inspection for missing fire blocking material (an insulation blanket) on the partitions of the forward baggage compartment door, replacing the seal on both partitions with a new seal, and corrective action if necessary. The corrective action includes installing a new insulation blanket if fire blocking material is missing. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DAC mandated the service information and issued Brazilian airworthiness directive 2006–02–02, dated February 24, 2006, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in Brazil and is 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. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. We have examined the DAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	1	$80	None	$80	23	$1,840
Seal replacement	7	80	Minimal	560	23	12,880

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2006–24366; Directorate Identifier 2006–NM–040–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 11, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–135BJ airplanes, certificated in any category; as identified in EMBRAER Service Bulletin 145LEG–25–0060, dated November 18, 2005.

Unsafe Condition

(d) This AD results from a report indicating that certain airplanes were delivered with the fire blocking material missing and the seal improperly installed on the partitions of the forward baggage compartment door. We are issuing this AD to detect and correct such discrepancies on the partitions of the forward baggage compartment door, which, in the event of a fire in the baggage compartment, could result in smoke propagating into the main cabin.

Compliance

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

Inspection/Investigative and Corrective Actions

(f) Within 24 months after the effective date of this AD: Do a general visual inspection for missing fire blocking material (an insulation blanket) on the left- and right-hand partitions of the forward baggage

compartment door, replace the seal on both partitions with a new seal, and accomplish all applicable corrective actions, by doing all the actions specified in the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG–25–0060, dated November 18, 2005. All applicable corrective actions must be done before further flight.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) Brazilian airworthiness directive 2006–02–02, dated February 24, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on March 30, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3440 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24368; Directorate Identifier 2005–NM–230–AD]

RIN 2120–AA64

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

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes. This proposed AD would require replacing the clamp bases for the fuel vent pipe with improved clamp bases. This proposed AD results from reports that the foil wrapping on existing plastic clamp bases has migrated out of position, which compromises the bonding of the fuel vent lines to the airplane structure. We are proposing this AD to ensure that the fuel vent lines are properly bonded to the airplane structure. Improper bonding could prevent electrical energy from a lightning strike from dissipating to the airplane structure, and create an ignition source, which could result in a fuel tank explosion.

DATES: We must receive comments on this proposed AD by May 26, 2006.

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

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

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

FOR FURTHER INFORMATION CONTACT: Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5254; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "FAA–2006–24368; Directorate Identifier 2005–NM–230–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 with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent

ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Foil-wrapped plastic clamp bases are used to bond the fuel vent line to the airplane structure in parts of the fuel vent system on McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes. We have received reports that the foil wrapping on existing plastic clamp bases has migrated out of position on several airplanes, which compromises the bonding of the fuel vent lines to the airplane structure. Bonding of the fuel vent lines to the airplane structure is critical to ensure that the electrical energy from a lightning strike dissipates to the airplane structure. This condition, if not corrected, could create an ignition source and result in a fuel tank explosion.

Relevant Service Information

We have reviewed Boeing Service Bulletin DC9–28–211, dated February 23, 2005. The service bulletin describes procedures for replacing existing foil-wrapped plastic clamp bases for the fuel vent line with improved metal clamp bases. These replacement procedures include verifying the electrical conductivity of the structural bracket and vent pipe surfaces using an ohmmeter and taking corrective action if necessary. If the ohmmeter reading is more than 2.5 milliohms, the corrective action includes prepping and applying chemical conversion coating to the surface of the structural bracket and/or vent pipe, as applicable. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and Service Bulletin."

Differences Between the Proposed AD and Service Bulletin

Although the service bulletin recommends accomplishing the replacement of clamp bases for the fuel vent line within 10 years after the issue date of the service bulletin, we have determined that interval would not address the identified unsafe condition soon enough to ensure an adequate level of safety for the affected fleet. In developing an appropriate compliance time for this AD, we considered the manufacturer's recommendation, the degree of urgency associated with the subject unsafe condition, and the time necessary to do the replacement. In light of all of these factors, we find that a 60-month compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with Boeing, and Boeing concurs.

Costs of Compliance

There are about 640 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 413 airplanes of U.S. registry. The proposed actions would take up to 4 work hours per airplane, at an average labor rate of $80 per work hour. Required parts would cost between $1,004 and $2,008 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is between $546,812 and $961,464, or $1,324 and $2,328 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2006–24368; Directorate Identifier 2005–NM–230–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 26, 2006.

Affected ADs

(b) None.

Applicability

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

Unsafe Condition

(d) This AD results from reports that the foil wrapping on existing plastic clamp bases has migrated out of position, which compromises the bonding of the fuel vent lines to the airplane structure. We are issuing this AD to ensure that the fuel vent lines are properly bonded to the airplane structure. Improper bonding could prevent electrical energy from a lightning strike from dissipating to the airplane structure, and create an ignition source, which could result in a fuel tank explosion.

Compliance

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

Clamp Base Replacement

(f) Within 60 months after the effective date of this AD, replace the existing clamp bases for the fuel vent line with improved metal clamp bases, by doing all of the applicable actions in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC9–28–211, dated February 23, 2005. Any corrective action that is required following the conductivity verification, which is included in the replacement procedures, must be done before further flight.

Alternative Methods of Compliance (AMOCs)

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

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

Issued in Renton, Washington, on March 30, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3441 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24369; Directorate Identifier 2006–NM–001–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, and –800 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing Model 737–600, –700, –700C, and –800 series airplanes. The existing AD currently requires replacing the point "D" splice fitting between windows number 1 and 2 with a new splice fitting; performing an eddy current inspection for cracking of the holes in the structure common to the new splice fitting, including doing any related investigative actions; and performing corrective actions if necessary. This proposed AD would add repetitive inspections for cracking of the skin just below each splice fitting, and related corrective actions if necessary. This proposed AD results from full-scale fuselage fatigue testing on the splice fitting that failed prior to the design objective on Boeing Model 737–800 series airplanes, and a report of a cracked splice fitting on an operational airplane. We are proposing this AD to prevent cracking of the existing fitting, which may result in cracking through the skin and consequent decompression of the flight cabin.

DATES: We must receive comments on this proposed AD by May 26, 2006.

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

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

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

FOR FURTHER INFORMATION CONTACT: Sue Lucier, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6438; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number "Docket No. FAA–2006–24369; Directorate Identifier 2006–NM–001–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 with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or visit *http://dms.dot.gov*.

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket

Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

On November 25, 2005, we issued AD 2005–25–03, amendment 39–14396 (70 FR 72595, December 6, 2005), for certain Boeing Model 737–600, –700, –700C, and –800 series airplanes. That AD requires replacing the point "D" splice fitting between windows number 1 and 2 with a new splice fitting; performing an eddy current inspection for cracking of the holes in the structure common to the new splice fitting, including doing any related investigative actions; and performing corrective actions if necessary. That AD resulted from full-scale fuselage fatigue testing on the splice fitting that failed prior to the design objective on Boeing Model 737–800 series airplanes, and a report of a cracked splice fitting on an operational airplane. We issued that AD to prevent cracking of the existing fitting, which may result in cracking through the skin and consequent decompression of the flight cabin.

Since the Existing AD Was Issued

In the preamble to AD 2005–25–03, we indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. We have determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Relevant Service Information

We have previously reviewed Boeing Alert Service Bulletin (ASB) 737–53A1222, Revision 2, dated October 20, 2005, the appropriate service information referenced in AD 2005–25–03. The ASB describes procedures for replacing the splice fitting between windows number 1 and 2, at point "D" on the windowsill with a new splice fitting, and performing related investigative actions. Those investigative actions include performing an open hole eddy current inspection for cracking of the fastener holes, and a special detailed inspection for cracking of 12 fasteners in the adjacent structure. The ASB also describes procedures for repetitive detailed inspections of the skin near the six skin fasteners below the splice fitting. The ASB specifies that if cracking is detected, to contact Boeing for further instructions. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2005–25–03 and retain the requirements of the existing AD. This proposed AD would also require accomplishing repetitive external detailed inspections of the skin near the six skin fasteners below the splice fitting, specified in the ASB described previously.

Differences Between the AD and the ASB

Where the ASB specifies contacting Boeing if any cracking is detected, this AD would require that repair of any cracking be accomplished before further flight, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO).

Costs of Compliance

There are about 563 airplanes of the affected design in the worldwide fleet. We estimate that about 243 airplanes are on the U.S. Register, and that the average labor rate is $80 per hour. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Fleet cost
Replacing splice fittings with new fittings (required by AD 2005–25–03)	36	$15,445	$18,325	$4,452,975
External detailed inspection (new proposed action)	1	0	80	*19,440

* Per inspection cycle.

Authority for this Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14396 (70 FR 72595, December 6, 2005) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2006–24369; Directorate Identifier 2006–NM–001–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 26, 2006.

Affected ADs

(b) This AD supersedes AD 2005–25–03.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, and –800 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin (ASB) 737–53A1222, Revision 2, dated October 20, 2005.

Unsafe Condition

(d) This AD results from full-scale fuselage fatigue testing on a splice fitting that failed prior to the design objective on Boeing Model 737–800 series airplanes, and a report of a cracked splice fitting on an operational airplane. We are issuing this AD to prevent cracking of the existing fitting, which may result in cracking through the skin and consequent decompression of the flight cabin.

Compliance

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

Restatement of Certain Requirements of AD 2005–25–03

Replacing the Splice Fittings

(f) Replace the splice fittings with new splice fittings in accordance with the Accomplishment Instructions of Boeing ASB 737–53A1222, Revision 2, dated October 20, 2005, at the times specified in paragraph (f)(1) or (f)(2) of this AD, as applicable. Before further flight, do any related investigative actions by accomplishing all the applicable actions specified in the Accomplishment Instructions.

(1) For airplanes that have accumulated fewer than 13,500 total flight cycles as December 21, 2005 (the effective date of AD 2005–25–03): Replace prior to the accumulation of 13,500 total flight cycles, or within 1,000 flight cycles after December 21, 2005, whichever occurs later.

(2) For airplanes that have accumulated 13,500 or more total flight cycles as of December 21, 2005: Replace at the later of the times specified in paragraphs (f)(2)(i) and (f)(2)(ii) of this AD.

(i) Prior to the accumulation of 18,000 total flight cycles, or within 1,000 flight cycles after December 21, 2005, whichever occurs first.

(ii) Within 90 days after December 21, 2005.

New Requirements of This AD

Repetitive Inspections

(g) Within 24,000 flight cycles after accomplishing the actions specified in paragraph (f) of this AD, perform an external detailed inspection of the skin just below each splice fitting, in accordance with the Accomplishment Instructions of Boeing ASB 737–53A1222, Revision 2, dated October 20, 2005. Thereafter, repeat the external detailed inspections at intervals not to exceed 24,000 flight cycles.

Corrective Actions

(h) If any cracking is found during any inspection required by this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, or with a method approved in accordance with the procedures specified in paragraph (j) of this AD.

Acceptable Method of Compliance

(i) Replacing the splice fitting and any related investigative actions before December 21, 2005 (the effective date of AD 2005–25–03), in accordance with Boeing Service Bulletin 737–53–1222, dated June 6, 2002; or Boeing ASB 737–53A1222, Revision 1, dated January 30, 2003, is acceptable for compliance with the requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved previously in accordance with AD 2005–25–03, amendment 39–14396, are approved as AMOCs for the corresponding provisions of paragraphs (f) and (h) of this AD.

Issued in Renton, Washington, on March 31, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3442 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23249; Directorate Identifier 2005–NM–219–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Model GV–SP Series Airplanes

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

ACTION: Proposed rule; withdrawal.

SUMMARY: The FAA withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD) for certain Gulfstream Model GV–SP series airplanes. The proposed AD would have required an inspection to determine the serial number of the anti-skid control unit (ACU) in the right electronics equipment rack, and replacement of the ACU with a new or serviceable ACU if necessary. Since the proposed AD was issued, we have received new data that indicate the identified unsafe condition has been corrected on all airplanes that would have been affected by the NPRM, and on all ACUs in the affected range of serial numbers. Accordingly, the proposed AD is withdrawn.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC. This docket number is FAA–2005–23249; the directorate identifier for this docket is 2005–NM–219–AD.

FOR FURTHER INFORMATION CONTACT: Darby Mirocha, Aerospace Engineer, Systems and Equipment Branch, ACE–119A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6095; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

We proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with a notice of proposed rulemaking (NPRM) for a new AD for certain Gulfstream Model GV–SP series airplanes. That NPRM was published in

the **Federal Register** on December 9, 2005 (70 FR 73173). The NPRM would have required an inspection to determine the serial number of the anti-skid control unit (ACU) in the right electronics equipment rack, and replacement of the ACU with a new or serviceable ACU if necessary. The NPRM resulted from a report that an airplane temporarily lost normal braking function during landing rollout on a pre-delivery flight. The proposed actions were intended to prevent loss of normal braking function, which could result in a runway overrun that could cause injury to flightcrew or passengers or damage to the airplane.

Actions Since NPRM Was Issued

Since we issued the NPRM, Gulfstream Aerospace has provided data that indicate the identified unsafe condition has been corrected on all airplanes that would have been affected by the NPRM, and on all ACUs in the affected range of serial numbers (S/Ns). Gulfstream Aerospace therefore requests that we withdraw the NPRM. We agree with the commenter.

Request To Incorporate by Reference (IBR) the Service Information

The Modification and Replacement Parts Association (MARPA) requests that we either publish the relevant service information with the AD, or IBR it with the NPRM. If we IBR rather than publish the relevant service information, then MARPA further requests that we identify the S/Ns of the defective ACUs in the AD. As justification, MARPA states that parts purveyors and maintenance facilities cannot identify the defective parts unless we specify them in the AD because they do not possess the proprietary service information referenced in the NPRM. For the same reason, MARPA states that those in the alternative parts industry (operating under 14 CFR 21.303) also cannot identify any parts manufacturer approval (PMA) parts equivalent to the defective ACUs. MARPA asserts that there are many ACUs in its PMA database that also may be affected by unsafe condition identified in the NPRM.

MARPA also comments on our practice of IBR and referencing propriety service information. MARPA asserts that if we IBR proprietary service information with a public document, such as an AD, then that service information loses its protected status and becomes a public document. Also, MARPA claims that IBR requires we provide a copy of the relevant service information to the Director of the Federal Register before the NPRM can be published. MARPA further states that: "Merely referencing a service document without incorporation thus becomes an "end run" around the publication requirement while still requiring possession of a proprietary document in order to comply with the law." MARPA believes our practice of IBR is flawed legally where it is impossible to comply with the requirements of an AD without first obtaining the necessary propriety service information.

Although we acknowledge MARPA's comments, we do not agree with its request, since the identified unsafe condition has been corrected on all airplanes that would have been affected by the NPRM and on all ACUs in the affected range of S/Ns. Those affected parts are ACUs having part number 1159SCL501–1 and S/Ns 355 through 400 inclusive. The unsafe condition identified in the NPRM was caused by the installation of incorrect capacitors in the affected ACUs only. Since that NPRM addresses a quality control issue limited to a range of S/Ns, we find that the MARPA's statements regarding PMA equivalent parts are not relevant to that particular NPRM.

We have one correction regarding MARPA's comments on our practice of IBR and referencing propriety service information; we are required to provide a copy of any relevant service information to the Director of the Federal Register for publication of a final rule, not an NPRM. We are currently reviewing our practice of referencing proprietary service information. Once we have thoroughly examined all aspects of this issue, and have made a final determination, we will consider whether our current practice needs to be revised.

FAA's Conclusions

Upon further consideration, we have determined that the actions that would have been required by the NPRM have already been accomplished on all affected airplanes, and that the identified unsafe condition has been corrected on all affected ACUs. Accordingly, the NPRM is withdrawn.

Withdrawal of the NPRM does not preclude the FAA from issuing another related action or commit the FAA to any course of action in the future.

Regulatory Impact

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, we withdraw the NPRM, Docket No. FAA–2005–23249, Directorate Identifier 2005–NM–219–AD, which was published in the **Federal Register** on December 9, 2005 (70 FR 73173).

Issued in Renton, Washington, on March 31, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–5253 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23902; Airspace Docket No. 06–AGL–01]

Proposed Modification of Class E Airspace; Fremont, MI

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at Fremont, MI. Standard Instrument Approach Procedures have been developed for Fremont Municipal Airport, Fremont, MI. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the area of the existing controlled airspace for Fremont, MI.

DATES: Comments must be received on or before June 5, 2006.

ADDRESSES: Send comments on the 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–2006–23901/ Airspace Docket No. 06–AGL–01, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone

1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at FAA Terminal Operations, Central Service Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Steve Davis, FAA Terminal Operations, Central Service Office, Airspace and Procedures Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7131.

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 document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2006–23902/Airspace Docket No. 06–AGL–01." 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 Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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 Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket number for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airpspace at Fremont, MI, for Fremont Municipal Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing instrument approach procedures. Class E airspace areas extending upward from 700 feet above the surface of the earth are published in paragraph 6005 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 E designations listed in this document would be removed subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment 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 will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

* * * * *

AGL MI E5 Fremont, MI [Revised]

Fremont Municipal Airport, MI
(Lat. 43°26′22″ N., long. 85°59′42″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Fremont Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois, on March 22, 2006.

Nancy B. Kort,

Area Director, Central Terminal Operations.

[FR Doc. 06–3425 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No.: FAA–2006–24277; Notice No. 06–05]

RIN 2120–AI75

Fire Penetration Resistance of Thermal Acoustic Insulation Installed on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; Correction.

SUMMARY: This document makes a correction to the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on April 3, 2006 by changing the amendment number to a notice number. The NPRM proposed to

extend, by 12 months, the date for operators to comply with the fire penetration resistance requirements of thermal/acoustic insulation used in transport category airplanes manufactured after September 2, 2007.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2136, facsimile (425) 227–1149, e-mail: *jeff.gardlin@faa.gov*.

Correction

In the Notice of Proposed Rulemaking FR Doc. E6–4791, published on April 3, 2006 (71 FR 16678), make the following correction:

1. On page 16678, in column 1 in the heading section, beginning on line 4, remove "Amendment No. 121–323" and insert "Notice No. 06–05".

Issued in Washington, DC, on April 6, 2006.

Ida M. Klepper,

Acting Director, Office of Rulemaking.

[FR Doc. E6–5330 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD1–06–001]

RIN 1625–AA00

Safety Zone; Town of Marblehead Fourth of July Fireworks Display, Marblehead Harbor, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary safety zone for the Town of Marblehead Fourth of July Fireworks. This safety zone is necessary to protect the life and property of the maritime public from the potential hazards associated with a fireworks display. The safety zone would temporarily prohibit entry into or movement within this portion of Marblehead Harbor during the closure period.

DATES: Comments and related material must reach the Coast Guard on or before May 11, 2006.

ADDRESSES: You may mail comments and related material to Sector Boston 427 Commercial Street, Boston, MA. Sector Boston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of docket CGD01–06–001 and are available for inspection or copying at Sector Boston, 427 Commercial Street, Boston, MA between the hours of 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) 223–5007.

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 the rulemaking (CGD01–06–001), 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 materials in an unbound format, no larger than 8.5 by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to Sector Boston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

This rule proposes to establish a safety zone on the waters of Marblehead Harbor within a 400-yard radius of the fireworks barge located at approximate position 42° 30′548″ N., 70°50′098″ W. The safety zone would be in effect from 8:30 p.m. until 10 p.m. e.d.t. on July 4, 2006. The rain date for the fireworks event is from 8:30 p.m. until 10 p.m. e.d.t. on July 5, 2006.

The safety zone would temporarily restrict movement within this effected portion of Marblehead Harbor and is needed to protect the maritime public from the dangers posed by a fireworks display. Marine traffic may transit safely outside the safety 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 the effective period of this proposed rule via safety marine information broadcasts and Local Notice to Mariners.

Discussion of Proposed Rule

The Coast Guard is establishing a temporary safety zone in Marblehead Harbor, Marblehead, Massachusetts. The safety zone would be in effect from 8:30 p.m. until 10 p.m. e.d.t. on July 4, 2006, with a rain date of 8:30 p.m. until 10 p.m. e.d.t. on July 5, 2006. Marine traffic may transit safely outside of the safety zone in the majority of Marblehead Harbor during the event. This safety zone will control vessel traffic during the fireworks display to protect the safety of the maritime public.

Due to the limited time frame of the fireworks display, the Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via local media, local notice to mariners and marine information broadcasts.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this proposed rule would prevent traffic from transiting a portion of Marblehead Harbor during the effective period, the effects of this rule will not be significant for several reasons: Vessels will be excluded from the proscribed area for only one and one half hours, 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), the Coast Guard 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 may be small entities: The owners or operators of vessels intending to transit or anchor in the effected portion of Marblehead Harbor from 8:30 p.m. e.d.t. on July 4, 2006 to 10 p.m. e.d.t. on July 4, 2006 or during the same hours on July 5.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: This proposed rule would be in effect for only one and one half hours, vessel traffic can safely pass around the safety zone during the effected period, and advance notification via safety marine informational broadcast and Local Notice to Mariners will be made before and during the effective period.

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.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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 Chief Petty Officer Paul English at the address listed under **ADDRESSES**. 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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that may 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 rule under Commandant Coast Guard Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule fits the category selected from paragraph (34)(g), as it would establish a safety zone. 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 this rule should be categorically excluded from further environmental review.

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 proposes to amend 33 CFR 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.T06–001, to read as follows:

§ 165.T01–006 Safety Zone; Town of Marblehead Fourth of July Fireworks Display, Marblehead, Massachusetts.

(a) *Location.* The following area is a safety zone: All waters of Marblehead Harbor within a 400-yard radius of the fireworks barge located at approximate position 42°30′548″ N., 70°50′098″ W.

(b) *Effective date.* This rule is effective from July 4, 2006 at 8:30 p.m. until July 5, 2006 at 10 p.m. e.d.t. This rule will be enforced from 8:30 p.m. until 10 p.m. e.d.t. on July 4, 2006, unless it rains, in which case it will be enforced from 8:30 p.m. until 10 p.m. e.d.t. on July 5, 2006.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, State, and Federal law enforcement vessels.

Dated: March 30, 2006.

James L. McDonald,

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

[FR Doc. E6–5263 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0171; FRL–8053–1]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern particulate matter (PM–10) emissions from open burning and volatile organic compound (VOC) emissions from gasoline storage and transfer. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by May 11, 2006.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0171, by one of the following methods:

- Federal eRulemaking Portal: *www.regulations.gov*. Follow the on-line instructions.
- E-mail: *steckel.andrew@epa.gov*.
- Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at *WWW.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail.

www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Al Petersen, EPA Region IX, (415) 947–4118, *petersen.alfred@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: SJVUAPCD Rule 4103 and SCAQMD Rule 461. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: March 7, 2006.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 06–3402 Filed 4–10–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2005–0131; FRL–8157–4]

RIN 2060–AM46

Protection of Stratospheric Ozone: Recordkeeping and Reporting Requirements for the Import of Halon-1301 Aircraft Fire Extinguishing Vessels

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to exempt entities that import aircraft fire extinguishing spherical pressure vessels containing halon-1301 ("aircraft halon bottles") for hydrostatic testing from the import petitioning requirements for used controlled substances. The petitioning requirements compel importers to submit detailed information to the Administrator concerning the origin of the substance at least forty working days before a shipment is to leave a foreign port of export. This action proposes to reduce the administrative burden on entities that are importing aircraft halon-1301 bottles for the purpose of maintaining these bottles to commercial safety specifications and standards set forth in Federal Aviation Authority airworthiness directives. This action does not propose to exempt entities importing bulk quantities of halon-1301 in containers that are not being imported for purposes of hydrostatic testing.

In the "Rules and Regulations" section of today's **Federal Register**, we are creating this exemption as a direct final rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this exemption in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any persons interested in commenting must do so at this time.

DATES: Written comments on the companion direct final rule must be received on or before May 11, 2006 or by May 26, 2006 if a hearing is requested. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. eastern standard time on April 21, 2006. If a hearing is requested it will be held April 25, 2006. If a hearing is held, commenters will have 30 days to submit follow up comments before the close of the comment period. Persons interested in attending a public hearing should consult with the contact person below regarding the location and time of the hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2005–0131, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *A-and-R-docket@epa.gov*
- Fax: 202–343–2337, attn: Hodayah Finman
- Mail: Air Docket, Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery or Courier. Deliver your comments to: EPA Air Docket, EPA West, 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2005–0131. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The *www.regulations.gov* website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov index.* Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Hodayah Finman, EPA, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 343–9246.

SUPPLEMENTARY INFORMATION: The EPA believes that the revision to the import petition process for the import of halon aircraft bottles described in the direct final rule published in today's **Federal Register** is noncontroversial; however, should the Agency receive adverse comment on the companion direct final rule, EPA will publish a timely withdrawal informing the public that the rule will not take effect. All adverse comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. For additional information, see the direct final rule published in the Final Rules section of this **Federal Register**.

Table of Contents

Summary of Supporting Analysis

I. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines a "significant" regulatory action as one that is likely to result in a rule that may:

(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 government 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 the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this is a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Current recordkeeping and reporting requirements under 40 CFR 82.13 allow EPA to implement the provisions of today's action. Today's action will reduce the reporting burden that would otherwise be required under 40 CFR 82.13(g) by removing the requirement to submit information to EPA prior to each import of aircraft halon bottles. OMB has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0170, EPA ICR number 1432.25. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business that is primarily engaged in the hydrostatic testing of halon aircraft bottles as defined in NAIC code 541380 with annual receipts less than $10,000,000 (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This proposed rule will reduce the administrative burden on all entities who import aircraft halon bottles. We have therefore concluded that today's proposed rule will relieve regulatory burden for all affected small entities.

D. 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, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small

government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Section 203 of UMRA requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule. Section 204 requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

Today's rule contains no Federal mandates (under the regulatory provision of Title II of the UMRA) for State, local, or tribal governments or the private sector. This rule imposes no enforceable duty on any State, local or tribal government or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

E. Executive Order 13132: Federalism

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

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule is expected to primarily affect importers and exporters of halons. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. It does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

While this proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866 and this rule does not pose an adverse health effect to children, we nonetheless have reason to believe that the environmental, health, or safety risk addressed by the underlying Ozone Protection Program regulations may have a disproportionate effect on children. Depletion of stratospheric ozone results in greater transmission of the sun's ultraviolet (UV) radiation to the earth's surface. The following studies describe the effects on children of excessive exposure to UV radiation: (1) Westerdahl J, Olsson H, Ingvar C. "At what age do sunburn episodes play a crucial role for the development of malignant melanoma," Eur J Cancer 1994; 30A: 1647–54; (2) Elwood JM, Jopson J. "Melanoma and sun exposure: an overview of published studies," Int J Cancer 1997; 73:198–203; (3) Armstrong BK. "Melanoma: childhood or lifelong sun exposure" In: Grobb JJ, Stern RS, Mackie RM, Weinstock WA, eds. "Epidemiology, causes and prevention of skin diseases," 1st ed. London, England: Blackwell Science, 1997: 63–6; (4) Whiteman D., Green A. "Melanoma and Sunburn," Cancer Causes Control, 1994: 5:564–72; (5) Kricker A, Armstrong, BK, English, DR, Heenan, PJ. "Does intermittent sun exposure cause basal cell carcinoma? A case control study in Western Australia," Int J Cancer 1995; 60: 489–94; (6) Gallagher, RP, Hill, GB, Bajdik, CD, et. al. "Sunlight exposure, pigmentary factors, and risk of nonmelanocytic skin cancer I, Basal cell carcinoma," Arch Dermatol 1995; 131: 157–63; (7) Armstrong, BK. "How sun exposure causes skin cancer: an epidemiological perspective," Prevention of Skin Cancer. 2004. 89–116.

EPA anticipates that this rule will have a positive impact on the environment and human health by removing a disincentive to preventive maintenance of aircraft halon bottles and reducing the likelihood of accidental emissions. Thus, this proposed rule is not expected to increase the impacts on children's health from stratospheric ozone depletion.

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

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and

business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Chemicals, Exports, Halon, Imports, Ozone Layer, Reporting and recordkeeping requirements.

Dated: April 5, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. 06–3462 Filed 4–10–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2006–0158; FRL–8157–3]

RIN 2060–AN29

Protection of Stratospheric Ozone: Allocation of Essential Use Allowances for Calendar Year 2006

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to allocate essential use allowances for import and production of class I stratospheric ozone depleting substances (ODSs) for calendar year 2006. Essential use allowances enable a person to obtain controlled class I ODSs as part of an exemption to the regulatory ban on the production and import of these chemicals which became effective as of January 1, 1996. EPA allocates essential use allowances for exempted production or import of a specific quantity of class I ODS solely for the designated essential purpose. The proposed allocations total 1,002.40 metric tons of chlorofluorocarbons (CFCs) for use in metered dose inhalers for 2006.

DATES: Written comments on this proposed rule must be received by the EPA Docket on or before May 11, 2006, unless a public hearing is requested. Comments must then be received on or before May 22, 2006. Any party requesting a public hearing must notify the contact listed below under **FOR FURTHER INFORMATION CONTACT** by 5 p.m. Eastern Standard Time on April 17, 2006. If a hearing is held, it will take place on April 21, 2006 at EPA headquarters in Washington DC. EPA will post a notice on our Web site *http://www.epa.gov/ozone* announcing further information on the hearing if it is requested.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0158, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *A-and-R-docket@epa.gov*
- Fax: 202–343–2337, attn: Hodayah Finman.
- Mail: Air Docket, Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery or Courier. Deliver your comments to: EPA Air Docket, EPA West 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, D.C. 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0158. 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* 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 *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 Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Hodayah Finman, Team Leader, by regular mail: U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by courier service or overnight express: 1301 L Street, NW., Room 827M Washington DC 20005, by telephone: 202–343–9246; or by e-mail: *finman.hodayah@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. National Technology Transfer and Advancement Act

I. General Information

A. What Should I Consider When Preparing My Comments?

1. Confidential Business Information

Do not submit this information to EPA through *http://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:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Basis for Allocating Essential Use Allowances

A. What are essential use allowances?

Essential use allowances are allowances to produce or import certain ozone-depleting chemicals in the U.S. for purposes that have been deemed "essential" by the Parties to the Montreal Protocol and the U.S. Government.

The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) is the international agreement aimed at reducing and eliminating the production and consumption of stratospheric ozone-depleting substances. The elimination of production and consumption of class I ODSs is accomplished through adherence to phase-out schedules for specific class I ODSs [1], including: chlorofluorocarbons (CFCs), halons, carbon tetrachloride, and methyl chloroform. As of January 1, 1996, production and import of most class I ODSs were phased out in developed countries, including the United States.

However, the Protocol and the Clean Air Act (Act) provide exemptions that allow for the continued import and/or production of class I ODS for specific uses. Under the Protocol, exemptions may be granted for uses that are determined by the Parties to be "essential." Decision IV/25, taken by the Parties to the Protocol in 1992, established criteria for determining whether a specific use should be approved as essential, and set forth the international process for making determinations of essentiality. The criteria for an essential use, as set forth in paragraph 1 of Decision IV/25, are the following:

"(a) that a use of a controlled substance should qualify as 'essential' only if:

(i) it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and

(ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health;

(b) that production and consumption, if any, of a controlled substance for essential uses should be permitted only if:

(i) all economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and

(ii) the controlled substance is not available in sufficient quantity and quality from existing stocks of banked or recycled controlled substances, also bearing in mind the developing countries' need for controlled substances."

B. Under what authority does EPA allocate essential use allowances?

Title VI of the Act implements the Protocol for the United States.[2] Section 604(d) of the Act authorizes EPA to allow the production of limited quantities of class I ODSs after the phase out date for the following essential uses:

(1) Methyl Chloroform, "solely for use in essential applications (such as nondestructive testing for metal fatigue and corrosion of existing airplane engines and airplane parts susceptible to metal fatigue) for which no safe and effective substitute is available." Under section 604(d)(1) of the Act, this exemption was available only until January 1, 2005.

(2) Medical Devices (as defined in section 601(8) of the Act), "if such authorization is determined by the Commissioner [of the Food and Drug Administration], in consultation with the Administrator [of EPA] to be necessary for use in medical devices." EPA issues allowances to manufacturers of metered-dose inhalers, which use CFCs as propellant for the treatment of asthma and chronic obstructive pulmonary diseases.

(3) Aviation Safety, for which limited quantities of halon-1211, halon-1301, and halon-2402 may be produced "if the Administrator of the Federal Aviation Administration, in consultation with the Administrator [of EPA] determines that no safe and effective substitute has been developed and that such authorization is necessary for aviation safety purposes." Neither EPA nor the Parties have ever granted a request for essential use allowances for halon, because alternatives are available or because existing quantities of this substance are large enough to provide for any needs for which alternatives have not yet been developed.

The Protocol, under Decision X/19, additionally allows a general exemption for laboratory and analytical uses. This exemption is reflected in EPA's regulations at 40 CFR part 82, subpart A. While the Act does not specifically provide for this exemption, EPA has determined that an exemption for essential laboratory and analytical uses is allowable under the Act as a *de minimis* exemption. The *de minimis* exemption is addressed in EPA's final rule of March 13, 2001 (66 FR 14760–14770). The Parties to the Protocol subsequently agreed (Decision XI/15) that the general exemption does not apply to the following uses: testing of oil and grease, and total petroleum

[1] Class I ozone-depleting substances are listed at 40 CFR Part 82 subpart A, appendix A.

[2] According to Section 614(b) of the Act, Title VI "shall be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol * * * and shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol. In the case of conflict between any provision of this title and any provision of the Montreal Protocol, the more stringent provision shall govern." EPA's regulations implementing the essential use provisions of the Act and the Protocol are located in 40 CFR part 82.

hydrocarbons in water; testing of tar in road-paving materials; and forensic finger-printing. EPA incorporated this exclusion at Appendix G to Subpart A of 40 CFR part 82 on February 11, 2002 (67 FR 6352). In a December 29, 2005 final rule, EPA extended the general exemption for laboratory and analytical uses through December 31, 2007 (70 FR 77048), in accordance with Decision XV/8 of the Parties to the Protocol.

C. What Is the Process for Allocating Essential Use Allowances?

Before EPA may allocate essential use allowances, the Parties to the Protocol must first approve the United States' request to produce or import essential class I ODSs. The procedure set out by Decision IV/25 calls for individual Parties to nominate essential uses and the total amount of ODSs needed for those essential uses on an annual basis. The Protocol's Technology and Economic Assessment Panel evaluates the nominated essential uses and makes recommendations to the Protocol Parties. The Parties make the final decisions on whether to approve a Party's essential use nomination at their annual meeting. This nomination cycle occurs approximately two years before the year in which the allowances would be in effect. The allowances allocated through today's action were first nominated by the United States in January 2004.

Once the U.S. nomination is approved by the Parties, EPA allocates essential use exemptions to specific entities through notice-and-comment rulemaking in a manner consistent with the Act. For medical devices, EPA requests information from manufacturers about the number and type of devices they plan to produce, as well as the amount of CFCs necessary for production. EPA then forwards the information to the Food and Drug Administration (FDA), which determines the amount of CFCs necessary for metered-dose inhalers in the coming calendar year. Based on FDA's assessment, EPA proposes allocations to each eligible entity. Under the Act and the Protocol, EPA may allocate essential use allowances in quantities that together are below or equal to the total amount approved by the Parties. EPA may not allocate essential use allowances in amounts higher than the total approved by the Parties. For 2006, the Parties authorized the United States to allocate up to 1,100 metric tons of CFCs for essential uses.

III. Essential Use Allowances for Medical Devices

The following is a step-by-step list of actions EPA and FDA have taken thus far to implement the exemption for medical devices found at section 604(d)(2) of the Act for the 2006 control period.

1. On March 24, 2005, EPA sent letters to MDI manufacturers requesting the following information under section 114 of the Act ("114 letters"):

a. The MDI product where CFCs will be used.

b. The number of units of each MDI product produced from 1/1/04 to 12/31/04.

c. The number of units anticipated to be produced in 2005.

d. The gross target fill weight per unit (grams).

e. Total amount of CFCs to be contained in the MDI product for 2006.

f. The additional amount of CFCs necessary for production.

g. The total CFC request per MDI product for 2006.

The 114 letters are available for review in the Air Docket ID No. EPA–HQ–OAR–2006–0158. The companies requested that their responses be treated as confidential business information; for this reason, EPA has not placed the responses in the docket.

2. On July 5, 2005, EPA sent FDA the information MDI manufacturers provided in response to the 114 letters with a letter requesting that FDA make a determination regarding the amount of CFCs necessary for MDIs for calendar year 2006. This letter is available for review in Air Docket ID No. EPA–HQ–OAR–2006–0158.

3. On October 12, 2005, FDA sent a letter to EPA stating the amount of CFCs determined by the Commissioner to be necessary for each MDI company in 2006. This letter is available for review in the Air Docket ID No. EPA–HQ–OAR–2006–0158. In their letter, FDA informed EPA that they had determined that 1,002.40 metric tons of CFCs were necessary for use in medical devices in 2006. The letter stated: "Our recommendation for the allocation of CFCs is lower than the total amount requested by sponsors. In reaching this estimate, we took into account the sponsors' production of MDIs that used CFCs as a propellant in 2004, their estimated production in 2005, their estimated production in 2006, their current stockpile levels, and the presence on the market of two albuterol MDIs that do not use CFCs. We have also based our recommendation for 2006 on an estimate of the quantity of MDIs using CFCs as a propellant that would be necessary for sponsors to maintain a 12-month stockpile, consistent with paragraph 3 of Decision XVI/12." EPA has confirmed with FDA that this determination is consistent with Decision XVII/5, including new language on stocks that states that "Parties shall take into account pre- and post-1996 stocks of controlled substances as described in paragraph 1 (b) of decision IV/25, such that no more than a one-year operational supply is maintained by that manufacturer."

In accordance with the determination made by FDA, today's action proposes to allocate essential use allowances for a total of 1,002.40 metric tons of CFCs for use in MDIs for calendar year 2006.

The amounts listed in this proposal are subject to additional review by EPA and FDA if new information demonstrates that the proposed allocations are either too high or too low. Commentors requesting increases or decreases of essential use allowances should provide detailed information supporting their claim for additional or fewer CFCs. Any company that needs less than the full amount listed in this proposal should notify EPA of the actual amount needed.

IV. Proposed Allocation of Essential Use Allowances for Calendar Year 2006

TABLE I.—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2006

Company	Chemical	2006 Quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Armstrong Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	147.50
Boehringer Ingelheim Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	116.50
Inyx (Aventis)	CFC–11 or CFC–12 or CFC–114	106.40
Schering-Plough Corporation	CFC–11 or CFC–12 or CFC–114	556.00
3M Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	0.0

TABLE I.—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2006—Continued

Company	Chemical	2006 Quantity (metric tons)
Wyeth	CFC–11 or CFC–12 or CFC–114	76.0

EPA proposes to allocate essential use allowances for calendar year 2006 to the entities listed in Table 1. These allowances are for the production or import of the specified quantity of class I controlled substances solely for the specified essential use.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(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 the Executive Order.

It has been determined by OMB and EPA that this proposed action is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review under the Executive Order.

Under Section 6(a)(3)(B)(ii) of Executive Order 12866, the Agency must provide to OMB's Office of Information and Regulatory Affairs an "assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions."

EPA is undertaking today's proposed action under the mandate established by Section 604(d) of the Clean Air Act Amendments of 1990, which directs the Administrator to authorize the production of limited quantities of class I substances solely for use in medical devices, if the Commissioner of FDA determines that the authorization is necessary. The proposed allocations in today's rule are the amounts determined by FDA to be necessary for calendar year 2006. EPA has not assessed the costs and benefits specific to today's proposed action. The Agency examined the costs and benefits associated with a related regulation. The Agency's Regulatory Impact Analysis (RIA) for the entire Title VI phaseout program examined the projected economic costs of a complete phaseout of consumption of ozone-depleting substances, as well as the projected benefits of phased reductions in total emissions of CFCs and other ozone-depleting substances, including essential-use CFCs used for metered dose inhalers (U.S. Environmental Protection Agency, "Regulatory Impact Analysis: Compliance with Section 604 of the Clean Air Act for the Phaseout of Ozone Depleting Chemicals," July 1992).

B. Paperwork Reduction Act

This proposed action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* OMB previously approved the information collection requirements contained in the final rule promulgated on May 10, 1995, and assigned OMB control number 2060–0170 (EPA ICR No. 1432.21).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 1.

C. Regulatory Flexibility Act

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

For purposes of assessing the impact of today's rule on small entities, small entity is defined as: (1) Pharmaceutical preparations manufacturing businesses (NAICS code 325412) that have less than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive

economic effect on all of the small entities subject to the rule.

This proposed rule provides an otherwise unavailable benefit to those companies that are receiving essential use allowances by creating an exemption to the regulatory phaseout of chlorofluorocarbons. We have therefore concluded that today's proposed rule will relieve regulatory burden for all small entities. We continue to be interested in the potential impact of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative, if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector, since it merely provides exemptions from the 1996 phase out of class I ODSs. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, because this rule merely allocates essential use exemptions to entities as an exemption to the ban on production and import of class I ODSs.

E. Executive Order 13132: Federalism

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

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

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's rule affects only the companies that requested essential use allowances. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such as the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to E.O. 13045 because it implements a mandatory requirement as per Section 604(d)(2) of the Clean Air Act which compels the Agency to allocate essential use exemptions should the Food and Drug Administration finds that the exemption is necessary.

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

This proposed rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The rule affects only the pharmaceutical companies that requested essential use allowances.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 82

Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Environmental protection, Imports, Methyl Chloroform, Ozone, Reporting and recordkeeping requirements.

Dated: April 5, 2006.

Stephen L. Johnson,

Administrator.

40 CFR Part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601,7671–7671q.

Subpart A—Production and Consumption Controls

2. Section 82.8 is amended by revising the table in paragraph (a) to read as follows:

§ 82.8 Grants of essential use allowances and critical use allowances.

(a) * * *

TABLE I.—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2006

Company	Chemical	2006 Quantity (metric tons)
Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Armstrong Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	147.50
Boehringer Ingelheim Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	116.50
Inyx (Aventis)	CFC–11 or CFC–12 or CFC–114	106.4
Schering-Plough Corporation	CFC–11 or CFC–12 or CFC–114	556.00
3M Pharmaceuticals	CFC–11 or CFC–12 or CFC–114	0.0
Wyeth	CFC–11 or CFC–12 or CFC–114	76.0

* * * * *

[FR Doc. E6–5329 Filed 4–10–06; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 71, No. 69
Tuesday, April 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

Submission for OMB Review; Comment Request

April 5, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13, Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: National Visitor Use Monitoring, and Customer and Use Survey Techniques for Operations, Management, Evaluation, and Research.

OMB Control Number: 0596–0110.

Summary of Collection: The National Forest Management Act (NFMA) of 1976 and the Forest and Rangeland Renewable Resources Act (RPA) of 1974 require a comprehensive assessment of present and anticipated uses, demand for and supply of renewable resources from the nation's public and private forests and rangelands. The Forest Service (FS) is required to report to Congress and others in conjunction with these legislated requirements as well as the use of appropriated funds. An important element in the reporting is the number of visits to National Forests and Grasslands, as well as to Wilderness Areas that the agency manages. The Customer and Use Survey Techniques for Operations, Management, Evaluation and Research (CUSTOMER) study combines several different survey approaches to gather data describing visitors to and users of public recreation lands, including their trip activities, satisfaction levels, evaluations, demographic profiles, trip characteristics, spending, and annual visitation patterns. FS will use face-to-face interviewing for collecting information on-site as well as written survey instruments to be mailed back by respondents.

Need and Use of the Information: FS plans to collect information from a variety of National Forests and other recreation areas. Information gathered through the various Customer modules has been and will continue to be used by planners, researchers, managers, policy analyst, and legislators in resource management areas, regional offices, regional research stations, agency headquarters, and legislative offices.

Description of Respondents: Individuals or households.

Number of Respondents: 66,000.

Frequency of Responses: Reporting; Quarterly; Annually.

Total Burden Hours: 10, 60.

Charlene Parker,
Departmental Information Collection Clearance Officer.

[FR Doc. E6–5249 Filed 4–10–06; 8:45 am]
BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV06–996–1 N]

Peanut Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; request for nominations.

SUMMARY: The Farm Security and Rural Investment Act of 2002 requires the Secretary of Agriculture to establish a Peanut Standards Board (Board) for the purpose of advising the Secretary on quality and handling standards for domestically produced and imported peanuts. The initial Board was appointed by the Secretary and announced on December 5, 2002. USDA seeks nominations for individuals to be considered for selection as Board members for terms of office ending June 30, 2009. Selected nominees sought by this action would replace those six producer and industry representatives who are currently serving for the initial term of office that ends June 30, 2006. The Board consists of 18 members representing producers and industry representatives.

DATES: Written nominations must be received on or before May 17, 2006.

ADDRESSES: Nominations should be sent to Dawana J. Clark, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737: Telephone: (301) 734–5243; Fax: (301) 734–5275; E-mail: *Dawana.Clark@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 1308 of the Farm Security and Rural Investment Act of 2002 (Farm Bill) requires the Secretary of Agriculture to establish a Peanut Standards Board (Board) for the purpose of advising the Secretary regarding the establishment of quality and handling standards for all domestic and imported peanuts marketed in the United States. The Farm Bill requires the Secretary to consult

with the Board before the Secretary establishes or changes quality and handling standards for peanuts.

The Farm Bill provides that the Board consist of 18 members, with three producers and three industry representatives from the States specified in each of the following producing regions: (a) Southeast (Alabama, Georgia, and Florida); (b) Southwest (Texas, Oklahoma, and New Mexico); and (c) Virginia/Carolina (Virginia and North Carolina).

For the initial appointments, the Farm Bill required the Secretary to stagger the terms of the members so that: (a) One producer member and peanut industry member from each peanut producing region serves a one-year term; (b) one producer member and peanut industry member from each peanut producing region serves a two-year term; and (c) one producer member and peanut industry member from each peanut producing region serves a three-year term. The term "peanut industry representatives" includes, but is not limited to, representatives of shellers, manufacturers, buying points, marketing associations and marketing cooperatives. The Farm Bill exempted the appointment of the Board from the requirements of the Federal Advisory Committee Act. The initial Board was appointed by the Secretary and announced on December 5, 2002.

USDA invites those individuals, organizations, and groups affiliated with the categories listed above to nominate individuals for membership on the Board. Nominees sought by this action would replace one producer and one industry member from each peanut producing region who served for the initial term of office that ends June 30, 2006. New members would serve for a 3-year term of office ending June 30, 2009.

Nominees should complete a Peanut Standards Board Background Information form and submit it to Mrs. Clark. Copies of this form may be obtained at the Internet site *http://www.ams.usda.gov/fv/peanut-farmbill.htm*, or from Mrs. Clark. USDA seeks a diverse group of members representing the peanut industry.

Equal opportunity practices will be followed in all appointments to the Board in accordance with USDA policies. To ensure that the recommendations of the Board have taken into account the needs of the diverse groups within the peanut industry, membership shall include, to the extent practicable, individuals with demonstrated abilities to represent minorities, women, persons with disabilities, and limited resource agriculture producers.

Authority: 7 U.S.C. 7958.

Dated: April 5, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–5225 Filed 4–10–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to request an extension for a currently approved information collection (OMB No. 0524–0026) for Form CSREES–665, "Assurance of Compliance with the Department of Agriculture Regulations Assuring Civil Rights Compliance," and Form CSREES–666, "Organizational Information."

DATES: Submit comments on or before June 12, 2006.

ADDRESSES: Written comments concerning this notice and requests for copies of the information collection may be submitted by any of the following methods to Joanna Moore, Policy Specialist, Office of Extramural Programs, Policy, Oversight, and Funds Management Branch; Mail: CSREES/USDA; Mail Stop 2299; 1400 Independence Avenue, SW.; Washington, DC 20250–2299; Hand Delivery/Courier: 800 9th Street, SW., Waterfront Centre, Room 2249,Washington, DC 20024; Fax: 202–401–7752; or e-mail: *jmoore@csrees.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Danus, Branch Chief, Policy, Oversight, and Funds Management Branch; Office of Extramural Programs; CSREES/USDA; (202) 401–4325; E-mail: *edanus@csrees.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Assurance of Compliance with the Department of Agriculture Regulations Assuring Civil Rights Compliance and Organizational Information.

OMB Number: 0524–0026.

Expiration Date of Current Approval: August 31, 2006.

Type of Request: Intent to extend a currently approved information collection for three years.

Abstract: CSREES has primary responsibility for providing linkages between the Federal and State components of a broad-based, national agricultural research, extension, and education system. Focused on national issues, its purpose is to represent the Secretary of Agriculture and carry out the intent of Congress by administering formula and grant funds appropriated for agricultural research, extension, and education. Before awards can be made, certain information is required from applicants to assure compliance with the applicable civil rights laws and to effectively assess the potential recipient's capacity to manage Federal funds.

Need for the Information: Form CSREES–665 "Assurance of Compliance with the Department of Agriculture Regulations Assuring Civil Rights Compliance": By signing this form, the organization certifies that it complies with the Civil Rights Act of 1964, as amended. The applicant agrees that it will offer its programs to all eligible persons without regard to race, color, national origin, gender, disability, age, political beliefs, religion, marital status, or familial status and that people will not be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives the Federal financial assistance from the Department of Agriculture. This information is submitted to CSREES on a one-time basis.

Form CSREES–666 "Organizational Information": Enables CSREES to determine that applicants recommended for awards will be responsible recipients of Federal funds. The information pertains to organizational management and financial matters of the potential grantee. This form and the documents which the applicant attaches to it provide CSREES with information such as the legal name of grantee, certification that the organization has the legal authority to accept Federal funding, identification and signatures of the key officials of the organization, the organization's practices in regard to compensation rates and benefits of employees, insurance for equipment,

subcontracting with other organizations, etc., as well as the financial condition of the organization. All of this information is considered by CSREES prior to award to determine the grantee is both managerially and fiscally responsible. This information is submitted to CSREES on a one-time basis. If sufficient changes occur within the organization, the grantee submits revised information.

With regards to compliance with the Government Paperwork Elimination Act (44 U.S.C. 3504 note), CSREES is proposing to postpone making an electronic option available for this information collection until the Federal government-wide electronic process is developed for collecting organizational information and statutory certifications from new grantees. Under the Federal Financial Assistance Management Improvement Act of 1999 (Pub.L. No. 106–107), Federal agencies and OMB have been working together to streamline and simplify the award and administration of Federal grants. As a result of these activities, Federal agencies and OMB are proposing various regulations, policies, and business processes that will decrease the overall information collection burden to grant recipients by having a central location where this information is collected for use by all Federal grantmaking agencies.

Estimate of the Burden: CSREES estimates the number of responses for the Form CSREES–665 will be 150 with an estimated response time of .5 hour per form, representing a total annual burden of 75 hours for this form. CSREES estimates the number of responses for the Form CSREES–666 will be 150 with an estimated response time of 6.3 hours per form, representing a total annual burden of 945 hours for this form. These estimates are based on a survey of grantees who had recently been approved for grant awards. They were asked to give an estimate of time it took them to complete each form. This estimate was to include such things as: (1) Reviewing the instructions; (2) searching existing data sources; (3) gathering and maintaining the data needed; and (4) actual completion of the forms. The average time it took each respondent was calculated from their responses.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have a practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection 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.

Done at Washington, DC, this 4th day of March 2006.

Joseph Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. E6–5227 Filed 4–10–06; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Mendocino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mendocino County Resource Advisory Committee will meet April 21, 2006 (RAC) in Willits, California. Agenda items to be covered include: (1) Approval of minutes, (2) Public Comment, (3) Sub-committees, (4) Discussion—items of interest, (5) Next agenda and meeting date.

DATES: The meeting will be held on April 21, 2006, from 9 a.m. until 12 noon.

ADDRESSES: The meeting will be held at the Mendocino County Museum, located at 400 E. Commercial St., Willits, California.

FOR FURTHER INFORMATION CONTACT: Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo Ranger District, 78150 Covelo Road, Covelo, CA 95428. (707) 983–8503; e-mail *rhurt@fs.fed.us*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by April 17, 2006. Public comment will have the opportunity to address the committee at the meeting.

Dated: March 30, 2006.

Blaine Baker,

Designated Federal Official.

[FR Doc. 06–3427 Filed 4–10–06; 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.

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 Virginia, North Carolina, and possibly any petitions received between the publication of this notice and meeting dates.

DATES: The meeting will be held May 8–9, 2006, from 8 a.m. to 5 p.m each day.

ADDRESSES: The meeting will be held at the Forest Service's headquarters: Sydney R. Yates Federal Building, 201 14th Street, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Committee Coordinator, Garth Smelser, 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 *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 by May 1, 2006. You will need photo identification to enter the building. Due to limited seating, public attendance will be offered on a first-come, first-served basis.

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. Because of the limited time and space, those wishing to offer their comments to the Committee are strongly encouraged to submit written statements for the Committee's review. Written comments should be addressed to the Roadless Area Conservation National Advisory

Committee Chair and mailed to: USDA Forest Service, ATTN: Roadless Advisory Committee Chair, 1400 Independence Avenue, SW., Mailstop 1104, Washington, DC 20250.

Attendees wishing to comment orally will be allotted a specific amount of time—based on the number of speakers—to address the Committee on May 8, 2006. To offer oral comments on this day, contact the Committee Coordinator, Garth Smelser, at *gsmelser@fs.fed.us* or (202) 205–0992.

Both oral and written comments should (1) specifically address the state petition(s) being reviewed, (2) focus on the basis for agreement/disagreement with a petition, and (3) if in disagreement, recommend an alternative. All public comment will become a permanent part of the official meeting record and, therefore, be made available to the public.

Dated: April 4, 2006.

Frederick Norbury,

Associate Deputy Chief, NFS.

[FR Doc. E6–5268 Filed 4–10–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Funding Availability and Solicitation of Applications

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funding availability and solicitation of applications.

SUMMARY: USDA Rural Development administers rural utilities programs through the Rural Utilities Service. USDA Rural Development announces the Distance Learning and Telemedicine (DLT) Program grant application window for funding during fiscal year (FY) 2006. FY 2005 funding for the DLT grant program was approximately $29.4 million.

In addition to announcing an application window, the Agency announces the available funding, and the minimum and maximum amounts for DLT grants applicable for the fiscal year.

DATES: You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must be postmarked and mailed, shipped, or sent overnight *no later* than June 12, 2006 to be eligible for FY 2006 grant funding. Late or incomplete applications are not eligible for FY 2006 grant funding.
- Electronic copies must be received by June 12, 2006 to be eligible for FY 2006 grant funding. Late or incomplete applications are not eligible for FY 2006 grant funding.

ADDRESSES: You may obtain copies of the FY 2006 application guide and materials for the DLT grant program at the DLT Web site: *http://www.usda.gov/rus/telecom/dlt/dlt.htm.* You may also request the FY 2006 application guide and materials by contacting the DLT Program at (202) 720–0413.

Submit completed paper applications for grants to the Telecommunications Program, USDA Rural Development, United State Department of Agriculture, 1400 Independence Ave., SW., Room 2845, STOP 1550, Washington, DC 20250–1550. Applications should be marked "Attention: Director, Advanced Services Division."

Submit electronic grant applications at *http://www.grants.gov* (Grants.gov), following the instructions you find on that Web site.

FOR FURTHER INFORMATION CONTACT: Orren E. Cameron, III, Director, Advanced Services Division, Telecommunications Program, USDA Rural Development, United States Department of Agriculture, telephone: (202) 720–0413, fax: (202) 720–1051.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS).

Funding Opportunity Title: Distance Learning and Telemedicine Grants.

Announcement Type: Initial announcement.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.855.

Dates: You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must be postmarked and mailed, shipped, or sent overnight no later than June 12, 2006. to be eligible for FY 2006 grant funding. Late or incomplete applications are not eligible for FY 2006 grant funding.
- Electronic copies must be received by June 12, 2006 to be eligible for FY 2006 grant funding. Late or incomplete applications are not eligible for FY 2006 grant funding.

Items in Supplementary Information

I. Funding Opportunity: Brief introduction to the DLT program.
II. Minimum and Maximum Application Amounts: Projected Available Funding.
III. Eligibility Information: Who is eligible, what kinds of projects are eligible, what criteria determine basic eligibility.
IV. Application and Submission Information: Where to get application materials, what constitutes a completed application, how and where to submit applications, deadlines, items that are eligible.
V. Application Review Information: considerations and preferences, scoring criteria, review standards, selection information.
VI. Award Administration Information: award notice information, award recipient reporting requirements.
VII. Agency Contacts: Web, phone, fax, email, contact name.

I. Funding Opportunity

Distance learning and telemedicine grants are specifically designed to provide access to education, training and health care resources for people in rural America. The Distance Learning and Telemedicine (DLT) Program provides financial assistance to encourage and improve telemedicine services and distance learning services in rural areas through the use of telecommunications, computer networks, and related advanced technologies by students, teachers, medical professionals, and rural residents. The grants are awarded through a competitive process.

As in years past, the FY 2006 grant application guide has been changed to reflect recent changes in technology and application trends. Details of changes from the FY 2005 application guide are highlighted throughout this Notice and described in full in the FY 2006 application guide. The Agency strongly encourages all applicants to carefully review and *exactly* follow the FY 2006 application guide and sample materials when compiling a DLT grant application.

II. Maximum and Minimum Amount of Grant Applications; Projected Available Funding

Under 7 CFR 1703.124, the Administrator has determined the maximum amount of an application for a grant in FY 2006 is $500,000 and the minimum amount of a grant is $50,000. The anticipated amount available to fund grant awards in FY 2006 is $20 million.

The USDA Rural Development will make awards and execute documents appropriate to the project prior to any advance of funds to successful applicants.

DLT grants cannot be renewed. Award documents specify the term of each award. Applications to extend existing projects are welcomed (grant applications must be submitted during the application window) and will be evaluated as new applications.

III. Eligibility Information

A. Who is eligible for grants? (See 7 CFR 1703.103.)

1. Only entities legally organized as one of the following are eligible for DLT grants:

a. An incorporated organization or partnership,

b. An Indian tribe or tribal organization, as defined in 25 U.S.C. 450b(b) and (c),

c. A state or local unit of government,

d. A consortium, as defined in 7 CFR 1703.102, or

e. Other legal entity, including a private corporation organized on a for-profit or not-for-profit basis.

2. Individuals are not eligible for DLT grants directly.

3. Electric and telecommunications borrowers under the Rural Electrification Act of 1936 (7 U.S.C. 950aaa *et seq.*) are not eligible for grants.

B. What are the basic eligibility requirements for a project?

1. Required matching contributions: See 7 CFR 1703.125(g) and the FY 2006 application guide for information on required matching contributions.

a. Grant applicants must demonstrate matching contributions, in cash or in kind (new, non-depreciated items), of at least fifteen (15) percent of the total amount of financial assistance requested. Matching contributions *must* be used for eligible purposes of DLT grant assistance (see 7 CFR 1703.121, paragraphs IV.G.1.c and V.B.2.d of this Notice and the FY 2006 application guide).

b. Greater amounts of eligible matching contributions may increase an applicant's score (see 7 CFR 1703.126(b)(4), paragraph V.B.2.d of this notice, and the FY 2006 application guide).

c. Applications that do not provide evidence of the required fifteen percent match which helps determine eligibility will be declared ineligible and returned. See paragraphs IV.G.1.c and V.B.2.d of this Notice, and the FY 2006 application guide for specific information on documentation of matching contributions.

d. Applications that do not document all matching contributions are subject to budgetary adjustment by USDA Rural Development, which may culminate in rejection of an application as ineligible due to insufficient match.

2. The DLT grant program is designed to flow the benefits of distance learning and telemedicine to residents of rural America (see 7 CFR 1703.103(a)(2)). Therefore, in order to be eligible, applicants must:

a. Operate a rural community facility; or

b. Deliver distance learning or telemedicine services to entities that operate a rural community facility or to residents of rural areas, at rates calculated to ensure that the benefit of the financial assistance is passed through to such entities or to residents of rural areas.

3. Rurality.

a. All projects proposed for DLT grant assistance must meet a minimum rurality threshold, to ensure that benefits from the projects flow to rural residents. The minimum eligibility score is 20 points. Please see Section IV of this notice, 7 CFR 1703.126(a)(2), and the FY 2006 application guide for an explanation of the rurality scoring and eligibility criterion.

b. Each application must apply the following criteria to each of its end-user sites, and hubs that are also proposed as end-user sites, in order to determine a rurality score. The rurality score is the average of all end-user sites' rurality scores.

Criterion	Character	Population	DLT Points
Exceptionally Rural Area	Area not within a city, village or borough	≤5000	45
Rural Area	Incorporated or unincorporated area	>5000 and ≤10,000	30
Mid-Rural Area	Incorporated or unincorporated area	>10,000 and ≤20,000	15
Urban Area	Incorporated or unincorporated area	>20,000	0

c. The rurality score is one of the competitive scoring criteria applied to grant applications.

4. Projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*) are not eligible for grants from the DLT Program. Please see 7 CFR 1703.123(a)(11).

C. See Section IV of this Notice and the FY 2006 application guide for a discussion of the items that make up a complete application. You may also refer to 7 CFR 1703.125 for complete grant application items. The FY 2006 application guide provides specific, detailed instructions for each item that constitutes a complete application. The Agency strongly emphasizes the importance of *including every required item* (as explained in the FY 2006 application guide) and strongly encourages applicants to follow the instructions *exactly,* using the examples and illustrations in the FY 2006 application guide. Applications which do not include all items that determine project eligibility and applicant eligibility by the application deadline will be returned as ineligible. Applications that do not include all items necessary for scoring will be scored as is. Please see the FY 2006 application guide for a full discussion of each required item and for samples and illustrations.

IV. Application and Submission Information

A. *Where to get application information.* FY 2006 application guides, copies of necessary forms and samples, and the DLT Program regulation are available from these sources:

1. The Internet: *http://www.usda.gov/rus/telecom/dlt/dlt.htm.*

2. The DLT Program for paper copies of these materials: (202) 720–0413.

B. *What constitutes a completed application?*

1. Detailed information and instructions on each item in the table in paragraph IV.B.6 of this Notice can be found in the sections of the DLT Program regulation listed in the table, and the FY 2006 DLT grant application guide. Applicants are strongly encouraged to read and apply both the regulation and the FY 2006 application guide. Applications that do not include all items that determine project eligibility and applicant eligibility by the application deadline will be returned as ineligible. Applications that do not include all items necessary for scoring will be scored as is. Please see the FY 2006 application guide for a full discussion of each required item and for samples and illustrations.

a. When the table refers to a narrative, it means a written statement, description or other written material prepared by the applicant, for which no form exists. USDA Rural Development recognizes that each project is unique and requests narratives to allow applicants to fully explain their request for financial assistance.

b. When documentation is requested, it means letters, certifications, legal documents or other third-party documentation that provide evidence that the applicant meets the listed requirement. For example, to confirm

Enterprise Zone (EZ) designations, applicants use various types of documents, such as letters from appropriate government bodies and copies of appropriate USDA Web pages. Leveraging documentation sometimes includes letters of commitment from other funding sources, or other documents specifying in-kind donations. Evidence of legal existence is sometimes proven by applicants who submit articles of incorporation. None of the foregoing examples is intended to limit the types of documentation that may be submitted to fulfill a requirement. The DLT Program regulations and the FY 2006 application guide provide specific guidance on each of the items in the table.

2. The FY 2006 DLT application guide and ancillary materials provide all necessary forms and worksheets.

3. While the table in paragraph IV.B.6 of this Notice includes all items of a complete application, USDA Rural Development may ask for additional or clarifying information if the submitted items do not fully address a criterion or other provision. USDA Rural Development will communicate with applicants if the need for additional information arises. Applications which do not include all items that determine project eligibility and applicant eligibility by the application deadline will be returned as ineligible. Applications that do not include all items necessary for scoring will be scored as is. Please see the FY 2006 application guide for a full discussion of each required item and for samples and illustrations.

4. Submit the required application items in the order provided in the FY 2006 application guide. The FY 2006 application guide specifies the format and order of all required items. Applications that are not assembled and tabbed in the order specified delay the review process. Given the high volume of Program interest, incorrectly assembled applications will be returned as ineligible.

5. *DUNS Number.* As required by the OMB, all applicants for grants must supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying. The Standard Form 424 (SF–424) contains a field for you to use when supplying your DUNS number. Obtaining a DUNS number costs nothing and requires a short telephone call to Dun and Bradstreet. Please see *http://www.grants.gov/RequestaDUNS* for more information on how to obtain a DUNS number or how to verify your organization's number.

6. *Table of Required Elements of a Completed Grant Application.*

Application item (7 CFR 1703.125 and CFR 1703.126)	Notes (see the FY 2006 application guide for full instructions)
SF–424 (Application for Federal Assistance form)	*Completely* filled out, including the required detailed listing of all project sites. Application will be ineligible without this information.
Executive Summary	Narrative.
Rural Calculation Table	Recommend using the Agency worksheet. Application will be ineligible without this information.
National School Lunch Program Determination	Recommend using the Agency worksheet; must include source documentation.
EZ/EC or Champion Communities designation	Recommend using the Agency worksheet; and documentation.
Documented Need for Services/Benefits Derived from Services	Narrative and documentation, if necessary.
Innovativeness of the Project	Narrative and documentation.
Budget	Table or spreadsheet; recommend using the Agency format. Application will be ineligible without this information.
Leveraging Evidence and Funding Commitments from All Sources	Documentation. Application will be ineligible without this information.
Financial Information/Sustainability	Narrative. Application will be ineligible without this information.
System/Project Cost Effectiveness	Narrative and documentation.
Telecommunications System Plan	Narrative and documentation; maps or diagrams. Application will be ineligible without this information.
Proposed Scope of Work	Narrative or other appropriate format. Application will be ineligible without this information.
Statement of Experience	Narrative 3-page, single-spaced limit.
Consultation with the USDA State Director, Rural Development	Documentation.
Application conforms with State Strategic Plan per USDA State Director, Rural Development, (if plan exists).	Documentation.
Equal Opportunity and Nondiscrimination	Recommend using the Agency sample form.
Architectural Barriers	Recommend using the Agency sample form.
Flood Hazard Area Precautions	Recommend using the Agency sample form.
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.	Recommend using the Agency sample form.
Drug-Free Workpiace	Recommend using the Agency sample form.
Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.	Recommend using the Agency sample form.
Lobbying for Contracts, Grants, Loans, and Cooperative Agreements	Recommend using the Agency sample form.
Nonduplication of Services	Recommend using the Agency sample form. Application will be ineligible without this information.
Environmental Impact/Historic Preservation Certification	Recommend using the Agency sample form.
Evidence of Legal Authority to Contract with the Government	Documentation. Application will be ineligible without this information.
Evidence of Legal Existence	Documentation. Application will be ineligible without this information.

C. *How many copies of an application are required?*

1. Applications submitted on paper.

a. Submit the original application and two (2) copies to USDA Rural Development.

b. Submit one (1) additional copy to the State government single point of contact (SPOC) (if one has been designated) at the same time as you submit the application to the Agency. See *http://www.whitehouse.gov/omb/grants/spoc.html* for an updated listing of State government single points of contact.

2. Electronically submitted applications.

a. The additional paper copies specified in 7 CFR 1703.128(c) and 7 CFR 1703.136(b) are not necessary if you submit the application electronically through Grants.gov.

b. Submit one (1) copy to the State government single point of contact (if one has been designated) at the same time as you submit the application to the Agency. See *http://www.whitehouse.gov/omb/grants/spoc.html* for an updated listing of State government single points of contact.

D. *How and where to submit an application.* Grant applications may be submitted on paper or electronically.

1. Submitting applications on paper.

a. Address paper applications for grants to the Telecommunications Program, USDA Rural Development, United States Department of Agriculture, 1400 Independence Ave., SW., Room 2845, STOP 1550, Washington, DC 20250–1550. Applications should be marked "Attention: Director, Advanced Services Division."

b. Paper applications must show proof of mailing or shipping by the deadline consisting of one of the following:

(i) A legibly dated U.S. Postal Service (USPS) postmark;

(ii) A legible mail receipt with the date of mailing stamped by the USPS; or

(iii) A dated shipping label, invoice, or receipt from a commercial carrier.

c. Due to screening procedures at the Department of Agriculture, packages arriving via regular mail through the USPS are irradiated, which can damage the contents and delay delivery to the DLT Program. USDA Rural Development encourages applicants to consider the impact of this procedure in selecting their application delivery method.

2. Electronically submitted applications.

a. Applications will not be accepted via fax or electronic mail.

b. Electronic applications for grants will be accepted if submitted through the Federal government's Grants.gov initiative at *http://www.grants.gov.*

c. How to use Grants.gov.

(i) Grants.gov contains full instructions on all required passwords, credentialing and software.

(ii) Central Contractor Registry. Submitting an application through Grants.gov requires that you list your organization in the Central Contractor Registry (CCR). Setting up a CCR listing takes up to five business days, so the Agency strongly recommends that you obtain your organization's DUNS number and CCR listing well in advance of the deadline specified in this notice.

(iii) Credentialing and authorization of applicants. Grants.gov will also require some credentialing and online authentication procedures. These procedures may take several business days to complete, further emphasizing the need for early action by applicants to complete the sign-up, credentialing and authorization procedures at Grants.gov before you submit an application at that Web site.

(iv) Some or all of the CCR and Grants.gov registration, credentialing and authorizations require updates. If you have previously registered at Grants.gov to submit applications electronically, please ensure that your registration, credentialing and authorizations are up to date well in advance of the grant application deadline.

d. USDA Rural Development encourages applicants who wish to apply through Grants.gov to submit their applications in advance of the deadlines.

e. If a system problem occurs or you have technical difficulties with an electronic application, please use the customer support resources available at the Grants.gov Web site.

E. *Deadlines.*

1. Paper applications must be postmarked and mailed, shipped, or sent overnight no later than June 12, 2006 to be eligible for FY 2006 grant funding. Late or incomplete applications are not eligible for FY 2006 grant funding.

2. Electronic grant applications must be received by June 12, 2006 to be eligible for FY 2006 funding. Late or incomplete applications are not eligible for FY 2006 grant funding.

F. *Intergovernmental Review.* The DLT grant program is subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." As stated in paragraph IV.C of this Notice, a copy of a DLT grant application must be submitted to the State single point of contact if one has been designated. Please see *http://www.whitehouse.gov/omb/grants/spoc.html* to determine whether your state has a single point of contact.

G. *Funding Restrictions.*

1. *Eligible purposes.*

a. End-user sites may receive financial assistance; hub sites (rural or non-rural) may also receive financial assistance if they are necessary to provide DLT services to end-user sites. Please see 7 CFR 1703.101(h).

b. To fulfill the policy goals laid out for the DLT Program in 7 CFR 1703.101, the following table lists purposes for financial assistance and whether each purpose is generally considered to be eligible for the assistance. Please consult the FY 2006 application guide and the regulations (7 CFR 1703.102 for definitions, in combination with the portions of the regulation cited in the table) for detailed requirements for the items in the table. USDA Rural Development *strongly* recommends that applicants exclude ineligible items from the grant and match portions of their project budgets. However, some items ineligible for funding or matching contributions may be vital to the project. USDA Rural Development encourages applicants to document those costs in the application's budget. Please see the FY 2006 application guide for a recommended budget format, and detailed budget compilation instructions.

Item	Eligible? (7 CFR 1703.121 and 7 CFR 1703.123)
Lease or purchase of eligible DLT equipment and facilities	Yes—equipment only.
Acquire instructional programming	Yes.
Technical assistance, develop instructional programming, engineering or environmental studies	Yes, not to exceed 10% of the grant.
Medical or education equipment or facilities necessary to the project	No.
Vehicles using distance learning or telemedicine technology to deliver services	No.
Teacher-student links located at the same facility	No.
Links between medical professionals located at the same facility	No.
Site development or building alteration	No.
Land or building purchase	No.
Building construction	No.
Acquiring telecommunications transmission facilities	No.
Salaries, wages, benefits for medical or educational personnel	No.
Salaries/administrative expenses of applicant or project	No.

Item	Eligible? (7 CFR 1703.121 and 7 CFR 1703.123)
Recurring project costs or operating expenses	No. Equipment leases are eligible. Telecommunications connection charges are *not* eligible.
Equipment to be owned by the LEC or other telecommunications service provider, if the provider is the applicant.	Yes.
Duplicate distance learning or telemedicine services	No.
Any project that, for its success, depends on additional DLT financial assistance or other financial assistance that is not assured.	No.
Application preparation costs	No.
Other project costs not covered in regulation	No.
Costs for and facilities providing distance learning broadcasting	No.
Reimburse applicant or others for costs incurred prior to the Agency's receipt of completed application.	No.

c. *Discounts.* The DLT Program regulation has long stated that manufacturers' and service providers' discounts are not eligible matches. The Agency will not consider as eligible any proposed match from a vendor, manufacturer, or service provider whose products or services will be used in the DLT project as described in the application. In recent years, the Agency has noted a trend of vendors, manufacturers and other service providers offering their own products and services as in-kind matches for a project when their products or services will also be purchased with either grant or cash match funds for that project. Such activity is a discount and is therefore not an eligible match. Similarly, if a vendor, manufacturer or other service provider proposes a cash match (or any in-kind match) when their products or services will be purchased with grant or match funds, such activity is a discount and is not an eligible match. The Agency actively discourages such matching proposals and will adjust budgets as necessary to remove any such matches, which may reduce an application's score or result in the application's ineligibility due to insufficient match.

2. *Eligible Equipment and Facilities.* Please see 7 CFR 1703.102 for definitions of eligible equipment, eligible facilities and telecommunications transmission facilities as used in the table above. In addition, the FY 2006 application guide supplies a wealth of information and examples of eligible and ineligible items.

3. *Apportioning budget items.* Many DLT applications propose to use items for a blend of specific DLT project purposes and other purposes. For the first time, USDA Rural Development asks that applicants attribute the proportion (by percentage of use) of the costs of each item to the project's DLT purpose or to other purposes. See the FY 2006 application guide for detailed information on how to apportion use and apportioning illustrations.

V. Application Review Information

A. *Special considerations or preferences.* American Samoa, Guam, Virgin Islands, and Northern Mariana Islands applications are exempt from the matching requirement up to a match amount of $200,000 (see 48 U.S.C. 1469a; 91 Stat. 1164).

B. *Criteria.* 1. Grant applications are scored competitively and subject to the criteria listed below.

2. Grant application scoring criteria (total possible points: 235) See 7 CFR 1703.125 for the items that will be reviewed during scoring, and 7 CFR 1703.126 for scoring criteria.

a. Need for services proposed in the application, and the benefits that will be derived if the application receives a grant (up to 55 points).

(i) Up to 45 of the 55 possible points under this criterion are available to all applicants. Points are awarded based on the required narrative crafted by the applicant. USDA Rural Development encourages applicants to carefully read the cited portions of the Program regulation and the FY 2006 application guide for full discussions of all of the facets of this criterion.

(ii) Up to 10 of the possible 55 possible points under this criterion can be earned only by applications whose overall National School Lunch Program (NSLP) eligibility is less than 50%.

(iii) Applicants whose projects demonstrate an overall NSLP eligibility of less than 50% must include an affirmative request for consideration of the possible 10 points, and documentation of reasons why the NSLP eligibility percentage does not fully demonstrate the economic need of the proposed project areas in their applications.

b. Rurality of the proposed service area (up to 45 points).

c. Percentage of students eligible for the NSLP in the proposed service area (objectively demonstrates economic need of the area) (up to 35 points).

d. Leveraging resources above the required matching level (up to 35 points). Please see paragraph III.B of this Notice for a brief explanation of matching contributions.

e. Level of innovation demonstrated by the project (up to 15 points).

f. System cost-effectiveness (up to 35 points).

g. Project overlap with Empowerment Zone, Enterprise Communities or Champion Communities designations (up to 15 points).

C. *Review standards.* 1. In addition to the scoring criteria that rank applications against each other, the Agency evaluates grant applications for possible awards on the following items, according to 7 CFR 1703.127:

a. Financial feasibility.

b. Technical considerations. If the application contains flaws that would prevent the successful implementation, operation or sustainability of a project, the Agency will not award a grant.

c. Other aspects of proposals that contain inadequacies that would undermine the ability of the project to comply with the policies of the DLT Program.

2. Applications which do not include all items that determine project eligibility and applicant eligibility by the application deadline will be returned as ineligible. Applications that do not include all items necessary for scoring will be scored as is. Please see the FY 2006 application guide for a full discussion of each required item and for samples and illustrations.

3. If an application contains all items necessary to determining eligibility, but does not contain all items that affect its score, the application will be scored based on the information submitted by the deadline. The Agency will not request missing items that affect the application's score.

4. The FY 2006 application guide specifies the format and order of all

required items. Applications that are not assembled and tabbed in the order specified delay the review process. Given the high volume of Program interest, incorrectly assembled applications will be returned as ineligible.

5. Most DLT projects contain numerous project sites. USDA Rural Development requires that site information be consistent throughout an application. Sites must be referred to by the same designation throughout all parts of an application. USDA Rural Development has provided a site worksheet that requests the necessary information, and can be used as a guide by applicants. USDA Rural Development strongly recommends that applicants complete the site worksheet, listing all requested information for each site. Applications without consistent site information will be returned as ineligible.

D. *Selection Process.* Grant applications are ranked by final score, and by application purpose (education or medical). USDA Rural Development selects applications based on those rankings, subject to the availability of funds. USDA Rural Development may allocate grant awards between medical and educational purposes, but is not required to do so. In addition, USDA Rural Development has the authority to limit the number of applications selected in any one State during a fiscal year. See 7 CFR 1703.127.

VI. Award Administration Information

A. *Award Notices.* USDA Rural Development generally notifies applicants whose projects are selected for awards by faxing an award letter. USDA Rural Development follows the award letter with a grant agreement that contains all the terms and conditions for the grant. USDA Rural Development recognizes that each funded project is unique, and therefore may attach conditions to different projects' award documents. An applicant must execute and return the grant agreement, accompanied by any additional items required by the grant agreement, within 120 days of the selection date.

B. *Administrative and National Policy Requirements:* The items listed in Section IV of this notice, and the DLT Program regulation, FY 2006 application guide and accompanying materials implement the appropriate administrative and national policy requirements.

C. *Reporting.* 1. *Performance reporting.* All recipients of DLT financial assistance must provide annual performance activity reports to USDA Rural Development until the project is complete and the funds are expended. A final performance report is also required; the final report may serve as the last annual report. The final report must include an evaluation of the success of the project in meeting DLT Program objectives. See 7 CFR 1703.107.

2. *Financial reporting.* All recipients of DLT financial assistance must provide an annual audit, beginning with the first year a portion of the financial assistance is expended. Audits are governed by United States Department of Agriculture audit regulations. Please see 7 CFR 1703.108.

VII. Agency Contacts

A. Web site: *http://www.usda.gov/rus/telecom/dlt/dlt.htm.* The DLT Web site maintains up-to-date resources and contact information for DLT programs.

B. Phone: 202–720–0413.

C. Fax: 202–720–1051.

D. E-mail: *dltinfo@usda.gov.*

E. Main point of contact: Orren E. Cameron, III, Director, Advanced Services Division, Telecommunications Program, USDA Rural Development, United States Department of Agriculture.

Dated: March 31, 2006.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E6–5224 Filed 4–10–06; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committees

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting; correction.

SUMMARY: The Bureau of the Census (Census Bureau) is issuing this notice to correct the dates of the meetings for the Census Advisory Committees (CACs) on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations. The Census Bureau originally published in the **Federal Register** on Monday, April 3, 2006 (63 FR 16548), a Notice of Public Meeting for the above named committees. This notice corrects the **DATES** section of the earlier notice. The **DATES** section should now read that the meetings will be held on April 27–28, 2006.

DATES: April 27–28, 2006. On April 27, the meeting will begin at approximately 8:45 a.m. and end at approximately 4 p.m. On April 28, the meeting will begin at approximately 8:30 a.m. and end at approximately 3 p.m.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Ms. Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Office Building 3, Washington, DC 20233, telephone (301) 763–2070, TTY (301) 457–2540.

Dated: April 5, 2006.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. E6–5265 Filed 4–10–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 10–2006]

Foreign-Trade Zone 163—Ponce, Puerto Rico Area, Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Codezol, C.D., grantee of FTZ 163, requesting authority to expand FTZ 163, in the Hormigueros, Puerto Rico area, adjacent to the Ponce Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 3, 2006.

FTZ 163 was approved on October 18, 1989 (Board Order 443, 54 FR 46097, 11/01/89) and expanded on April 18, 2000 (Board Order 1091, 65 FR 24676, 4/27/00) and April 25, 2005 (Board Order 1397, 70 FR 36117, 6/22/05). The zone project currently consists of the following sites in the Ponce, Puerto Rico, area: *Site 1* (106 acres)—within the Port of Ponce area, including a site (11 acres) located at 3309 Avenida Santiago de Los Caballeros, Ponce; *Site 2* (191 acres, 5 parcels)—Peerless Oil & Chemicals, Inc., Petroleum Terminal Facilities located at Rt. 127, Km. 17.1, Penuelas; *Site 3* (13 acres, 2 parcels)—Rio Piedras Distribution Center located within the central portion of the Quebrada Arena Industrial Park, and the Hato Rey Distribution Center located within the northeastern portion of the Tres Monjitas Industrial Park, San Juan; *Site 4* (14 acres)—warehouse facility located at State Road No. 3, Km. 1401, Guayama; *Site 5* (256 acres, 34 parcels)—Mercedita Industrial Park

located at the intersection of Route PR–9 and Las Americas Highway, Ponce; and *Site 6* (86 acres)—Coto Laurel Industrial Park located at the southwest corner of the intersection of Highways PR–56 and PR–52, Ponce.

An application is pending with the FTZ Board to expand FTZ 163 (FTZ Docket 67–2005) to include a site at Guaynabo, Puerto Rico. The proposed site consists of 17 acres and is located at State Road No. 1, Km 21.1 in Guaynabo.

The applicant is requesting authority to expand the zone to include an additional site (6 acres) for a warehouse facility in Hormigueros, some 41 miles west of Ponce: *Proposed* Site 8 (6 acres)—located on PR Highway #2, at Km.165.2, Hormigueros. The site is owned by Jose A. Lugo Lugo. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses below:

1. *Submissions via Express/Package Delivery Services*: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building–Suite 4100W, 1099 14th Street, NW, Washington, DC 20005; or

2. *Submissions via U.S. Postal Service*: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW, Washington, DC 20230.

The closing period for their receipt is June 12, 2006. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 26, 2006).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No. 1 listed above and Codezol, C.D., 3309 Avenida Santiago de los Caballeros, Ponce, Puerto Rico 00734.

Dated: April 4, 2006.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E6–5334 Filed 4–10–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 40-2005]

Withdrawal of Application for Expansion for Ponce, Puerto Rico Area, FTZ 163

Notice is hereby given of the withdrawal of the application requesting authority to expand FTZ 163, in the Ponce, Puerto Rico area, adjacent to the Ponce Customs port of entry. The application was filed on August 8, 2005.

The withdrawal was requested because of changed circumstances, and the case has been closed without prejudice.

Dated: April 3, 2006.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E6–5337 Filed 4–10–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–851]

Dynamic Random Access Memory Semiconductors from the Republic of Korea: Amended Final Results of Countervailing Duty Administrative Review

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

EFFECTIVE DATE: April 11, 2006.

FOR FURTHER INFORMATION CONTACT: Ryan Langan, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2613.

SUPPLEMENTARY INFORMATION:

Background

On March 14, 2006, the Department of Commerce ("the Department") issued its *Final Results* in the countervailing duty administrative review of dynamic random access memory semiconductors from the Republic of Korea. *See Dynamic Random Access Memory Semiconductors from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 71 FR 14174 (March 21, 2006) ("*Final Results*"). On March 21, 2006, Hynix Semiconductor, Inc. ("Hynix") filed timely ministerial error allegations pursuant to 19 CFR 351.224(c)(2). On March 27, 2006, Micron Technology, Inc. ("the petitioner") responded to Hynix's allegations.

Scope of the Order

The products covered by this order are dynamic random access memory semiconductors (DRAMS) from Korea, whether assembled or unassembled. Assembled DRAMS include all package types. Unassembled DRAMS include processed wafers, uncut die, and cut die. Processed wafers fabricated in Korea, but assembled into finished semiconductors (DRAMS) outside Korea are also included in the scope. Processed wafers fabricated outside Korea and assembled into finished semiconductors in Korea are not included in the scope.

The scope of this order additionally includes memory modules containing DRAMS from Korea. A memory module is a collection of DRAMS, the sole function of which is memory. Memory modules include single in-line processing modules, single in-line memory modules, dual in-line memory modules, small outline dual in-line memory modules, Rambus in-line memory modules, and memory cards or other collections of DRAMS, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules that contain additional items which alter the function of the module to something other than memory, such as video graphics adapter boards and cards, are not included in the scope. This order also covers future DRAMS module types.

The scope of this order additionally includes, but is not limited to, video random access memory, and synchronous graphics ram, as well as various types of DRAMS, including fast page-mode, extended data-out, burst extended data-out, synchronous dynamic RAM, rambus DRAM, and Double Data Rate DRAM. The scope also includes any future density, packaging, or assembling of DRAMS. Also included in the scope of this order are removable memory modules placed on motherboards, with or without a central processing unit, unless the importer of the motherboards certifies with U.S. Customs and Border Protection ("CBP") that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation or, consistent with the Memorandum from Stephen J. Claeys to David M. Spooner, "*Final Scope Ruling*," dated January 12, 2006, unless the importer of the motherboards certifies with CBP that the motherboard is being imported for repair or

refurbishment, and that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation, except as necessary in the course of repair or refurbishment of the motherboards, in which case any subject memory modules removed from the motherboards will be destroyed.

The scope of this order does not include DRAMS or memory modules that are re-imported for repair or replacement, as stated in the *Final Scope Ruling*, provided that the importing company can demonstrate that the DRAMS or memory modules are being re-imported for repair or replacement to the satisfaction of CBP.

The DRAMS subject to this order are currently classifiable under subheadings 8542.21.8005 and 8542.21.8020 through 8542.21.8030 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The memory modules containing DRAMS from Korea, described above, are currently classifiable under subheadings 8473.30.10.40 and 8473.30.10.80 of the HTSUS. Removable memory modules placed on motherboards, described above, are classifiable under subheading 8471.50.0085, 8517.30.5000, 8517.50.1000, 8517.50.5000, 8517.50.9000, 8517.90.3400, 8517.90.3600, 8517.90,3800, 8517.90.4400 and 8543.89.9600. Although the HTSUS subheadings are provided for convenience and customs purposes, the department's written description of the scope of this order remains dispositive.

Scope Rulings

On December 29, 2004, the Department received a request from Cisco Systems, Inc. ("Cisco"), to determine whether removable memory modules placed on motherboards that are imported for repair or refurbishment are within the scope of the countervailing duty ("CVD order"). The Department initiated a scope inquiry pursuant to 19 CFR 351.225(e) on February 4, 2005. On June 16, 2005, the Department issued a preliminary scope ruling, finding that removable memory modules placed on motherboards that are imported for repair or refurbishment are within the scope of the CVD order. *See* Memorandum from Julie H. Santoboni to Barbara E. Tillman, "*Preliminary Scope Ruling*," dated June 16, 2005. On July 5, 2005, and July 22, 2005, comments on the preliminary scope ruling were received from Cisco. On July 6, 2005, and July 15, 2005, comments were received from Micron.

On January 12, 2006, the Department issued a final scope ruling, finding that removable memory modules placed on motherboards that are imported for repair or refurbishment are not within the scope of the CVD order if the importer certifies that it will destroy any memory modules that are removed during repair or refurbishment. *See Final Scope Ruling*. The scope of the CVD order was clarified to CBP in message number 6037201, dated February 6, 2006.

Amended Final Results

In accordance with section 751(h) of the Act and 19 CFR 351.224(e), we have determined that the Department made certain ministerial errors in the *Final Results* and, therefore, we are amending the *Final Results* to correct these ministerial errors. For a detailed discussion of the ministerial error allegations and the Department's analysis, *see* Memorandum to Stephen J. Claeys, *Countervailing Duty Administrative Review: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, regarding Ministerial Error Allegations for Final Results, dated March 31, 2006, which is on file in the Central Records Unit ("CRU"), room B–099 of the main Department building.

The revised countervailing duty rate for Hynix for the period April 7, 2003, through December 31, 2003, is listed below:

Producer/Exporter	Original Final Rate	Amended Final Rate
Hynix Semiconductor, Inc.	58.22%	58.11%

Assessment Rates

The Department will instruct CBP to liquidate shipments of DRAMS by Hynix entered or withdrawn from warehouse, for consumption from April 7, 2003, through December 31, 2003, at 58.11 percent *ad valorem* of the entered value. We will also instruct CBP to take into account the "provisional measures cap" in accordance with 19 CFR 351.212(d).

Cash Deposits

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties at 58.11 percent *ad valorem* of the entered value on all shipments of the subject merchandise from Hynix, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This cash deposit rate shall remain in effect until publication of the final results of the next administrative review.

We are issuing and publishing these amended final results and notice in accordance with sections 751(a)(1), 751(h) and 771(i)(1) of the Act.

Dated: April 4, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–5340 Filed 4–10–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Pure Magnesium and Alloy Magnesium From Canada: Notice of Extension of Time Limit for 2004 Administrative Reviews

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

EFFECTIVE DATE: April 11, 2006.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1174.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department of Commerce ("Department") to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On September 28, 2005, the Department published a notice of

initiation of administrative reviews of the countervailing duty orders on pure magnesium and alloy magnesium from Canada, covering the period January 1, 2004, through December 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631 (September 28, 2005). The preliminary results for the countervailing duty administrative reviews of pure magnesium and alloy magnesium from Canada are currently due no later than May 3, 2006.

Extension of Time Limits for Preliminary Results

The Department requires additional time to review and analyze Norsk Hydro Canada Inc.'s ("NHCI") request for revocation of the orders in part. Moreover, the Department requires additional time for the possibility of verification in these reviews, and it is thus not practicable to complete these reviews within the original time limit (*i.e.*, May 3, 2006). Therefore, the Department is extending the time limit for completion of these preliminary results to not later than July 12, 2006, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 5, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–5339 Filed 4–10–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040506B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; receipt of Exempted Fishing Permit application.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has decided that the subject Exempted Fishing Permit (EFP) application contains all the required information and warrant's farther consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). Based on preliminary review of this project, a Categorical Exclusion (CE) from requirements to prepare either an Environmental Impact Statement (EIS) or an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) appears to be justified. However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow two commercial fishing vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP, which would enable researchers to investigate the feasibility of using low profile gillnets to catch flounders while limiting roundfish bycatch, would allow for exemptions from the FMP as follows: Gulf of Maine (GOM) Rolling Closure Areas I, II, III, IV, and V.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before April 26, 2006.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on the GOM Low Profile Gillnet Study." Comments may also be sent via facsimile (fax) to (978) 281–9135, or submitted via e-mail to the following address: *DA6-32@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Mark Grant, Fishery Management Specialist, (978) 281–9145, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: A complete application for an EFP was submitted on March 2, 2006, by Dr. Pingguo He of the University of New Hampshire (UNH) for a project funded by the Northeast Consortium. The primary goal of this joint project with the Massachusetts Division of Marine Fisheries is to test lower vertical profile flounder gillnets to reduce the catch of roundfish, such as cod, while retaining flounders, such as winter flounder, in inshore western GOM waters. Researchers anticipate that, if the experimental net is successful, data gathered during this study may be useful in the establishment of a Special Access Program for the use of NE multispecies B days-at-sea (DAS) in a future action.

The project would be conducted between May 1, 2006, and April 30, 2007, and would include flume tank trials and 45 days of at-sea trials. Two types of low profile gillnets, each 8 meshes deep with variations in flotation and hanging ratio, would be compared with three commercial cod and flounder gillnets, each 25 meshes deep. The participating vessels would fish the nets in fleets of 10 nets, two nets per type, alternately rigged so that two experimental nets can be compared with the three control nets. One vessel would fish six fleets per day; the other would fish eight fleets per day. The nets would be soaked for 24 hr before hauling.

All specimens caught would be sampled and measured. All undersized or otherwise protected fish would be returned to the sea as quickly as practicable after measurement and examination. The overall fishing mortality is estimated to be 30 percent of the average commercial fishing mortality that would result from the proposed number of DAS. The researcher anticipates that a total of 11,000 lb (4,990 kg) of fish would be harvested throughout the course of the study and there would be 8,420 lb (3,819 kg) of regulatory discards (see Table 1). All legal-sized fish, within the possession limit, would be sold, with the proceeds returned to the project for the purpose of enhancing future research.

TABLE 1: ESTIMATED CATCH AND DISCARD BY SPECIES

Species	Harvested		Discarded	
	lb	kg	lb	kg
Cod	4,000	1,814	700	318
Winter Flounder	2,000	907	100	45
Gray Sole	1,000	454	100	45
American Plaice	1,000	454	100	45
Yellowtail Flounder	200	91	20	9
Monkfish	200	91	20	9
White Hake	400	181	100	45
Lobster	0	0	200	91
Dogfish	0	0	5,000	2,268
Skates	0	0	2,000	907

All at-sea research would be conducted from three fishing vessels, each of which would be fishing in a different area. This EFP would cover two vessels, the F/V Barbara & Lyn (permit # 230151, O.N. 552653) and the F/V Holly & Abby (permit # 250467, O.N. 590567). A third vessel, the F/V Capt. Al (permit # 221462, O.N. 693618), has previously been issued a separate EFP in the form of an extension. The F/V Barbara & Lyn would fish north of 42°10′ N. lat., and west of 69°00′ W. long. The F/V Holly & Abby would fish south of 42°40′ N. lat., and west of 70°00′ W. long. Both vessels would fish exclusively outside the Western GOM Closed Area. Researchers have asked for an exemption to the regulations at 50 CFR 648.81(f) establishing the GOM Rolling Closure Areas I, II, III, IV, and V because they believe that an optimum mixture of flounders and cod for testing the experimental gear will be present in the waters of the Western GOM during May and June. All research would be conducted using A DAS.

The applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request.

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

Dated: April 5, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–5323 Filed 4–10–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–22]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–22 with attached transmittal and policy justification.

Dated: April 5, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

In reply refer to:
I-06/003063

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-22, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Australia for defense articles and services estimated to cost $2 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 06-22

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Australia

(ii) Total Estimated Value:

Major Defense Equipment*	$ .983 billion
Other	$1.017 billion
TOTAL	$2.000 billion

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: up to four C-17 GLOBEMASTER III aircraft, up to 18 Pratt & Whitney F117-PW-100 engines, up to four AN/AAQ-24V(13) Large Aircraft Infrared Countermeasures (LAIRCM) Systems, up to 15 AN/AVS-9 Night Vision Goggles; Personnel Life Support equipment, spare and repair parts, supply support, training equipment, publications and technical data, United States Government and contractor technical assistance and other related elements of logistics support.

(iv) Military Department: Air Force (SEN)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 3 APR 2006

* as defined in Section 47(6) of the Arms Export Control Act.

Transmittal No. 06-22

POLICY JUSTIFICATION

Australia – C-17 GLOBEMASTER III Aircraft

The Government of Australia requested a possible sale of up to four C-17 GLOBEMASTER III aircraft, up to 18 Pratt & Whitney F117-PW-100 engines, up to four AN/AAQ-24V(13) Large Aircraft Infrared Countermeasures (LAIRCM) Systems, up to 15 AN/AVS-9 Night Vision Goggles; Personnel Life Support equipment, spare and repair parts, supply support, training equipment and support, publications and technical data, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $2 billion.

Australia is one of our most important allies in the Western Pacific. The strategic location of this political and economic power contributes significantly to ensuring peace and economic stability in the region. Australia's efforts in operations Iraqi and Enduring Freedom, peacekeeping, and humanitarian operations have made a significant impact to regional, political, and economic stability and have served U.S. national security interests. This proposed sale is consistent with those objectives and facilitates burden sharing with our allies.

Australia does not currently have a heavy airlift capability and must rely on outside sources for these services. This assistance normally takes the form of either U.S. Air Force airlift or contract carriers that use Russian heavy airlift aircraft. The C-17 will greatly improve Australia's capability to rapidly deploy in support of global coalition operations and will also greatly enhance its ability to lead regional humanitarian/peacekeeping operations.

Australia has the ability to absorb and employ the C-17. It plans on basing the C-17s at Royal Australian Air Force (RAAF) Base Amberly. RAAF Base Amberly will become the primary base for airlift and tanker aircraft and is currently undergoing the infrastructure upgrades required to support the C-17 and other large aircraft Australia has currently contracted to purchase.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

This proposed sale will involve the following contractors:

Boeing Company	Long Beach, California
Boeing Company Training Systems	St. Louis, Missouri
AAI Services Corporation	Goose Creek, South Carolina
United Technologies Corporation	East Hartford, Connecticut
Northrop Grumman Systems Corporation	Rolling Meadows, Illinois

Additional subcontractors may be needed depending on the exact nature of the contracting arrangements established. Offset agreements associated with this proposed sale are expected, but at this time the specific offset agreements are undetermined and will be defined in negotiations between the purchaser and contractors.

This proposed sale will result in Boeing establishing a facility at RAAF Base Amberly that will provide logistics support for the C-17 under the current GLOBEMASTER Support Partnership. The proposed plan will require seven each U.S. Government and Australian representatives at the facility. Implementation of this proposed sale will require the assignment of up to ten each U.S. Government and contractor representatives to travel to Australia for annual participation in training, program management, and technical review.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 06-22

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Boeing C-17 GLOBEMASTER III military airlift aircraft is the newest, most flexible cargo aircraft to enter the U. S. Air Force fleet. The C-17 is capable of rapid strategic delivery of up to 170,900 pounds of personnel and equipment to main operating bases or to forward operating bases. The aircraft is also capable of short field landings with a full cargo load. Finally, the aircraft can perform tactical airlift and airdrop missions and can also transport litters and ambulatory patients during aeromedical evacuation when required. A fully integrated electronic cockpit and advanced cargo systems allow a crew of three: the pilot, copilot and loadmaster, to operate the aircraft on any type of mission.

2. The AN/AAQ-24V(13) Large Aircraft Infrared Countermeasure (LAIRCM) is an active countermeasure system designed to defeat man-portable, shoulder-fired, and vehicle-launched infrared guided missile guidance by directing a high-intensity modulated laser beam into the missile seeker. This aircraft self-protection suite will provide fast and accurate threat detection, processing, tracking, and countermeasures to defeat current and future generation infrared missile threats. LAIRCM is designed for installation on a wide range of fixed-wing aircraft.

3. The AN/AVS-9 Night Vision Goggles (NVG), a 3rd generation aviation device offers a higher resolution, high gain, and photo response to near infrared. Features include independent eye-span adjustment; 25-mm eye relief eyepieces, which easily accommodate eyeglasses, and a low-profile battery pack. Minus-blue filter screens glare from cockpit instrument lighting; and a class B filter (available with some variants) can accommodate aircraft color displays. Other features include: low-distortion optics and automatic brightness control. The Night Vision Imaging System (NVIS) modification includes cockpit modifications to provide NVG-compatible cockpit lighting that optimizes NVG sensitivity, as well as external lighting capable of operating in a covert mode wherein only NVG-equipped personnel can see the aircraft external lighting. The hardware, technical data, and documentation to be provided are Unclassified.

4. The AN/ALE-47 Counter-Measures Dispensing System (CMDS) is an integrated, threat-adaptive, software-programmable dispensing system capable of dispensing chaff, flares and active radio frequency expendables. The threats countered by the CMDS include radar-directed anti-aircraft artillery (AAA), radar command-guided missiles, radar homing guided missiles, and infrared (IR) guided missiles. The system is internally mounted and may be operated as a stand-alone system or may be integrated with other on-board electronic warfare and avionics systems. The AN/ALE-47 uses threat data received over the aircraft interfaces to assess the threat situation and to determine a response. Expendable routines tailored to the immediate aircraft and threat environment may be dispensed using one of four operational modes. The hardware, technical data, and documentation to be provided are Unclassified.

5. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 06–3446 Filed 4–10–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–18]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–18 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: April 5, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

31 MAR 2006
In reply refer to:
I-05/016243

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-18, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Korea for defense articles and services estimated to cost $130 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 06-18

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Korea

(ii) Total Estimated Value:

Major Defense Equipment*	$112 million
Other	$ 18 million
TOTAL	$130 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 42 AGM-84L (air-launched) and 16 UGM-84L (submarine-launched) HARPOON guided missiles, 22 MK 607 MOD 0 containers, 2 HARPOON Training Ballistic Air Missiles, containers; training devices; spare and repair parts; technical support; support equipment; personnel training and training equipment; technical data and publications; U.S. Government and contractor engineering and logistics support services; and other related elements of logistics support.

(iv) Military Department: Navy (AJG and AJF)

(v) Prior Related Cases, if any: numerous cases dating back to 1976

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 31 MAR 2006

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Korea - HARPOON Block II Missiles

The Government of Korea has requested a possible sale of 42 AGM-84L (air-launched) and 16 UGM-84L (submarine-launched) HARPOON guided missiles, 22 MK 607 MOD 0 containers, 2 HARPOON Training Ballistic Air Missiles, containers; training devices; spare and repair parts; technical support; support equipment; personnel training and training equipment; technical data and publications; U.S. Government and contractor engineering and logistics support services; and other related elements of logistics support. The estimated cost is $130 million.

The Government of Korea is one of the major political and economic powers in East Asia and the Western Pacific and a key partner of the United States in ensuring peace and stability in that region. It is vital to the U.S. national interest to assist our ally in developing and maintaining a strong and ready self-defense capability, which will contribute to an acceptable military balance in the area. This proposed sale is consistent with those objectives. No foreign policy or military developments affect this proposed sale.

Korea intends to use the purchase to upgrade and modernize its existing HARPOON missile capability. The missiles will be installed on South Korea Navy Destroyers, Submarines, Patrol Boats and F-16 and P-3C aircraft. Korea already has operational HARPOON missiles and weapons stations in its military inventory. It will have no difficulty absorbing these additional missiles into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: The Boeing Company of St. Louis, Missouri and Delex Systems, Incorporated, of Vienna, Virginia. There are no known offset agreements proposed in connection with this potential sale.

U.S. Government or contractor personnel may be temporarily assigned in-country, to conduct technical and program management oversight and support requirements.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 06-18

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AGM-84L and UGM-84L (A/UGM-84L) HARPOON missile is an Anti-Surface Warfare (ASuW) missile in air- and submarine-launched versions that provides naval forces with a capability to engage targets in both the "blue water" regions and the littorals of the world. The highest classification of any data and/or items associated with this proposed sale of A/UGM-84L missiles, including publications, documentation, operations, supply, maintenance, and training is Confidential.

2. The A/UGM-84L incorporates components, software, and technical design information that are considered sensitive. The following HARPOON components being conveyed by the proposed sale are considered sensitive and are classified Confidential:

a. Radar seeker
b. Global Positioning System/Inertial Navigation System (GPS/INS)
c. Operational Flight Program (OFP) software
d. Missile operational characteristics and performance data
e. Coastal Target Suppression

These elements are essential to the ability of the HARPOON missile to selectively engage hostile targets under a wide range of operational, tactical, and environmental conditions.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 06–3447 Filed 4–10–06; 8:45am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board 2006 Summer Study on Information Management for Net-Centric Operations will meet in closed session on *April 20–21, 2006, May 18–19, 2006,* and *July 18–19, 2006;* at Systems Planning Corporation; and on *June 15, 2006,* at Strategic Analysis Inc. The address for both locations is 3601 Wilson Boulevard, 3rd Floor, Arlington, VA. These meetings continue the task force's work and will consist of classified and proprietary briefings on current technologies and programs.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Assess the features and capabilities VTOL/STOL aircraft should have in order to support the nation's defense needs through at least the first half of the 21st century.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: LtCol Scott Dolgoff, USA, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *scott.dolgoff@osd.mil,* or via phone at (703) 571–0082.

Due to scheduling difficulties, there is insufficient time to provide timely notice required by Section 10(a) of the Federal Advisory Committee Act and § 102–3.150(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR 102–3.150(b), which further requires publication at least 15 calendar days prior to the meeting.

Dated: April 6, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–3445 Filed 4–10–06; 8:45 am]
BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Joint Environmental Impact Statement/ Environmental Impact Report for the San Francisquito Creek Study, San Mateo and Santa Clara Counties, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the California Environmental Quality Act (CEQA), and Public Law 102–484 section 2834, as amended by Public Law 104–106 section 2867, the Department of the Army and the San Francisquito Creek Joint Powers Authority (SFCJPA) hereby give notice of intent to prepare a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the San Francisquito Creek Project in San Mateo and Santa Clara Counties, CA to consider opportunities to reduce both fluvial and tidal flooding, to reduce the threat to public safety due to flooding and to restore ecosystem quality and function, where possible. The U.S. Army Corps of Engineers (Corps) is the lead agency for this project under NEPA. The SFCJPA is the lead agency for this project under CEQA.

A public scoping meeting will be held to solicit comments on the environmental scope of the project and the appropriate scope of the joint EIS/EIR.

DATES: The public scoping meeting will be held on April 27, 2006 from 7 to 8:30 p.m. at the International School of the Peninsula, Cohn Campus, 151 Laura Lane, Palo Alto, Santa Clara County, CA. Written comments from all interested parties are encouraged and must be received on or before May 26, 2006.

ADDRESSES: Written comments and requests for information should be sent to Sarah Gaines, U.S. Army Corps of Engineers, San Francisco District, 333 Market St., 7th floor, San Francisco, CA 94105, *Sara.M.Gaines@spd02.usace.army.mil,* (415) 977–8533.

FOR FURTHER INFORMATION CONTACT: For questions concerning the CEQA aspects of the study, contact Cynthia D'Agosta, San Francisquito Creek Joint Powers Authority, 701 Laurel Street, Menlo Park, CA 94025, (650) 330–6765.

SUPPLEMENTARY INFORMATION: The San Francisquito Creek watershed encompasses an area of approximately 45 square miles, extending from the ridge of the Santa Cruz Mountains to San Francisco Bay in California. The majority of the watershed lies in the Santa Cruz Mountains and Bay Foothills northwest of Palo Alto; the remaining 7.5 square miles lie on the San Francisquito alluvial fan near San Francisco Bay.

San Francisquito Creek watershed contains mainstem San Francisquito Creek and the main tributary streams of West Union Creek, Corte Madera Creek, Bear Creek and Los Trancos Creek. Los Trancos Creek and San Francisquito Creek form the boundary between San Mateo and Santa Clara counties. The reaches are divided up as follows: Reach 1 extends from San Francisco Bay to the upstream face of Highway 101; Reach 2 extends from Highway 101 to Highway 280; and Reach 3 continues from Highway 280 to the ridge of the Santa Cruz Mountains. Also under consideration are two additional reaches subject to tidal flooding. The tidal reaches are as follows: (1) Tidal Reach 1 begins near the railroad trestle south of the Dumbarton Bridge and extends to the Menlo Park City limits in San Mateo County; (2) Tidal Reach 2 is from Matadero Creek to Adobe Creek in Santa Clara County.

The non-Federal sponsor for the Feasibility phase of the study is the SFCJPA. The SFCJPA is comprised of the following member agencies: The City of Palo Alto; the City of Menlo Park; the City of East Palo Alto; the Santa Clara Valley Water District; and the San Mateo County Flood Control District, as well as the following associate members: Stanford University and the San Francisquito Watershed Council.

1. *Background.* The carrying capacity of San Francisquito Creek is affected by the presence of development, vegetation, sedimentation, land subsidence, levee settlement, erosion, and culverts and bridges in the project area. Tidal influence compounds the flooding problem in Reach 1, particularly during times of heavy rainfall and high tides. Erosion has caused the undermining of roads and structures in many places throughout

the watershed. Flooding on San Francisquito Creek affects the cities on Menlo Park and East Palo Alto in San Mateo County, and the city of Palo Alto in Santa Clara County.

Flooding has been a common occurrence from San Francisquito Creek. The most recent flood event occurred as a result of record creek flows in February 1998, when the Creek overtopped its banks in several areas, affecting approximately 1,700 residential and commercial structures and causing more than $26.6 million in property damages. After these floods, the SFCJPA was formed to pursue flood control and restoration opportunities in the area.

Low-lying portions of the cities of Palo Alto, East Palo Alto, and Menlo Park are also subject to tidal flooding caused by the potential overtopping or breaching of Bayfront levees during extreme high tide events. In this scenario, the waters of San Francisco Bay could inundate all land below the high tide level, potentially flooding hundreds of residential and commercial properties in all three cities.

The current Corps Feasibility study is a continuation of the authority passed on May 22, 2002 by the Committee on Transportation and Infrastructure of the United States House of Representatives, which is in accordance with Section 4 of the Flood Control Act of 1941. The resolution reads as follows:

"Resolved by the Committee on Transportation and Infrastructure of the United States House of Representatives, That, the Secretary of the Army, in accordance with Section 4 of the Flood Control Act of 1941, is hereby requested to conduct a study of the Guadalupe River and Tributaries, California, to determine whether flood damage reduction, environmental restoration and protection, storm water retention, water conservation and supply, recreation and other allied purposes are advisable in the interest of the San Francisquito Creek Watershed, including San Francisquito Creek, Santa Clara and San Mateo Counties, California."

2. *Proposed Action.* The joint EIS/EIR will consider the environmental impact of possible flood damage reduction and ecosystem restoration alternatives with the end goal of reducing flood damage and improving environmental conditions in the San Francisquito Creek Watershed.

3. *Proposed Alternatives.* The joint EIS/EIR will include at a minimum the following alternatives. The possible measures have been organized by topic areas: no action, non-structural, fluvial flooding, tidal flooding, and ecosystem restoration. Measures will be combined to compose project alternatives.

a. *No Action:* With the No Action Plan (which is the "Future Without-Project Condition"), it is assumed that no long-term actions would be taken to provide flood control improvements along San Francisquito Creek or the Bayfront levees; flood control improvements would consist of emergency fixes to damage areas, consistent with available funding.

b. *Non-Structural Alternative:* A non-structural plan is comprised entirely of nonstructural measures or a combination of nonstructural measures and traditional structural measures. Examples of common nonstructural measures include: Flood warning and evacuation, relocation, land management designated floodways, and flood proofing measures such as raising structures.

c. *Fluvial Flooding Action Measures—Reach 1:* Some flood damage reduction measures that have been proposed for Reach 1 include (1) Widening the culvert at Highway 101 by constructing an additional culvert barrel and covering the surface opening between Highway 101 and West Bayshore Road, (2) raising levees or constructing floodwalls, (3) constructing weirs in existing levees to allow controlled overflow to open space areas, (4) widening the channel and constructing new levees, and (5) constructing a secondary channel in the Palo Alto Municipal Golf Course area.

d. *Tidal Flooding Action Measures—Reach 1 and Tidal Reaches 1 and 2:* Protection against tidal flooding could be provided by (1) the installation of flap gates that control the amount of tidal water entering San Francisquito Creek, (2) construction of higher levees or floodwalls along the creek to prevent tidal waters from entering the creek, and/or (3) construction of new or upgraded Bayfront levees or floodwalls between the city of Menlo Park's northernmost city limits and Adobe Creek to protect against tidal inundation.

e. *Ecosystem Restoration Measures—Reach 1:* Depending on the flood-damage-reduction measure selected for Reach 1, a number of restoration activities could be performed in this area. Restoration would primarily be in the form of wetland restoration and could be implemented in the area of the Palo Alto Municipal Golf Course (if it is redesigned to accommodate the project), in the creekside area if the levees are set back or in areas further downstream. Because threatened, endangered and special-status species occur in the study area, any restoration project would need to provide improved habitat quality for these species.

f. *Fluvial Flooding Action Measures—Reaches 2&3:* Some flood-damage-reduction measures under consideration for Reaches 2&3 include: (1) Upland detention, (2) concrete channelization, (3) bank stabilization, (4) new levee or floodwall construction, (5) channel widening, (6) construction of diversion conduit(s), (7) construction of new reservoirs or modification of existing reservoir(s), and (8) replacement or modification of bridges.

g. *Ecosystem Restoration Measures—Reaches 2&3:* A number of methods have been proposed for improving the habitat quality of San Francisquito Creek, depending on the need for bank stabilization in any particular area. These methods include: (1) Stabilize bank through use of vegetation only (remove invasive plant materials and replace riparian canopy), (2) repair structural bank protection locally, (3) use vegetative structure to reinforce existing bank protection, (4) remove and replace structural bank protection, (5) regrade and replant using biological techniques of bank stabilization, (6) stabilize banks by creating vegetated terraces, (7) combine a biotechnical approach to bank stabilization with toe placement of large rocks to prevent bank washout and toe scour, (8) use vegetated riprap along the bank, (9) stabilize the bank using a near-vertical vegetated wall, and (10) removal or modification of steelhead trout migration barriers.

4. *Environmental Considerations.* In all cases, environmental considerations will include riparian habitat, aquatic habitat, sediment budget, fish passage, recreation, public access, aesthetics, cultural resources, and environmental justice as well as other potential environmental issues of concern.

5. *Scoping Process.* The Corps and SFCJPA are seeking input from interested federal, state, and local agencies, Native American representatives, and other interested private organizations and parties through provision of this notice and holding of a scoping meeting (see **DATES**). The purpose of this meeting is to solicit input regarding the environmental issues of concern and the alternatives that should be discussed in the joint EIS/EIR. The public comment period closes May 26, 2006.

6. *Availability of Joint EIS/EIR.* The public will have an additional opportunity in the NEPA/CEQA process to comment on the proposed

alternatives after the draft joint EIS/EIR is released to the public in 2008.

Philip T. Feir,

Lieutenant Colonel, Corps of Engineers, District Engineer.

[FR Doc. 06–3458 Filed 4–10–06; 8:45am]

BILLING CODE 3710–19–M

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity; Notice of Members

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education.

What Is the Purpose of This Notice?

The purpose of this notice is to list the members of the National Advisory Committee on Institutional Quality and Integrity (National Advisory Committee) and to give the public the opportunity to nominate candidates for the positions to be vacated by those members whose terms will expire on September 30, 2006. This notice is required under Section 114(c) of the Higher Education Act (HEA), as amended.

What is the Role of the National Advisory Committee?

The National Advisory Committee is established under Section 114 of the HEA, as amended, and is composed of 15 members appointed by the Secretary of Education from among individuals who are representatives of, or knowledgeable concerning, education and training beyond secondary education, including representatives of all sectors and type of institutions of higher education.

The National Advisory Committee meets at least twice a year and provides recommendations to the Secretary of Education pertaining to:

- The establishment and enforcement of criteria for recognition of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA.
- The recognition of specific accrediting agencies or associations.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.

As the Committee deems necessary or on request, the Committee also advises the Secretary about:

- The eligibility and certification process for institutions of higher education under Title IV, HEA.
- The development of standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies in order to establish the interim eligibility of those institutions to participate in Federally funded programs.
- The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

What Are the Terms of Office for Committee Members?

The term of office of each member is 3 years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed is appointed for the remainder of the term. A member may be appointed, at the Secretary's discretion, to serve more than one term.

Who Are the Current Members of the Committee?

The current members of the National Advisory Committee are:

Members With Terms Expiring 9/30/06

- Dr. Carol D'Amico, Chancellor, Ivy Tech State College, Central Indiana.
- Mr. Ronald S. Blumenthal, Senior Vice President, Administration, Kaplan University, Iowa.
- Dr. Thomas E. Dillon, President, Thomas Aquinas College, California.
- Mr. David Johnson, III, Student, Brigham Young University and University of Utah.

Members With Terms Expiring 9/30/07

- Dr. Lawrence J. DeNardis, President Emeritus, University of New Haven, Connecticut.
- Dr. Geri H. Malandra, Associate Vice Chancellor for Institutional Planning and Accountability, University of Texas System.
- Ms. Andrea Fischer-Newman, Senior Vice President of Government Affairs, Northwest Airlines.
- Dr. Laura Palmer Noone, President, University of Phoenix, Arizona.

Members With Terms Expiring 9/30/08

- Dr. Karen A. Bowyer, President, Dyersburg State Community College, Tennessee.
- Dr. Arthur Keiser, Chancellor, Keiser Collegiate System, Florida.
- Dr. George A. Pruitt, President, Thomas A. Edison State College, New Jersey.

How Do I Nominate An Individual for Appointment As a Committee Member?

If you would like to nominate an individual for appointment to the Committee, send the following information to the Committee's Executive Director:

- A copy of the nominee's resume; and
- A cover letter that provides your reason(s) for nominating the individual and contact information for the nominee (name, title, business address, and business phone and fax numbers).

The information must be sent by June 2, 2006 to the following address: Francesca Paris-Albertson, Executive Director, National Advisory Committee on Institutional Quality and Integrity, U.S. Department of Education, room 7110, MS 7592, 1990 K Street, NW., Washington, DC 20006.

How Can I Get Additional Information?

If you have any specific questions about the nomination process or general questions about the National Advisory Committee, please contact Ms. Francesca Paris-Albertson, the Committee's Executive Director, telephone: (202) 219–7009, fax: (202) 219–7008, e-mail: *Francesca.Paris-Albertson@ed.gov* between 9 a.m. and 5 p.m., Monday through Friday.

Authority: 20 U.S.C. 1011c.

Dated: April 5, 2006.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. E6–5250 Filed 4–10–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fund for the Improvement of Postsecondary Education—Special Focus Competition: EU–U.S. Atlantis Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.116J.

Dates: Applications Available: April 11, 2006.

Deadline for Transmittal of Applications: July 7, 2006.

Deadline for Intergovernmental Review: September 7, 2006.

Eligible Applicants: Institutions of higher education (IHEs) or combinations of IHEs and other public and private nonprofit institutions and agencies.

Estimated Available Funds: $500,000.

Estimated Range of Awards: $50,000–$150,000 for the first year; $200,000–

$600,000 for the four-year duration of the grant.

Estimated Average Size of Awards: $100,000 for the first year; $400,000 for the four-year duration of the grant.

Maximum Award: $696,000 for four years. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 5.

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 purpose of this program is to provide grants or enter into cooperative agreements with eligible applicants to improve postsecondary education opportunities by developing and implementing undergraduate joint or dual degree programs. The EU-U.S. Atlantis program is a revision of the European Union-United States Cooperation Program in Higher Education and Vocational Education and Training.

Priority: Under this competition, we are particularly interested in applications that address the following priority.

Invitational Priority: For FY 2006 this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is designed to support the formation of educational consortia of American and European institutions to support cooperation in the coordination of curricula, the exchange of students, and the opening of educational opportunities between the United States and the European Union. This priority relates to the purpose of the program to develop and implement undergraduate joint or dual degree programs.

This invitational priority is established in cooperation with the European Union. These awards support only the participation of U.S. institutions and students in these consortia. European Union institutions participating in any consortium proposal responding to the invitational priority may apply, respectively, to the Directorate-General for Education and Culture (DG EAC), European Commission for funding under a separate but parallel EU competition.

Program Authority: 20 U.S.C. 1138–1138d.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $500,000.

Estimated Range of Awards: $50,000 to $150,000 for the first year; $200,000–$600,000 for the four-year duration of the grant.

Estimated Average Size of Awards: $100,000 for the first year; $400,000 for the four-year duration of the grant.

Maximum Award: $696,000 for four years. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 5.

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 or combinations of IHEs and other public and private nonprofit institutions and agencies.

2. *Cost Sharing or Matching:* Although this program does not require cost sharing or matching for eligibility, it is expected that U.S applicants will provide an institutional financial commitment to the project.

IV. Application and Submission Information

1. *Address to Request Application Package:* Frank Frankfort, Fund for the Improvement of Postsecondary Education, EU–U.S. Atlantis Program, 1990 K Street, NW., room 6152, Washington, DC 20006–8544. Telephone: (202) 502–7513.

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 contact the 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 84.116J.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, of computer diskette) by contacting the program contact person 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 and instructions 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 the section of the narrative that addresses the selection criteria to the equivalent of no more than twenty (20) pages, using the following standards:

- A "page" is 8.5 x 11", one side only, with 1" margins at the top, bottom, and both sides. Page numbers and a document identifier may be within the 1" margin.
- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, and captions, and all text in charts, tables, figures, and graphs.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. Applications submitted in any other font (including Times Roman and Arial Narrow) will be rejected.
- Use not less than 12-point font.

The page limit applies only to the project narrative and does not include Part I, the cover sheet; Part II, the budget section, including an optional budget narrative; Part IV, the assurances and certifications; the table of contents or any of the appended materials such as the bibliography, or the letters of support. We strongly recommend that you limit the resumes to one page. 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: April 11, 2006.

Deadline for Transmittal of Applications: July 7, 2006.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application

electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, 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: September 7, 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 program.

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 program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.* Applications for grants under the EU-U.S. Atlantis Program—CFDA Number 84.116J must be submitted electronically using the Grants.gov 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.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under Exception to Electronic Submission Requirement.

You may access the electronic grant application for the EU-U.S. Atlantis Program at: *http://www.grants.gov*. You must search for the downloadable application package for this program by the CFDA number 84.116J. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

• 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 submission 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/GetStarted*). 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/assets/GrantsgovCoBrandBrochure8X11.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 points because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (SF 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. 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 acknowledgement 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 Technical Issues with the Grants.gov System: 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 the 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.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a federal holiday, the next business day following the federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Frank Frankfort, Fund for the Improvement of Postsecondary Education, EU–U.S. Atlantis Program, 1990 K Street, NW., room 6152, Washington, DC 20006–8544. FAX: (202) 502–7877. Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. 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 84.116J), 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 84.116J), 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 qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You 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 84.116J), 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 the Application for Federal Education Assistance (SF 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

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

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.

4. *Performance Measures:* The success of this competition depends upon (1) the percentage of students pursuing a joint or dual degree who persist from one academic year to the next (persistence); and (2) the percentage of students who graduate within the project's stated time for completing a joint or dual degree (completion). These two performance measures constitute the Fund for the Improvement of Postsecondary Education's (FIPSE) indicators of the success of the program. If funded, you will be asked to collect and report data from your project on steps taken toward achieving these goals. Consequently, applicants are advised to include these two outcomes in conceptualizing the design,

implementation, and evaluation of their proposed projects. Persistence and completion rates are important outcomes that ensure the ultimate success of international consortia funded through this program.

VII. Agency Contact

For Further Information Contact: Frank Frankfort, Fund for the Improvement of Postsecondary Education, EU-U.S. Atlantis Program, 1990 K Street, NW., room 6152, Washington, DC 20006–8544. Telephone: (202) 502–7513.

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 to the program contact person listed in this section.

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: April 6, 2006.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. E6–5332 Filed 4–10–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Interagency Committee on Disability Research (ICDR)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of public meeting and request for written comments.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Interagency Committee on Disability Research (ICDR). Notice of this meeting is intended to inform members of the general public of their opportunity to attend the meeting and provide comment. During the public meeting and through the submission of written comments, we encourage individuals with disabilities, including persons who represent service providers, service provider organizations, disability and rehabilitation research and policy groups, and representatives of advocacy organizations with specialized knowledge and experience, to suggest specific ways to improve future research for individuals with disabilities. We are also interested in hearing from individuals concerning how well the existing Federal research programs are responding to the changing needs of individuals with disabilities. We are interested in comments covering a wide range of research areas. Your information will be used by the ICDR in its deliberations; however, we cannot respond individually to your comments. The meeting will be open and accessible to the general public.

SUPPLEMENTARY INFORMATION: The Interagency Committee on Disability Research (ICDR), authorized by the Rehabilitation Act of 1973, as amended, promotes coordination and cooperation among Federal departments and agencies conducting disability and rehabilitation research programs. Representatives of 35 Federal entities regularly participate in the ICDR. In addition to the full committee, five subcommittees address specific issues: Disability Statistics, Medical Rehabilitation, Technology, Employment, and the New Freedom Initiative (NFI). The goals of the ICDR and its Subcommittees are to: (1) Increase public input and involvement in ICDR deliberations to ensure research efforts lead to solutions for identified needs, (2) improve the visibility of the ICDR and Federal disability research in general, (3) identify and solve common problems through collaboration among agencies, and (4) initiate and monitor activities involving interagency coordination and cooperation in support of the NFI.

According to statute (Rehabilitation Act of 1973, as amended): "After receiving input from individuals with disabilities and the individuals' representatives, the Committee shall identify, assess, and seek to coordinate all Federal programs, activities, and projects, and plans for such programs, activities, and projects with respect to the conduct of research related to rehabilitation of individuals with disabilities."

The ICDR maintains a public Web site at *http://www.icdr.us,* which contains additional information about the ICDR. This public Web site also provides a comment form for collection of comments regarding the Federal research agenda in disability and rehabilitation research. The purpose of this public meeting and request for written comments is to ensure that individuals who may not have access to the Internet and the ICDR public Web site also have an opportunity to submit comments.

The Director of the National Institute on Disability and Rehabilitation Research, Office of Special Education and Rehabilitative Services, Department of Education is Chair of the ICDR. The Chair announces a public meeting in 2006 and invites written comments with respect to the Federal disability and rehabilitation research agenda. Representatives of the ICDR will be present at the meeting to hear your comments. Your comments will be used by the ICDR in its deliberations; however we will not respond individually to your comments.

Date, Time, and Address: The meeting will take place May 23, 2006, from 10 a.m. to 3 p.m. at the Capital Hilton Hotel, 1001 16th Street NW., Washington DC, 20036. Telephone: (202) 393–1000.

FOR FURTHER INFORMATION CONTACT: Robert Jaeger, Executive Secretary ICDR, U.S. Department of Education, 550 12th Street, SW., room 6050, Potomac Center Plaza, Washington, DC 20202–2700. Telephone: (202) 245–7386. Fax: (202) 245–7633. Internet: *Robert.Jaeger@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–4475.

Individuals who need accommodations for a disability in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, material in alternative format) should notify Robert Jaeger at (202) 245–7386 or (202) 205–4475 (TDD) ten business days in advance of the meeting. The meeting location is accessible to individuals with disabilities.

Participants: Individuals who wish to present comments at the public meeting must reserve time on the agenda by contacting the individual identified under Reservations and Additional Meeting Information. Reservations for presenting comments will be accepted on a first-come, first-served basis. Given

the expected number of individuals interested in presenting comments at the meeting, reservations should be made as soon as possible.

Format: Participants will be allowed approximately five minutes to present their comments, depending upon the number of individuals who reserve time on the agenda. Prior to the meeting, participants must submit written copies of their comments, and other written or electronic versions of information such as agency or organization policy statements, recommendations, research findings and research literature. Walk-ins must bring two written copies of their comments.

Reservations and Additional Meeting Information: All individuals attending the public meeting, including those presenting comments, must make reservations by May 9, 2006, by contacting: Robert Jaeger, Executive Secretary, ICDR.

If time permits, individuals who have not registered in advance may be allowed to make comments.

Assistance to Individuals with Disabilities at the Public Meeting: The meeting room and proceedings will be accessible to individuals with disabilities. In addition, when making reservations, anyone presenting comments or attending the meeting who needs special accommodations, such as sign language interpreters, Brailled agenda, computer-assisted real-time (CART) reporting, should inform the previously listed individual of his or her specific accessibility needs. You must make requests for accommodations on or before May 9, 2006. Although we will attempt to meet a request we receive after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Due Dates: We request your registration to attend along with written and e-mail comments to be provided no later than May 9, 2006.

ADDRESSES: Submit all comments to: Robert Jaeger, Executive Secretary ICDR, U.S. Department of Education, 550 12th Street, SW., room 6050, Potomac Center Plaza, Washington, DC 20202–2700. Telephone: (202) 245–7386. Fax: (202) 245–7633. Internet: *Robert.Jaeger@ed.gov.*

If you use a telecommunications device for the deaf, you may call (202) 205–4475.

Individuals with disabilities may obtain a copy of this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document: You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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.*

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–5331 Filed 4–10–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity (National Advisory Committee); Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education.

What Is the Purpose of This Notice?

The purpose of this notice is to announce the public meeting of the National Advisory Committee and invite third-party oral presentations before the Committee. This notice also presents the proposed agenda and informs the public of its opportunity to attend this meeting. The notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

When and Where Will the Meeting Take Place?

We will hold the public meeting on Monday, June 5, 2006, from 9:30 a.m. until approximately 5:30 p.m.; on Tuesday, June 6, 2006, from 8:30 a.m. until approximately 5:30 p.m., and on Wednesday, June 7, 2006, from 8:30 a.m. until approximately 3:30 p.m. in the Gallery I and II Meeting Rooms at the Hilton Arlington Hotel, 950 North Stafford Street, Arlington, VA 22203. You may call the hotel at (703) 528–6000 to inquire about rooms.

What Assistance Will Be Provided to Individuals With Disabilities?

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Who Is the Contact Person for the Meeting?

Please contact Ms. Francesca Paris-Albertson, Executive Director of the National Advisory Committee on Institutional Quality and Integrity, if you have questions about the meeting. You may contact her at the U.S. Department of Education, Room 7110, 1990 K St., NW., Washington, DC 20006; telephone: (202) 219–7009; fax: (202) 219–7008; e-mail: *Francesca.Paris-Albertson@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What Is the Authority for the National Advisory Committee?

The National Advisory Committee on Institutional Quality and Integrity is established under Section 114 of the Higher Education Act (HEA) as amended, 20 U.S.C. 1011c.

What Are the Functions of the National Advisory Committee?

The Committee advises the Secretary of Education about:

- The establishment and enforcement of the Criteria for Recognition of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA.
- The recognition of specific accrediting agencies or associations.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, HEA.
- The development of standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies in order to establish the interim eligibility of those institutions

to participate in Federally funded programs.

• The relationship between: (1) Accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.

• Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

What Items Will Be on the Agenda for Discussion at the Meeting?

Agenda topics will include the review of agencies that have submitted petitions for renewal of recognition and/or an expansion of an agency's scope of recognition, and the review of agencies that have submitted an interim report or a progress report.

What Agencies Will the National Advisory Committee Review at the Meeting?

The following agencies will be reviewed during the June 5–7, 2006 meeting of the National Advisory Committee:

Nationally Recognized Accrediting Agencies

Petition for Initial Recognition

1. National Oriental Medicine Accreditation Agency (Requested scope of recognition: The accreditation of freestanding educational institutions of Oriental Medicine and programs that offer entry-level professional doctoral degrees in Oriental Medicine.)

Petitions for Renewal of Recognition That Include an Expansion of the Scope of Recognition

1. *Accrediting Council for Independent Colleges and Schools (Current scope of recognition:* The accreditation of private postsecondary institutions offering certificates or diplomas and postsecondary institutions offering associate's, bachelor's, or master's degrees in programs that are designed to train and educate persons for careers or professions where business applications or doctrines, supervisory or management techniques, professional or paraprofessional applications, and other business-related applications support or constitute the career.) (Requested scope of recognition: The accreditation of private postsecondary institutions offering certificates or diplomas, and postsecondary institutions offering associate, bachelor's, or master's degrees in programs designed to educate students for professional, technical, or occupational careers including those that offer those programs via distance education.)

2. *American College of Nurse-Midwives, Division of Accreditation (Current scope of recognition:* The accreditation and preaccreditation of basic certificate and basic graduate nurse-midwifery education programs for registered nurses, the pre-accreditation and accreditation of pre-certification nurse-midwifery education programs and the accreditation and pre-accreditation of direct-entry midwifery programs for the non-nurse.) (Requested scope of recognition: The accreditation and preaccreditation of basic certificate, basic graduate nurse-midwifery, direct-entry midwifery, and pre-certification nurse-midwifery education programs. The accreditation and pre-accreditation of freestanding institutions of midwifery education that may offer other related health care programs to include nurse practitioner programs, and including those institutions and programs that offer distance education.)

3. *Joint Review Committee on Education in Radiologic Technology (Current scope of recognition:* The accreditation of educational programs for radiographers and radiation therapists.) (Requested scope of recognition: The accreditation of educational programs in radiography, including magnetic resonance; radiation therapy; and medical dosimetry at the certificate, associate degree, and baccalaureate degree levels, including programs using distance education methodology.) (**Note:** The agency has revised its requested scope of recognition from that which was published in the February 6, 2006 **Federal Register** notice. The agency's original request included the accreditation of programs at the graduate level.)

4. *National Council for Accreditation of Teacher Education (Current scope of recognition:* The accreditation throughout the United States of professional education units providing baccalaureate and graduate degree programs for the preparation of teachers and other professional personnel for elementary and secondary schools.) (Requested scope of recognition: The accreditation throughout the United States of professional education units providing baccalaureate and graduate degree programs for the preparation of teachers and other professional personnel for elementary and secondary schools including programs offering distance education.)

Petition for Renewal of Recognition That Includes a Contraction of the Scope of Recognition

1. *Accreditation Council for Pharmacy Education (Current scope of recognition:* The accreditation and preaccreditation of professional degree programs in pharmacy leading to the degrees of Baccalaureate in Pharmacy and Doctor of Pharmacy.) (Requested scope of recognition: The accreditation and preaccreditation of professional degree programs in pharmacy leading to the Doctor of Pharmacy degree.)

Petitions for Renewal of Recognition

1. *American Dental Association, Commission on Dental Accreditation (Current scope of recognition:* The accreditation of predoctoral dental education programs (leading to the D.D.S or D.M.D degree); advanced dental education programs and allied dental education programs that are fully operational or have attained "accreditation eligible" status, and for its accreditation of programs offered via distance education.) (Requested scope of recognition: The accreditation of predoctoral dental education programs (leading to the DDS or DMD degree), advanced dental education programs, and allied dental education programs that are fully operational or have attained "Initial Accreditation" status, and for accreditation of its programs offered via distance education.) (Note: The requested scope of recognition reflects no change in scope but instead the agency's change in nomenclature from "Accreditation Eligible" to "Initial Accreditation.")

2. *Council on Chiropractic Education, Commission on Accreditation (Current and requested scope of recognition:* The accreditation of programs leading to the Doctor of Chiropractic degree and single-purpose institutions offering the Doctor of Chiropractic program.)

3. *Joint Review Committee on Educational Programs in Nuclear Medicine Technology (Current and requested scope of recognition:* The accreditation of higher education programs for the nuclear medicine technologist.)

4. *National Accrediting Commission of Cosmetology Arts and Sciences (Current and requested scope of recognition:* The accreditation throughout the United States of postsecondary schools and departments of cosmetology arts and sciences and massage therapy.)

5. *Southern Association of Colleges and Schools, Commission on Colleges (Current and requested scope of recognition:* The accreditation and

preaccreditation ("Candidate for Accreditation") of degree-granting institutions of higher education in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia, including distance education programs offered at those institutions.)

6. *Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities* (*Current and requested scope of recognition:* The accreditation and preaccreditation ("Candidate for Accreditation") of senior colleges and universities in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands and the Republic of the Marshall Islands, including distance education programs offered at those institutions.)

Interim Report (An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted renewed recognition to the agency.)

1. Accrediting Bureau of Health Education Schools

2. American Speech-Language-Hearing Association, Council on Academic Accreditation in Audiology and Speech—Language Pathology

3. Distance Education and Training Council, Accrediting Commission

Progress Report (A report describing the agency's progress in implementing new accreditation processes and/or procedures.)

1. Montessori Accreditation Council for Teacher Education, Commission on Accreditation

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Interim Report

1. Puerto Rico State Agency for the Approval of Public Postsecondary Vocational, Technical Institutions and Programs

Progress Report

1. Oklahoma State Regents for Higher Education

State Agency Recognized for the Approval of Nurse Education

Petition for Renewal of Recognition

1. New York State Board of Regents, State Education Department, Office of the Professions (Nursing Education)

SUPPLEMENTARY INFORMATION: The agency listed below, which was scheduled for review during the National Advisory Committee's June 2006 meeting, will be postponed for review until the Fall 2006 meeting.

1. The petition for renewal of recognition submitted by the American Bar Association, Council of the Section of Legal Education and Admissions to the Bar (Current and requested scope of recognition: The accreditation throughout the United States of programs in legal education that lead to the first professional degree in law, as well as freestanding law schools offering such programs.)

Who Can Make Third-Party Oral Presentations at This Meeting?

We invite you to make a third-party oral presentation before the National Advisory Committee concerning the recognition of any agency published in this notice.

How Do I Request To Make an Oral Presentation?

You must submit a written request to make an oral presentation concerning an agency listed in this notice to the contact person identified earlier in this notice *so that the request is received via mail, fax, or e-mail no later than May 12, 2006.*

Your request (*no more than 6 pages maximum*) must include:

1. The names, addresses, phone and fax numbers, and e-mail addresses of all persons seeking an appearance,

2. The organization they represent, and

3. A brief summary of the principal points to be made during the oral presentation.

If you wish, you may attach documents illustrating the main points of your oral testimony. Please keep in mind, however, *that any attachments are included in the 6-page limit.* Please do not send materials directly to Committee members. Only materials submitted by the deadline to the contact person listed in this notice and in accordance with these instructions become part of the official record and are considered by the Committee in its deliberations. Documents received after the May 12, 2006 deadline will not be distributed to the National Advisory Committee for their consideration. Individuals making oral presentations may not distribute written materials at the meeting.

If I Cannot Attend the Meeting, Can I Submit Written Comments Regarding an Accrediting Agency in Lieu of Making an Oral Presentation?

This notice requests third-party oral testimony, not written comment. Requests for written comments on agencies that are being reviewed during this meeting were published in the **Federal Register** on February 6, 2006. The National Advisory Committee will receive and consider only written comments submitted by the deadline specified in the above-referenced **Federal Register** notice.

How Do I Request To Present Comments Regarding General Issues Rather Than Specific Accrediting Agencies?

At the conclusion of the meeting, the National Advisory Committee, at its discretion, may invite attendees to address the Committee briefly on issues pertaining to the functions of the Committee, which are listed earlier in this notice. If you are interested in making such comments, you should inform Ms. Paris-Albertson before or during the meeting.

How May I Obtain Access to the Records of the Meeting?

We will record the meeting and make a transcript available for public inspection at the U.S. Department of Education, 1990 K St., NW., Washington, DC 20006 between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. It is preferred that an appointment be made in advance of such inspection.

How May I Obtain Electronic Access to This Document?

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/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/index.html.*

Authority: 5 U.S.C. Appendix 2.

Dated: April 5, 2006.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. E6–5252 Filed 4–10–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC06–716A–001, FERC–716A]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

April 5, 2006.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of January 19, 2006 (71 FR 3065–3066) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by May 18, 2006.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–34, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, and original and 14 copies of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC06–716A–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-Filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to this e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's Home page using the "*eLibrary*" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC–716A "Application for Transmission Services Under Section 211 of the Federal Power Act."

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0168.

The Commission is now requesting that OMB approve and extend the expiration date for an additional three years with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary for the Commission to carry out its responsibilities in implementing the Statutory provisions of sections 211 of the Federal Power Act (FPA), 16 U.S.C. (824) as amended by the Energy Policy Act 1992 (Pub. L. 102–486) 106 Stat. 2776. Under section 211, the Commission may order transmission services if it finds that such action would be in the public interest and would not unreasonably impair the continued reliability of systems affected by the order. Section 211 allows an electric utility, Federal power marketing agency or any other person generating electric energy for sale or resale to apply to the Federal Energy Regulatory Commission for an order under subsection (a) requiring a transmitting utility to provide transmission service and notify the affected parties.

5. *Respondent Description:* The respondent universe currently comprises 8 companies (on average) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 20 total hours, 8 respondents (average), 1 response per respondent, and 2.5 hours per response (average).

7. *Estimated Cost Burden to respondents:* 20 hours/2080 hours per years × $112,767 per year = $1,084. The cost per respondent is equal to $136.

Statutory Authority: Section 211 of the Federal Power Act (FPA), 16 U.S.C. (824) as amended by the Energy Policy Act 1992 (Pub. L. 102–486) 106 Stat. 2776.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5303 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC06–716–001, FERC–716]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

April 5, 2006.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of January 19, 2005 (71 FR 3064–3065) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by May 18, 2006.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to

OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–34; Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC06–716–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's website at *http://www.ferc.gov* and click on "Make an E-Filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to this e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676. or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC–716 "Good Faith Request for Transmission Service and Response by Transmitting Utility under sections 211(a) & 213(a) of the FPA".

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.*: 1902–0170.

The Commission is now requesting that OMB approve and extend the expiration date for an additional three years with no changes to the existing collection. The information is not filed with the Commission but is used in conjunction with FERC–716A which is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary for the Commission to carry out its responsibilities in implementing the statutory provisions of sections 211 and 213 of the Federal Power Act (FPA) as amended and added by the Energy Policy Act of 1992. The information is not filed with the Commission, however, the request and response may be analyzed as a part of a section 211 proceeding. This collection of information covers the information that must be contained in the request and in the response.

The Energy Policy Act of 1992 amended section 211 of the FPA and expanded the Commission's authority to order transmission service. Under the revised section 211, the Commission may order transmission services if it finds that such action would be in the public interest, would not unreasonably impair the continued reliability of electric systems affected by the order, and would, meet the requirements of amended section 211 of the FPA.

The Commission's policy statement in Public Law 93–3, Policy Statement Regarding Good Faith Requests for Transmission Services and Responses by Transmitting Utilities under sections 211(a) and 213(a) of the Federal Power Act, as amended, implemented a data exchange between a transmission requester and a transmitting utility prior to the submission of a section 211 request with the Commission. Components of the data exchange are identified in the Code of Federal Regulations (CFR), 18 CFR 2.20. The general policy sets forth standards by which the Commission determines whether and when a valid good faith request for transmission has been made under section 211 of the FPA. In developing the standards, the Commission sought to encourage an open exchange of information with a reasonable degree of specificity and completeness between the party requesting transmission services and the transmitting utility. As a result, twelve components of a good faith estimate are identified under 18 CFR 2.20.

5. *Respondent Description:* The respondent universe currently comprises 8 companies (on average) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 800 total hours, 8 respondents (average), 1 response per respondent, and 100 hours per response (average).

7. *Estimated Cost Burden to respondents:* 800 hours/2080 hours per years × $112,767 per year = $43,372. The cost per respondent is equal to $5,421.

Statutory Authority: Sections 211 and 213 of the Federal Power Act as amended and added by the Energy Policy Act 1992.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5320 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–287–000]

ANR Pipeline Company; Notice of Tariff Filing

April 5, 2006.

Take notice that on March 31, 2006, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Eleventh Revised Sheet No. 153 and Seventh Revised Sheet No. 153A, to become effective on May 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible 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. E6–5311 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–288–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

April 5, 2006.

Take notice that on March 31, 2006, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective May 1, 2006:

Fourteenth Revised Sheet No. 17A.
First Revised Sheet No. 17B.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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. E6–5312 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1656–000]

California Independent System Operator Corporation; Notice Announcing Electronic Service

April 3, 2006.

Take notice that the Federal Energy Regulatory Commission is establishing electronic service (eService) for the above-captioned docket. In Order No. 653, the Commission revised its regulations to, among other things, provide that service of documents by the Secretary of the Commission shall be by electronic means, unless such means are impractical, and also to foster the use of electronic methods of service among parties on service lists in all proceedings. Moreover, for proceedings initiated on or after March 21, 2005, Order No. 653 required that any person or entity requesting inclusion on a service list must comply with all procedures for eService. *Electronic Notification of Commission Issuances*, 110 FERC ¶ 61, 110 (2005), *order on reh'g*, 111 FERC ¶ 61,021 (2005); *see also Notice That The Commission Secretary Will End Duplicate Paper Service of Commission Issuances*, Docket No. RM04–9–000 (June 17, 2005).

Participants in the above-captioned proceeding have expressed to Commission staff an interest in electronic service. Accordingly, to facilitate the electronic service of filings among participants in this proceeding, the Commission will establish eService for this docket effective May 8, 2006.

To participate in eService for this proceeding, participants must follow the instructions set out in the attachment to this Notice and submit the information requested by April 17, 2006. Participation in eService for this proceeding is not mandatory, but participants are encouraged to take advantage of this opportunity to serve and receive service of documents in a prompt and cost-effective manner.

Magalie R. Salas,

Secretary.

Attachment—Use of Eservice for ER02–1656–000

Participants who will use eService in this proceeding must meet the following two requirements by April 17, 2006.

1. eRegister using FERC Online (the following link may be used *http://www.ferc.gov/docs-filing/eregistration.asp*).

2. Send an e-Mail to *ER02–1656-eService@ferc.gov* that includes the following information:

a. The e-Mail subject line 'ER02–1656-eService.'

b. In the e-Mail body, include the e-Mail address with which the participant eRegistered with FERC Online and the name of the organization on whose behalf they previously intervened in the proceeding.

On May 8, 2006, the Commission will issue a notice announcing the establishment of the WebService list for ER02–1656–000 based on the information received by participants in this proceeding. Thereafter, a participant serving a document by e-mail should:

1. Retrieve and download the Web Service List for ER02–1656–000 using the participant's eRegistered FERC Online e-mail address and password (the following link may be used *http://www.ferc.gov/docs-filing/eservice.asp)*. The participant can specify the type of e-mail address as 'E-mail' and use the 'Download List' function on the Web Service List page.

2. After opening the saved list using any text editor, the participant may copy the downloaded list to their clipboard, paste it into the 'To:' line of the e-mail editor and enter an appropriate subject and e-mail body. To avoid e-mail delivery problems to companies who bar attachments or limit attachment size, a participant using eService should include in the e-mail body the link to the document in the FERC eLibrary system. The participant will receive this link to the document by

email from the FERC eFiling system when the particular document is accepted for filing by FERC.

For more information about eService, eRegistration, or eFiling contact *ferconlinesupport@ferc.gov* or call 866–208–3676 and include a current telephone number and e-mail address.

[FR Doc. E6–5288 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–290–000]

CenterPoint Energy Gas Transmission Company; Notice of Tariff Filing

April 5, 2006.

Take notice that on March 31, 2006, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheets to be effective May 1, 2006:

Eighth Revised Sheet No. 17.
Eighth Revised Sheet No. 18.

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. E6–5313 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–290–000]

CenterPoint Energy Gas Transmission Company ; Notice of Tariff Filing

April 5, 2006.

Take notice that on March 31, 2006, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheets to be effective May 1, 2006:

Eighth Revised Sheet No. 17
Eighth Revised Sheet No. 18

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. E6–5314 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP94–2–015]

Columbia Gas Transmission Corporation; Notice of Refund Report

April 4, 2006.

Take notice that on March 20, 2006, Columbia Gas Transmission Corporation (Columbia) tendered for filing with the Federal Energy Regulatory Commission ("Commission") its Refund Report made to comply with the April 17, 1995 Settlement ("Settlement") in Docket No. GP94–02, et al., as approved by the Commission on June 15, 1995 *Columbia Gas Transmission Corp.*, 71 FERC ¶ 61,337 (1995).

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 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.

Protest Date: 5 p.m. Eastern Time on April 11, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5299 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–286–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

April 5, 2006.

Take notice that on March 31, 2006, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective May 1, 2006:

Fourth Revised Sheet No. 0.
Second Revised Sheet No. 1149.
Second Revised Sheet No. 1150.
First Revised Sheet No. 1151.
First Revised Sheet No. 2051.
First Revised Sheet No. 2150.
Second Revised Sheet No. 2151.
First Revised Sheet No. 2152.
Third Revised Sheet No. 2153.
First Revised Sheet No. 2155.
Sheet No. 2156.
Second Revised Sheet No. 2501.

DTI states that the purposes of this filing are to revise certain of its proforma service agreements and to correct outdated or omitted references.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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. E6–5310 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–293–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

April 5, 2006.

Take notice that on March 31, 2006, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, the following tariff sheets to become effective May 1, 2006:

Second Revised Sheet No. 10.
Second Revised Sheet No. 11.
Second Revised Sheet No. 12.
Second Revised Sheet No. 84.

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. E6–5317 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–294–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

April 5, 2006.

Take notice that on March 31, 2006, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective January 1, 2006:

Eleventh Revised Sheet No. 3.
Tenth Revised Sheet No. 3B.

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. E6–5318 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–284–000]

Horizon Pipeline Company, L.L.C.; Notice of Refund Report

April 4, 2006.

Take notice that on March 31, 2006, Horizon Pipeline Company, L.L.C. (Horizon) filed its Refund Report regarding the penalty revenues, for the period January 1, 2005 through December 31, 2005, that it refunded to its customers pursuant to section 10.7 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff, Original Volume No. 1.

Horizon states that copies of the filing are being mailed to its customers and interested state commissions.

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. 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 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 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.

Protest Date: 5 p.m. Eastern Time April 11, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5298 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–296–000]

Kern River Gas Transmission Company; Notice of Report of Gas Compressor Fuel and Lost and Unaccounted-For Gas Factors for 2005

April 5, 2006.

Take notice that on March 31, 2006, Kern River Gas Transmission Company tendered a report supporting its gas compressor fuel and lost and unaccounted for gas factors for 2005.

In conjunction with this filing, and in compliance with the Commission's "Order Issuing Certificate" dated July 26, 2001, pertaining to Kern River's 2002 expansion project, Kern River also is submitting a work paper showing the 2005 system benefit to vintage shippers of rolling in Kern River's 2002 expansion project after actual fuel costs are considered.

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 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.

Intervention and Protest Date: 5 p.m. Eastern Time on April 12, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5302 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–291–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

April 5, 2006.

Take notice that on March 31, 2006, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed in Appendix A to its filing. The tariff sheets have a proposed effective date of April 30, 2006.

National Fuel states that copies of this filing were served upon its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed 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. E6–5315 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–295–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

April 5, 2006.

Take notice that on March 31, 2006, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Eighty Eighth Revised Sheet No. 9, to become effective April 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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. E6–5319 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12460–001]

North Snake Groundwater District; Notice of Surrender of Preliminary Permit

April 5, 2006.

Take notice that North Snake Groundwater District, permittee for the proposed North Snake Groundwater Project, has requested that its preliminary permit be terminated. The permit was issued on January 23, 2004, and would have expired on December 31, 2006.[1] The project would have been located on the Curren Ditch River in Godding County, Idaho.

The permittee filed the request on March 8, 2006, and the preliminary permit for Project No. 12460 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, part-day holiday that affects the Commission, or legal holiday as described in section 18 CFR 385.2007, in which case the effective date is the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5304 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–281–000]

Panhandle Eastern Pipe Line Company, LP; Notice of Proposed Changes in FERC Gas Tariff

April 4, 2006.

Take notice that on March 31, 2006, Panhandle Eastern Pipe Line Company, LP (Panhandle) tendered for filing as

[1] 106 FERC ¶ 62,055.

part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed in Appendix A attached to the filing to become effective May 1, 2006.

Panhandle states that this filing is made in accordance with section 25.1 (Flow Through of Cash-Out Revenues in Excess of Costs) of the General Terms and Conditions in Panhandles FERC Gas Tariff, Third Revised Volume No. 1.

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. E6–5295 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–282–000]

Panhandle Eastern Pipe LIne Company, LP; Notice of Report of Flow Through of Penalty Revenues

April 4, 2006.

Take notice that on March 31, 2006, Panhandle Eastern Pipe Line Company, LP (Panhandle) tendered for filing its Annual Report of Flow Through of Penalty Revenues in accordance with section 25.2(c)(i) of the General Terms and Conditions in its FERC Gas Tariff, Third Revised Volume No. 1.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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. E6–5296 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–292–000]

PIne Needle LNG Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

April 5, 2006.

Take notice that on March 31, 2006 Pine Needle LNG Company, LLC (Pine Needle) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Tenth Revised Sheet No. 4 to become effective May 1, 2006.

Pine Needle states that it is serving copies of the instant filing to its affected customers, interested State Commissions and other interested parties.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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. E6–5316 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions to Intervene, and Protests

April 5, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 516–420.

c. *Date Filed:* March 20, 2006.

d. *Applicant:* South Carolina Electric & Gas Company.

e. *Name of Project:* Saluda Project.

f. *Location:* Lake Murray in Richland County, South Carolina. This project does not occupy any federal or tribal lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Tommy Boozer, Manager, Lake Management Programs, South Carolina Electric & Gas Company, Mail Code MZ–6, Columbia, SC, 29218; (803) 217–9007.

i. *FERC Contacts:* Any questions on this notice should be addressed to Ms. Shana High at (202) 502–8674.

j. *Deadline for filing comments and or motions:* May 5, 2006.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–516–420) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Proposal:* South Carolina Electric & Gas Company is requesting Commission authorization to issue a permit to The Lakeport, LLC for the use of project lands and waters to construct water-oriented recreation amenities, including three docks and boat ramp with associated excavation/dredging, for use by residents of a proposed development. Approximately 6,600 cubic yards of material would be excavated to provide sufficient water depths to allow access to the piers, boat ramp, and other areas of the lake. The U.S. Department of the Army revised the proposal to limit the excavation area to the 356-foot contour in the center area, and the 355-foot contour in the two cove areas. The facility would not provide fuel services or pump-out facilities as boats with marine sanitary devices will not be allowed to be berthed at the docks.

l. *Location of the Applications:* The filings are available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, 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 call the Helpline at (866) 208–3676 or contact *FERCOnLineSupport@ferc.gov*. For TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5309 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–283–000]

Trailblazer Pipeline Company; Notice of Proposed Changes In FERC Gas Tariff

April 4, 2006.

Take notice that on March 31, 2006, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet No. 8, to become effective May 1, 2006.

Trailblazer states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed 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. E6–5297 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–285–000]

Vector Pipeline L.P.; Notice of Annual Fuel Use Report

April 4, 2006.

Take notice that on March 31, 2006, Vector Pipeline L.P. tendered for filing an annual report of its monthly fuel use ratios for the period January 1, 2005 through December 31, 2005. Vector states that this filing is made pursuant to section 11.4 of the General Terms and Conditions of the Vector Gas Tariff and § 154.502 of the Commission's regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5293 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–63–000]

Ash Grove Cement Company, Complainant v. Enron Power Marketing, Inc., Respondent; Notice of Complaint

April 3, 2006.

Take notice that on March 21, 2006, pursuant to Rules 206 and 207 of the Commission's Rules of Practice and Procedures, 18 CFR 395.206, 395.207, Ash Grove Cement Company (Ash Grove) filed a "Petition for Relief and a Request for Fast Track Processing," relating to a termination payment sought by Enron Power Marketing, Inc. (Enron). Ash Grove requests a determination by the Commission that the termination payment sought by Enron from Ash Grove is not permitted under Enron's rate schedule or its contract with Ash Grove entered into under such rate schedule, or is otherwise unlawful on the grounds that the contract is unjust and unreasonable or contrary to the public interest.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 20, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5287 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 31, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER05–6–044; EL04–135–046; EL02–111–064; EL03–212–060

Applicants: Midwest Independent Transmission System Operator, Inc.; PJM Interconnection, L.L.C.; Midwest ISO Transmission Owners; Midwest

StandAlone Transmission Companies; PJM and West Transmission Owners Agreement Administrative Committees.

Description: PJM Interconnection, LLC, Midwest ISO Transmission Owners et al. jointly submit its revisions to their Joint Operating Agreement.

Filed Date: 03/21/2006.

Accession Number: 20060328–0011.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 11, 2006.

Docket Numbers: ER05–537–001.

Applicants: PacifiCorp.

Description: PacifiCorp submits an Amended and Restated AC Intertie Agreement with Bonneville Power Administration in compliance with FERC's 3/15/05 Letter Order.

Filed Date: 03/22/2006.

Accession Number: 20060328–0014.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 12, 2006.

Docket Numbers: ER05–1234–001.

Applicants: Pacificorp.

Description: PacifiCorp submits revised tariff sheets First Revised Sheet 44 et al. to FERC Electric Tariff, Fifth Revised Volume 11, to be effective 4/1/06.

Filed Date: 03/22/2006.

Accession Number: 20060328–0013.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 12, 2006.

Docket Numbers: ER05–1501–001.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp. submits its Simplified and Reorganized Tariff conformed through 3/6/06 in response to the Commission 2/24/06 Order.

Filed Date: 03/22/2006.

Accession Number: 20060328–0113.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 12, 2006.

Docket Numbers: ER06–726–000.

Applicants: Madison Windpower, LLC.

Description: Madison Windpower, LLC withdraws its Petition for Order Accepting Market Based Rate Schedule filed 3/14/06.

Filed Date: 03/22/2006.

Accession Number: 20060322–5016

Comment Date: 5 p.m. Eastern Time on Wednesday, April 12, 2006.

Docket Numbers: ER06–780–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corp. on behalf of American Electric Power Co., Inc Operating Companies submits a proposed service agreement to transact with Ohio Valley Electric Corporation.

Filed Date: 03/24/2006.

Accession Number: 20060328–0084.

Comment Date: 5 p.m. Eastern Time on Friday, April 14, 2006.

Docket Numbers: ER06–781–000

Applicants: New York State Electric & Gas Corporation.

Description: New York State Electric & Gas Corp. submits its Original Service Agreement 918, under New York Independent System Operator, LLC's OATT, FERC Electric Tariff, Original Volume 1 with Triton Power Co.

Filed Date: 03/24/2006.

Accession Number: 20060328–0146.

Comment Date: 5 p.m. Eastern Time on Friday, April 14, 2006.

Docket Numbers: ER06–782–000.

Applicants: Tucson Electric Power Company.

Description: Tuscon Electric Power Co. submits its transmission line project participation agreement, Rate Schedule FERC 246, with Electrical District 2, Pinal County et al., to be effective within 60 days of the 5/23/06 letter.

Filed Date: 03/24/2006.

Accession Number: 20060328–0015.

Comment Date: 5 p.m. Eastern Time on Friday, April 14, 2006.

Docket Numbers: ER06–783–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits proposed revisions to its Market Administration and Control Area Services Tariff et al. to revise provisions re the review, challenge and correction of customer settlement info.

Filed Date: 03/24/2006.

Accession Number: 20060328–0016.

Comment Date: 5 p.m. Eastern Time on Friday, April 14, 2006.

Docket Numbers: ER06–784–000.

Applicants: Rumford Falls Hydro LLC.

Description: Rumford Falls Hydro, LLC's application for market-based rate authorization, certain waivers, and blanket authorizations and request for expedited action.

Filed Date: 03/24/2006.

Accession Number: 20060328–0017.

Comment Date: 5 p.m. Eastern Time on Friday, April 14, 2006.

Docket Numbers: ER06–785–000.

Applicants: Midwest Independent Transmission System Operator, Inc.; Midwest ISO Transmission Owners.

Description: Midwest Independent Transmission System Operator, Inc. and Midwest ISO Transmission Owners submit its proposed revisions to the Midwest ISO Agreement, effective 4/1/06.

Filed Date: 03/24/2006.

Accession Number: 20060328–0018.

Comment Date: 5 p.m. Eastern Time on Friday, April 14, 2006.

Docket Numbers: ER06–786–000.

Applicants: American Electric Power Services Corporation.

Description: American Electric Power Service Corp., on behalf of the AEP Eastern Operating Companies submits a Second Amended and Restated PJM Services and Cost Allocation Agreement etc.

Filed Date: 03/24/2006.

Accession Number: 20060328–0019.

Comment Date: 5 p.m. Eastern Time on Friday, April 14, 2006.

Docket Numbers: ER06–787–000.

Applicants: Idaho Power Company.

Description: Idaho Power Co. submits revisions to its OATT, First Revised Volume 5, along with a correction to its 3/24/05 filing filed 3/29/06.

Filed Date: 03/24/2006; 03/29/06.

Accession Number: 20060328–0101.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 19, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in

Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5280 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 3, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER01–1760–004.

Applicants: Haleywest L.L.C.

Description: Haleywest LLC submits an amendment to its market-based rate schedule.

Filed Date: 3/28/2006.

Accession Number: 20060331–0192.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 18, 2006.

Docket Numbers: ER01–205–013; ER98–2640–011; ER98–4590–009; ER99–1610–016.

Applicants: Xcel Energy Services Inc.; Northern States Power Company; Northern States Power Company (Wisconsin); Public Service Company of Colorado; Southwestern Public Service Company.

Description: Xcel Energy Services Inc on behalf of Xcel Energy Operating Companies submits a change in status report relating to NSP's market-based rate authority.

Filed Date: 3/28/2006.

Accession Number: 20060331–0190.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 18, 2006.

Docket Numbers: ER04–449–013.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator submits its revised final Status Report to the Commission on the progress it is making with stakeholders on the issue of deliverability of electric generating capacity etc.

Filed Date: 3/28/2006.

Accession Number: 20060331–0189.

Comment Date: 5 p.m. Eastern Time on Friday, April 7, 2006.

Docket Numbers: ER06–406–001.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits a compliance filing pursuant to the Commission's 2/24/06 order, amending its reliability assurance agreements.

Filed Date: 3/27/2006.

Accession Number: 20060330–0063.

Comment Date: 5 p.m. Eastern Time on Monday, April 17, 2006.

Docket Numbers: ER06–427–002.

Applicants: Mystic Development, LLC.

Description: Mystic Development, LLC submits amendment to its Fuel Price Index *et al.,* in reference to the Commission's 2/24/06 order.

Filed Date: 3/27/2006.

Accession Number: 20060330–0062.

Comment Date: 5 p.m. Eastern Time on Monday, April 17, 2006.

Docket Numbers: ER06–642–001.

Applicants: Brookfield Power Piney & Deep Creek LLC.

Description: Brookfield Power Piney & Deep Creek, LLC submits an amendment to its notice of succession pursuant to the Commission's 3/2/06 and 3/6/06 requests.

Filed Date: 3/28/2006.

Accession Number: 20060331–0185.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 7, 2006.

Docket Numbers: ER06–653–001.

Applicants: Entergy Nuclear Power Marketing, LLC.

Description: Entergy Services Inc, agent for its Entergy Nuclear Power Marketing LLC submits a supplement to its 2/21/06 filing.

Filed Date: 3/20/2006.

Accession Number: 20060331–0183.

Comment Date: 5 p.m. Eastern Time on Monday, April 10, 2006.

Docket Numbers: ER06–684–001.

Applicants: UGI Utilities, Inc.; Allegheny Energy Supply Company, L.L.C.

Description: UGI Utilities Inc. submits an amendment to its 2/28/06 Interconnection Agreement with Allegheny Energy Supply Co LLC.

Filed Date: 3/28/2006.

Accession Number: 20060331–0182.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 7, 2006.

Docket Numbers: ER06–685–001.

Applicants: UGI Development Company; UGI Utilities, Inc.

Description: UGI Utilities submits its compliance filing to reflect the effective date of 3/1/06 in the footers of the IOA with UGI Development Company under the requirements of Order 614.

Filed Date: 3/28/2006.

Accession Number: 20060331–0181.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 18, 2006.

Docket Numbers: ER06–721–001.

Applicants: American Electric Power Service Corp.

Description: American Electric Power Service Cooperation, as agent for Kentucky Power Co et al. submits an amendment to the 3/10/06 filing, executed interconnection agreement between AEP and Louisville Gas and Electric Co *et al.*, filed on 3/10/06.

Filed Date: 3/27/2006.

Accession Number: 20060330–0066.

Comment Date: 5 p.m. Eastern Time on Monday, April 17, 2006.

Docket Numbers: ER06–788–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Co submits an amendment to Third Revised Sheet 25 *et al.*, to FERC Electric Tariff, Second Revised Volume 6 pursuant to Section 205 of the Federal Power Act etc.

Filed Date: 3/27/2006.

Accession Number: 20060328–0078.

Comment Date: 5 p.m. Eastern Time on Monday, April 17, 2006.

Docket Numbers: ER06–789–000.

Applicants: Nevada Power Company.

Description: Nevada Power submits an executed Service Agreement for Network Integration Transmission Service Retail Access Transmission Service among Nevada Power's Merchant Function, the Colorado River Commission *et al.*

Filed Date: 3/27/2006.

Accession Number: 20060328–0020.

Comment Date: 5 p.m. Eastern Time on Monday, April 17, 2006.

Docket Numbers: ER06–790–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc. submits proposed revisions to Schedules 16 and 17 of its Open Access Transmission and Energy Markets Tariff, FERC Electric Tariff, Third Revised Volume 1.

Filed Date: 3/27/2006.

Accession Number: 20060330–0059.

Comment Date: 5 p.m. Eastern Time on Monday, April 17, 2006.

Docket Numbers: ER06–792–000.

Applicants: Norge Power Marketing Corporation.

Description: Norge Power Marketing Corp submits an application for market-based rate authority, acceptance of initial rate schedule, waivers and blanket authority.

Filed Date: 3/27/2006.

Accession Number: 20060330–0060.

Comment Date: 5 p.m. Eastern Time on Monday, April 17, 2006.

Docket Numbers: ER06–793–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool Inc submits its revisions to its regional Open Access Transmission Tariff to incorporate Sunflower Electric Power Corp as a Transmission Owner participating in the SPP Tariff.
Filed Date: 3/28/2006.
Accession Number: 20060330–0065.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 18, 2006.

Docket Numbers: ER06–800–000.
Applicants: Midwest Independent Transmission System; FirstEnergy Service Company.
Description: Midwest Independent Transmission System Operator, Inc, *et al.*, on behalf of American Transmission Systems submits proposed revisions to Attachment O transmission rate formula under Midwest ISO's OAT & EMT, FERC Electric Tariff Volume 1.
Filed Date: 3/28/2006.
Accession Number: 20060331–0180.
Comment Date: 5 p.m. Eastern Time on Tuesday, April 18, 2006.

Docket Numbers: ER99–3168–006.
Applicants: Astoria Generating Company Acquisitions.
Description: Astoria Generating Co LP submits a notice of change in status for market based rate authority.
Filed Date: 3/27/2006.
Accession Number: 20060330–0064.
Comment Date: 5 p.m. Eastern Time on Monday, April 17, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,
Secretary.
[FR Doc. E6–5292 Filed 4–10–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC06–41–000, et al.]

Aragonne Wind, LLC, et al.; Electric Rate and Corporate Filings

April 4, 2006.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Aragonne Wind LLC

[Docket No. EG06–41–000]

Take notice that on March 29, 2006, Aragonne Wind LLC filed with the Commission a Notice of Self Certification of Exempt Wholesale Generator Status pursuant to section 366.7 of the Commission's regulations.
Comment Date: 5 p.m. Eastern Time on April 19, 2006.

2. Central Hudson Gas & Electric Corporation

[Docket No. EC06–104–000]

Take notice that on March 30, 2006, Central Hudson Gas & Electric Corporation filed an application for authorization, pursuant to section 203 of the Federal Power Act, to transfer jurisdictional facilities, Neversink Hydroelectric Generating Plant, to New York City pursuant to an Agreement of Conveyance dated February 28, 2006.
Comment Date: 5 p.m. Eastern Time on April 21, 2006.

3. Cadillac Renewable Energy LLC

[Docket No. ER98–4515–006]

Take notice that on January 26, 2006, Cadillac Renewable Energy LLC filed tendered for filing a letter notifying the Commission of a change in status regarding its upstream ownership.
Comment Date: 5 p.m. Eastern Time on April 14, 2006.

4. Monongahela Power Company, the Potomac Edison Company, West Penn Power Company, and Allegheny Generating Company

[Docket Nos. ES06–30–000; EC06–103–000]

Take notice that on March 28, 2006, Monongahela Power Company (Mon Power), The Potomac Edison Company (PE), West Penn Power Company (West Penn), and Allegheny Generating Company (ACG) filed a joint application under section 204 of the Federal Power Act for a disclaimer of jurisdiction under section 204(f) or, in the alternative, authorization under section 204(a) to issue short term debt in connection with the Allegheny Energy Money Pool and under section 203 of the Federal Power Act for authorization to participate in the Allegheny Energy Money Pool with affiliated public utilities.
Comment Date: 5 p.m. Eastern Time on April 18, 2006.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible 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. E6–5300 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

April 5, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER97–4281–015; ER99–2161–006; ER99–3000–005; ER02–1572–003; ER02–1572–003; ER02–1571–003; ER99–1115–010; ER99–1116–010; ER98–4515–007; ER00–2810–004; ER99–4359–003; ER99–4358–003; ER99–2168–006; ER98–1127–010; ER99–2162–006; ER00–2807–004; ER00–2809–004; ER98–1796–009; ER00–1259–005; ER99–4355–003; ER99–4356–003; ER01–1558–003; ER00–3160–005; ER99–4357–003; ER01–2969–004; ER00–2313–005; ER03–955–005; ER02–2032–003; ER02–1396–003; ER02–1412–003; ER00–3718–004; ER99–3637–004; ER99–1712–006; ER00–1250–003; ER00–2808–004.

Applicants: NRG Power Marketing, Inc; Aurthur Kill power LLC; Astoria Gas Turbines Power LLC; Bayou Cove Peaking Power LLC; Big Cajun I Peaking Power LLC; Cabrillo Power I LLC; Cabrillo Power II LLC; Cadillac Renewable Energy LLC; Cadillac Renewable Energy LLC; Connecticut Jet Power LLC; Devon Power LLC; Dunkirk Power LLC; El Segundo Power, LLC; Huntley Power LLC; Indian River Power LLC; Keystone Power LLC; Long Beach Generation LLC; Louisiana Generating LLC; LLC; Middletown Power LLC; Montville Power LLC; NEO California Power LLC; NEO Chester-Gen LLC; Norwalk Power LLC; NRG Audrain Generating LLC; NRG Energy Center Paxton LLC; NRG Marketing Services LLC; NRG New Jersey Energy Sales LLC; NRG Rockford LLC; NRG Rockford II LLC; NRG Sterling Power LLC; Oswego Harbor Power LLC; Somerset Power LLC; Tacoma Energy Recovery Company; Vienna Power LLC.

Description: NRG Power Marketing Inc, Arthur Kill Power LLC, and Astoria Gas Turbine Power LLC *et al.* submits a notification of change in status.

Filed Date: March 23, 2006.

Accession Numbers: 20060328–0099 and 20060328–0100.

Comment Date: 5 p.m. Eastern Time on Thursday, April 13, 2006.

Docket Numbers: ER99–1115–009; ER99–1116–009; ER98–1127–009; ER98–1796–008; ER06–820–000.

Applicants: Cabrillo Power I LLC; Cabrillo Power II LLC; El Segundo Power, LLC; Long Beach Generation, LLC.

Description: WCP Project Companies submits an amended and restated version of each of their market-based rate tariffs.

Filed Date: March 23, 2006.

Accession Number: 20060328–0079.

Comment Date: 5 p.m. Eastern Time on Thursday, April 13, 2006.

Docket Numbers: ER03–951–007; ER03–416–008; ER04–94–005; ER03–296–007; ER05–534–005; ER05–365–005; ER01–3121–006; ER02–418–005; ER05–332–005; ER06–1–003; ER02–417–005; ER05–1146–005; ER06–200–004; ER05–481–005; ER06–821–000.

Applicants: Moraine Wind LLC; Klondike Wind Power LLC; Mountain View Power Partners III, LLC; Flying Cloud Power Partners, LLC; Eastern Desert Power LLC; Elk River Windfarm LLC; Klamath Energy LLC; Klamath Generation LLC; Klondike Wind Power II LLC; Leaning Juniper Wind Power LLC; Phoenix Wind Power LLC; Shiloh I Wind Project, LLC; Big Horn Wind Project LLC; Trimont Wind I LLC.

Description: PPM Companies submits proposed amendments to their market-based rate schedules to remove the prohibition against transactions with Pacificorp etc. under ER03–951 *et al.*

Filed Date: March 23, 2006.

Accession Number: 20060328–0088.

Comment Date: 5 p.m. Eastern Time on Thursday, April 13, 2006.

Docket Numbers: ER06–368–001.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Co submits its response to the deficiency items noted in FERC's February 23, 2006 deficiency letter.

Filed Date: March 27, 2006.

Accession Number: 20060330–0061.

Comment Date: 5 p.m. Eastern Time on Monday, April 17, 2006.

Docket Numbers: ER06–698–001.

Applicants: First Commodities Ltd.

Description: First Commodities Ltd submits its revised Rate Schedule and Petition for acceptance of Initial Rate Schedule, Waivers and Blanket Authority incorporating the requirements for change in status.

Filed Date: March 24, 2006.

Accession Number: 20060331–0179.

Comment Date: 5 p.m. Eastern Time on Friday, April 14, 2006.

Docket Numbers: ER06–762–000.

Applicants: Maine Public Service Company.

Description: Maine Public Service Co submits an informational filing setting forth the changed loss factor effective March 1, 2006 pursuant to the Commission's April 12, 2001 order.

Filed Date: March 15, 2006.

Accession Number: 20060324–0021.

Comment Date: 5 p.m. Eastern Time on Monday, April 10, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at http://www.ferc.gov. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's

eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5301 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–804–000, et al.]

Great Lakes Hydro America, LLC et al.; Electric Rate and Corporate Filings

April 5, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Great Lakes Hydro America, LLC

[Docket No. ER06–804–000]

Take notice that on March 28, 2006, Great Lakes America, LLC filed revisions to its Market-Base Rate Tariff, FERC Electric Tariff Second Revised Volume No. 1, to completely update and modernize its Tariff.

Comment Date: 5 p.m. Eastern Time on April 7, 2006.

2. Brookfield Energy Marketing Inc.

[Docket No. ER06–805–000]

Take notice that on March 28, 2006, Brookfield Energy Marketing Inc. filed revisions to its Market-Based Rate Tariff, FERC Electric Tariff Original Volume No. 1, to completely update and modernize its Tariff.

Comment Date: 5 p.m. Eastern Time on April 7, 2006.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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. E6–5321 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF06–19–000]

Questar Overthrust Pipeline Company; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Wamsutter Expansion Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

April 3, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that discusses the environmental impacts of the proposed Wamsutter Expansion Project (the Project). This project involves the construction and operation of facilities by Questar Overthrust Pipeline Company (Overthrust) in Lincoln and Sweetwater Counties, Wyoming. These facilities would include approximately 77 miles of 36-inch-diameter natural gas pipeline, two new compressor stations, two new receipt points, and one new delivery point.

The Wamsutter Expansion Project is a necessary and supporting component of the overall Rockies Express Pipeline Project, Western Phase, currently under review in the Commission's Pre-Filing Process in Docket No. PF06–3–000. Therefore, the environmental analysis for the Wamsutter Expansion Project will be incorporated into the EIS being prepared for the Rockies Express Pipeline Project. The EIS will be used by the Commission in its decision-making process to determine whether the proposed facilities are in the public convenience and necessity.

This notice explains the scoping process that will be used to gather input from the public and interested agencies on the Project. Your input will help FERC staff determine which issues/impacts associated with the Project need to be evaluated in the EIS. Please note that the scoping period for the Project will close on May 5, 2006.

Comments may be submitted in written form or verbally. In lieu of or in addition to sending written comments, you are invited to attend the public scoping meeting that has been scheduled in the Project area. One scoping meeting is scheduled for April 24, 2006, in Rock Springs, Wyoming. Further instructions on how to submit written comments and additional details of the public scoping meeting are provided in the public participation section of this notice.

The Wamsutter Expansion Project is currently in the preliminary stages of design, and at this time a formal application has not been filed with the Commission. For this proposal, the Commission is initiating the National Environmental Policy Act (NEPA) review prior to receiving the application. This allows interested stakeholders to become involved early in Project planning and to identify and resolve issues before an application is filed with the FERC. A docket number (PF06–19–000) has been established to place information filed by Overthrust and related documents issued by the Commission into the public record. [1] Once a formal application is filed with the FERC, a new docket number will be established.

The Bureau of Land Management (BLM) is participating as a cooperating agency in the preparation of the EIS because the Project would cross Federal land under the jurisdiction of the Rawlins, Rock Springs, and Kemmerer

[1] To view information in the docket, follow the instructions for using the eLibrary link at the end of this notice.

Field Offices. The EIS will be used by the BLM to meet its NEPA responsibilities in considering Overthrust's application for the portion of the Project on Federal land.

With this notice, we[2] are asking other Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues in the Project area to formally cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating status should follow the instructions for filing comments described later in this notice. We encourage government representatives to notify their constituents of this planned Project and encourage them to comment on their areas of concern.

This notice is being sent to landowners within 0.5 mile of the proposed compressor stations; landowners along the pipeline route under consideration; Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; local libraries and newspapers; and other interested parties.

Some affected landowners may be contacted by a Project representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. If so, Overthrust and the affected landowners should seek to negotiate a mutually acceptable agreement. In the event that the Project is certificated by the Commission, that approval conveys the right of eminent domain for securing easements for the facilities. Therefore, if easement negotiations fail to produce an agreement, Overthrust could initiate condemnation proceedings in accordance with Wyoming state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Overthrust proposes to construct and operate the following facilities as part of its proposed Wamsutter Expansion Project:

- Construct approximately 77 miles of buried 36-inch-diameter pipeline extending from the eastern terminus of Overthrust's existing transmission system at Kanda in Sweetwater County, Wyoming, to an interconnect with the Entrega Gas Pipeline, Inc. (Entrega) system near Wamsutter in Sweetwater County.
- Construct two new compressor stations:
  - Roberson Compressor Station—20,000 horsepower (hp) in Lincoln County.
  - Rock Springs Compressor Station—15,000 hp in Sweetwater County.
- Install two new receipt points with metering facilities in Lincoln County and one new delivery point in Sweetwater County.

Maps depicting the general location of the Project facilities are shown in appendix 1.[3]

Overthrust is requesting approval such that the facilities are completed and placed into service by December 31, 2007. Construction of the facilities would take about 8 months.

The EIS Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity under Section 7 of the Natural Gas Act. NEPA also requires us to identify and address concerns the public would have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EIS on important environmental issues and reasonable alternatives. By this Notice of Intent, the Commission staff requests agency and public comments on the scope of the issues to be addressed in the EIS. All comments received are considered during the preparation of the EIS.

We have already started to meet with Overthrust, agencies, and other interested stakeholders to discuss the Project and identify issues/impacts and concerns. On April 6, 2006, FERC staff will participate in the public open house sponsored by Overthrust in the Project area to explain the NEPA environmental review process to interested stakeholders and take comments about the Project.

Our independent analysis of the issues will be included in the draft EIS. The draft EIS will be published and mailed to Federal, State, and local agencies, Native American tribes, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review of the draft EIS. We will consider all timely comments on the draft EIS and revise the document, as necessary, before issuing a final EIS.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 5.

Currently Identified Environmental Issues

We have identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the information provided by Overthrust. This preliminary list of issues may be changed based on your comments and our analysis.

- Soils:

—Erosion control.
—Introduction or spread of noxious weeds.

- Fish, Wildlife, and Vegetation:

—Impact on migratory birds and big game species.
—Impact on fish from stream crossings.

- Endangered and Threatened Species:

—Potential impact on federally listed species.

- Cultural Resources:

—Impact on known and undiscovered cultural resources.
—Native American and tribal concerns.

- Air Quality and Noise:

—Effects on local air quality and ambient noise from construction and operation of the proposed facilities.

We will make recommendations on how to lessen or avoid impacts on these and other resource areas and evaluate possible alternatives to the proposed Project or portions of the Project.

Public Participation

You are encouraged to become involved in this process and provide your specific comments or concerns about Overthrust's proposal. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To expedite the receipt and consideration of your comments, electronic submission of comments is strongly encouraged. See Title 18 CFR 385.2001(a)(1)(iii) and the instructions

[2] "We," "us," and "our" refer to the environmental staff of the Office of Energy Projects.

[3] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies are available from the Commisson's Public Reference and Files Maintenance Branch, at (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this Notice.

on the FERC Internet Web site (*http://www.ferc.gov*) under the eFiling link and the link to the User's Guide. Before you can submit comments you will need to create a free account by clicking on "Sign-up" under "New User." You will be asked to select the type of submission you are making. This type of submission is considered a "Comment on Filing." Comments submitted electronically must be submitted by May 5, 2006.

If you wish to mail comments, please carefully follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 1.
- Reference Docket No. PF06–19–000 on the original and both copies.
- Mail your comments so that they will be received in Washington, DC on or before May 5, 2006.

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meeting we will conduct in the Project area. The location and time for this meeting is as follows:

April 24, 2006 (7 p.m.) Quality Inn, 1670 Sunset Dr., Rock Springs, WY 82901, 307–382–9490.

The public scoping meeting is designed to provide State and local agencies, interested groups, affected landowners, and the general public with another opportunity to offer your comments on the proposed Project. Interested groups and individuals are encouraged to attend the meeting and to present comments on the environmental issues they believe should be addressed in the EIS. A transcript of the meeting will be made so that your comments will be accurately recorded.

All public meetings are posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Environmental Mailing List

If you received this notice, you are on the environmental mailing list for this Project and will continue to receive Project updates including the draft and final EISs. If you want your contact information corrected or you do not want to remain on our mailing list, please return the Correct or Remove From Mailing List Form included as Appendix 2.

To reduce printing and mailing costs the draft and final EISs will be issued in both CD–ROM and hard copy formats. The FERC strongly encourages the use of the CD–ROM format in its publication of large documents. If you wish to receive a paper copy of the draft EIS instead of a CD–ROM, *you must indicate that choice on the return postcard* (Appendix 2).

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–5289 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF06–20–000]

TransColorado Gas Transmission Company; Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Blanco to Meeker Project and Request for Comments on Environmental Issues

April 3, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that discusses the environmental impacts of the proposed Blanco to Meeker Project (the Project). This project involves the construction and operation of facilities by TransColorado Gas Transmission Company (TransColorado) in San Juan County, New Mexico and Zuma, Montrose, Mesa, Garfield, and Rio Blanco Counties, Colorado. These facilities would include two new compressor stations, modifications at four existing compressor stations, and installation of approximately 1,000 feet of 24-inch-diameter natural gas pipeline.

The Blanco to Meeker Project is a necessary and supporting component of the overall Rockies Express Pipeline Project, Western Phase, currently under review in the Commission's Pre-Filing Process in Docket No. PF06–3–000. Therefore, the environmental analysis for the Blanco to Meeker Project will be incorporated into the EIS being prepared for the Rockies Express Pipeline Project. The EIS will be used by the Commission in its decision-making process to determine whether the proposed facilities are in the public convenience and necessity.

This notice explains the scoping process that will be used to gather input from the public and interested agencies on the Project. Your input will help FERC staff determine which issues/impacts associated with the Project need to be evaluated in the EIS. Please note that the scoping period for the Project will close on May 5, 2006. Instructions on how to submit written comments are provided in the public participation section of this notice.

The Blanco to Meeker Project is currently in the preliminary stages of design, and at this time a formal application has not been filed with the Commission. For this proposal, the Commission is initiating the National Environmental Policy Act (NEPA) review prior to receiving the application. This allows interested stakeholders to become involved early in Project planning and to identify and resolve issues before an application is filed with the FERC. A docket number (PF06–20–000) has been established to place information filed by TransColorado and related documents issued by the Commission into the public record [1]. Once a formal application is filed with the FERC, a new docket number will be established.

The Bureau of Land Management (BLM) and U.S. Forest Service (Forest Service) are participating as cooperating agencies in the preparation of the EIS because certain Project facilities would be located on Forest Service and other Federal lands. The EIS will be used by the BLM and the Forest Service to meet their NEPA responsibilities in

[1] To view information in the docket, follow the instructions for using the eLibrary link at the end of this notice.

considering TransColorado's application.

With this notice, we[2] are asking other Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues in the Project area to formally cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating status should follow the instructions for filing comments described later in this notice. We encourage government representatives to notify their constituents of this planned Project and encourage them to comment on their areas of concern.

This notice is being sent to landowners within 0.5 mile of the proposed compressor stations and compressor station upgrades; Federal, State, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; local libraries and newspapers; and other interested parties.

Some affected landowners may be contacted by a Project representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. If so, TransColorado and the affected landowners should seek to negotiate a mutually acceptable agreement. In the event that the Project is certificated by the Commission, that approval conveys the right of eminent domain for securing easements for the facilities. Therefore, if easement negotiations fail to produce an agreement, TransColorado could initiate condemnation proceedings in accordance with applicable state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

TransColorado proposes to construct and operate the following facilities as part of its proposed Blanco to Meeker Project:

- Construct a new compressor station at the Blanco Hub Area, San Juan County, New Mexico, with a site-rated total of 4,200 horsepower (hp).
- Install two bi-directional meters at existing connections to El Paso and Transwestern and approximately 1,000 feet of 24-inch diameter pipe to tie into the existing Conoco Gas Plant at the Blanco Hub Area.
- Construct a new compressor station at Conn Creek, Garfield County, Colorado, with a site-rated total of 5,900 hp. This compressor station will also require two electric generator sets of approximately 500 hp each.
- Install one new compressor unit at the existing Greasewood Compressor Station in Rio Blanco County, Colorado. The new compressor unit will have a site-rated total of 2,805 hp.
- Reconfigure the existing Mancos, Redvale, and Whitewater Compressor Stations (all in Colorado) by modifying header and piping facilities within the existing stations' fencelines.

A map depicting the general location of the Project facilities is shown in Appendix 1.[3]

TransColorado is requesting approval such that the facilities are completed and placed into service by January, 2008. Construction of the facilities would take about 10 months.

The EIS Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity under section 7 of the Natural Gas Act. NEPA also requires us to identify and address concerns the public would have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EIS on important environmental issues and reasonable alternatives. By this Notice of Intent, the Commission staff requests agency and public comments on the scope of the issues to be addressed in the EIS. All comments received are considered during the preparation of the EIS.

Our independent analysis of the issues will be included in the draft EIS. The draft EIS will be published and mailed to Federal, State, and local agencies, Native American tribes, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review of the draft EIS. We will consider all timely comments on the draft EIS and revise the document, as necessary, before issuing a final EIS.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have identified the following issues that we think deserve attention based on a preliminary review of the proposed facilities and the information provided by TransColorado. This preliminary list of issues may be changed based on your comments and our analysis.

- Land Use, Recreation and Special Interest Areas, and Visual Resources:

—Impact on public lands.

- Air Quality and Noise:

—Effects on local air quality and ambient noise from construction and operation of the proposed facilities.

We will make recommendations on how to lessen or avoid impacts on these and other resource areas and evaluate possible alternatives to the proposed Project or portions of the Project.

Public Participation

You are encouraged to become involved in this process and provide your specific comments or concerns about TransColorado's proposal. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To expedite the receipt and consideration of your comments, electronic submission of comments is strongly encouraged. See Title 18 CFR 385.2001(a)(1)(iii) and the instructions on the FERC Internet Web site (*http://www.ferc.gov*) under the eFiling link and the link to the User's Guide. Before you can submit comments you will need to create a free account by clicking on "Sign-up" under "New User." You will be asked to select the type of submission you are making. This type of submission is considered a "Comment on Filing." Comments submitted electronically must be submitted by May 5, 2006.

If you wish to mail comments, please carefully follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St. NE.; Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 1.
- Reference Docket No. PF06–20–000 on the original and both copies.

[2] "We," "us," and "our" refer to the envioronmental staff of the Office of Energy Products.

[3] The appendices referenced in this notice are not being printed in **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, at (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this Notice.

• Mail your comments so that they will be received in Washington, DC on or before May 5, 2006.

Environmental Mailing List

If you received this notice, you are on the environmental mailing list for this Project and will continue to receive Project updates including the draft and final EISs. If you want your contact information corrected or you do not want to remain on our mailing list, please return the Correct or Remove From Mailing List Form included as Appendix 2.

To reduce printing and mailing costs the draft and final EISs will be issued in both CD–ROM and hard copy formats. The FERC strongly encourages the use of the CD–ROM format in its publication of large documents. If you wish to receive a paper copy of the draft EIS instead of a CD–ROM, *you must indicate that choice on the return postcard* (Appendix 2).

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–5290 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12447–001]

Fort Dodge Hydroelectric Development Company; Notice of Application Tendered for Filing with the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

April 4, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original License.

b. *Project No.:* 12447–001.

c. *Date Filed:* March 21, 2006.

d. *Applicant:* Fort Dodge Hydroelectric Development Company.

e. *Name of Project:* Fort Dodge Mill Dam Hydroelectric Project.

f. *Location:* On the Des Moines River in Webster County, Iowa. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Thomas J. Wilkinson, Jr., Fort Dodge Hydroelectric Development Company, 1800 1st Ave., NE., Ste. 200, Cedar Rapids, IA 52402; (319) 364–0171.

i. *FERC Contact:* Stefanie Harris, (202) 502–6653 or *stefanie.harris@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: May 22, 2006.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "eFiling" link.

m. This application is not ready for environmental analysis at this time.

n. The Fort Dodge Mill Dam Project would consist of: (1) The existing 342-foot-long by 18-foot-high concrete dam with a 230-foot-long spillway and 5 Tainter gates; (2) a 90-acre reservoir with a normal full pond elevation of 990 feet above mean sea level; (3) an existing 40-foot-wide concrete intake structure with trash rack and stop log guides; (4) an existing powerhouse to contain two proposed turbine generating units with a total installed capacity of 1,400 kW; (5) a proposed 2,400-foot-long, 13.8–kV transmission line; and (6) appurtenant facilities. The applicant estimates that the total average annual generation would be about 7,506 MWh.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects.

For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Iowa State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. Procedural schedule and final amendments: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA. Staff intends to give at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application.

Issue Acceptance or Deficiency Letter—May 2006
Issue Scoping Document—June 2006
Notice of application is ready for environmental analysis—August 2006
Notice of the availability of the EA—February 2007
Ready for Commission's decision on the application—April 2007

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5294 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepting for Filing and Soliciting Motions To Intervene, Protests and Comments

April 5, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12615–000.

c. *Date filed:* September 29, 2005.

d. *Applicant:* Alaska Power & Telephone Company.

e. *Name of Project:* Soule River Water Project.

f. *Location:* On the Soule River, within the Ketchikan Recording District, First Judicial District, near Hyder, AK. The project would be on federal land within the Tongass National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert S. Grimm, President, Alaska Power & Telephone Company, P.O. Box 3222, Port Townsend, WA 98368, (360) 385–1733 x 120.

i. *FERC Contact:* Etta Foster, (202) 502–8769.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12615–000) on any comments, protests, or motions filed.

k. *Description of Project:* The proposed project would consist of: (1) A proposed concrete dam with a maximum height of 150–200 feet; (2) a proposed storage reservoir with a normal water surface area of 917 acres, a gross storage capacity of approximately 74,000 acre-feet and an active storage capacity of approximately 60,000 acre-feet; (3) a proposed 12-foot-diameter, 12,100-foot-long tunnel; (4) a proposed powerhouse containing 2 generating units with a total installed capacity of 42 MW; (5) an open channel tailrace; (6) a 35-kV submarine cable approximately 9.72 miles long connected to an interconnection with the existing transmission system in Hyder, and (7) appurtenant facilities.

The project would have an estimated annual generation of approximately 155 giga-watt hours. The applicant plans to sell the capacity and generated energy either to BC Hydro, or an electric utility in the United States after wheeling over the BC Hydro transmission system.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit

comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letter the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT", or "COMPETING APPLICATION", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5305 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepting for Filing and Soliciting Motions to Intervene, Protests and Comments

April 5, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12633–000.

c. *Date filed:* December 21, 2005.

d. *Applicant:* SV Hydro LLC.

e. *Name of Project:* Saylorville Hydroelectric Project.

f. *Location:* On the Des Moines River, Polk County, Iowa, utilizing Federal lands administrated by the U.S. Army Corps of Engineers. The existing dam is owned by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Douglas A. Spaulding, Spaulding Consultants, LLC, 1433 Utica Avenue South, Suite 162, Minneapolis, MN 55416, (952) 544–8133.

i. *FERC Contact:* Etta Foster, (202) 502–8769.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12633–000) on any comments, protests, or motions filed.

k. *Description of Project:* The proposed project would consist of the existing U.S. Army Corps of Engineers' Saylorville Dam and would consist of: (1) Thirty-six 280–kW submersible bulb-type turbine generator units mounted on three independent movable racks for a total installed capacity of 10 MW; (2) a raceway consisting of six 4,160-volt buried cables and a 100 pair direct buried control cable; (3) a 30-foot-square generator control building, (4) a switchyard; (5) a proposed 7,000-foot-long,13.8–kV transmission line; and (6) appurtenant facilities.

The project would have an estimated annual generation of approximately 50 gigawatt-hours. The applicant plans to sell the generated energy.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letter the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT", or "COMPETING APPLICATION", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5306 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepting for Filing and Soliciting Motions To Intervene, Protests and Comments

April 5, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12638–000.

c. *Date filed:* January 9, 2006.

d. *Applicant:* Green Energy Today, LLC.

e. *Name of Project:* Esquatzel Power Project.

f. *Location:* At the confluence of the Esquatzel Canal and the Columbia River, near Pasco, Franklin County, Washington. The Esquatzel Canal is owned by the U.S. Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jerry L. Straalsund, Green Energy Today, LLC, 1305 Mansfield, STE 5, Richland, WA 99352, (509) 308–2730.

i. *FERC Contact:* Etta Foster, (202) 502–8769.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12638–000) on any comments, protests, or motions filed.

k. *Description of Project:* The proposed project would utilize water being discharged from the Esquatzel Irrigation Canal and would consist of: (1) An existing measurement weir; (2) a proposed 1700-foot-long, 42-inch diameter, steel penstock, buried under 4-feet of cover; (3) proposed steel powerhouse containing one generating unit with a rated capacity of 900 kW; (4) an existing concrete discharge chute; (5) a proposed 3-phase, 480-volt transmission line constructed and owned by Big Bend Electric Cooperative; and (6) appurtenant facilities.

The project would have an estimated annual generation of 5,140,000 kWh (kilowatt-hours). The applicant plans to sell the generated energy to a local utility.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the

prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letter the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT", or "COMPETING APPLICATION", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5307 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene and Protests

April 5, 2006.

a. *Type of Application:* Application for Non-Project Use of Project Lands and Waters.

b. *Project Number:* P–2686–043.

c. *Date Filed:* March 3, 2006.

d. *Applicant:* Duke Power.

e. *Name of Project:* Westfork Hydroelectric Project No. 2686.

f. *Location:* The project is located on the West Fork of the Tuckasegee River in Jackson County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and sections 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative, Duke Energy Corporation, P.O. Box 1006, Charlotte, NC 28201, telephone (704) 382–8576.

i. *FERC Contact:* Any questions on this notice should be addressed to Chris Yeakel at (202) 502–8132, or e-mail address: *christopher.yeakel@ferc.gov.*

j. *Deadline for filing comments and or motions:* May 5, 2006.

k. *Description of Request:* Duke Power proposes to grant a lease of 0.26 acres of project lands for non-project use as a private marina to provide access to Lake Glenville for residents of the Glenville Lake Club Subdivision. The marina will consist of a cluster dock with ten boat docking locations and will be constructed of Ipe-wood decking, a metal frame and encapsulated styro-foam for floatation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field (P–2686) to access the document. 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, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers (P–2686–043). All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5308 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD06–6–000; Docket No. RM01–10–005; Docket No. RM05–30–000 [1]]

Joint Meeting of the Nuclear Regulatory Commission and the Federal Energy Regulatory Commission; Interpretative Order Relating to the Standards of Conduct; Rules Concerning Certification of the Electric Reliability Organization; Notice of Joint Meeting of the Nuclear Regulatory Commission and the Federal Energy Regulatory Commission

April 3, 2006.

The Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission (NRC) will hold a joint meeting on April 24, 2006, in Room 2C, 888 First Street, NE., Washington, DC 20426. The meeting is expected to begin at 2 p.m. (EDT) and conclude at 4 p.m. All interested persons are invited to attend.

Purpose of Joint Meeting

The NRC and FERC signed a Memorandum of Agreement on September 1, 2004, to facilitate interactions between the two agencies on matters of mutual interest pertaining to the nation's electric power grid reliability and related implementation activities based on the August 14, 2003, outage recommendations by the U.S.-Canada Power System Task Force. Both agencies have ongoing matters that are relevant to the April 24 joint meeting. The purpose of the joint meeting is to continue the dialog between the two agencies in furtherance of the goals set forth in the Memorandum of Agreement, especially in light of the concurrent matters involving offsite power,[2] and to explore the most effective role of each agency in addressing grid reliability issues and, thereby, to ensure an integrated approach in accomplishing their respective missions.

Format for Joint Meeting

The format for the joint meeting will be discussions between the two sets of commissioners following presentations by their respective staffs, as set forth in the agenda below. There will not be industry presentations.

Agenda

Opening Remarks by FERC Chairman Kelliher, NRC Chairman Diaz and Commissioners

Brief presentations by NRC Staff on effects of grid reliability on nuclear power plants and projected additions of new nuclear reactors to the grid and by FERC Staff on grid reliability and the Electric Reliability Organization proceeding.

Discussion

Brief presentations by NRC Staff on reactor regulation and oversight including adopting and revising standards and by FERC Staff on new responsibilities under the Energy Policy Act of 2005.

Discussion

Brief presentations/updates by NRC Staff on Generic Letter and by FERC Staff on Interpretive Order Proceeding.

Discussion

Closing Remarks by NRC Chairman Diaz, FERC Chairman Kelliher and Commissioners

* * * * *

A free webcast of this event is available through *http://www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the webcasts and offers access to the meeting via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

Transcripts of the meeting will be available immediately for a fee from Ace Reporting Company (202–347–3700 or 1–800–336–6646). They will be available for free on the Commission's eLibrary system and on the events calendar approximately one week after the meeting.

FERC conferences and meetings are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

All interested persons are invited. Pre-registration is not required and there is no fee to attend this joint meeting. Questions about the meeting should be directed to Mary Kipp at *Mary.Kipp@ferc.gov* or by phone at 202–502–8228.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5291 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–10–007]

Standards of Conduct for Transmission Providers; Notice of Panelists; Standards of Conduct Technical Conference and Workshop

April 3, 2006.

As announced on February 28, March 3 and March 10, 2006, the Federal Energy Regulatory Commission (Commission) will hold a technical conference and workshop on Standards of Conduct for Transmission Providers on April 7, 2006, in Scottsdale, Arizona. The meeting will begin at 9 a.m. (MST) and conclude at approximately 4 p.m. All interested persons are invited to attend. Below is the agenda, including the panelists who will speak at the conference.

The purpose of the conference and workshop is to discuss Standards of Conduct for Transmission Providers under Order No. 2004.[1] It will be held

[1] The Commission does not anticipate any decisions being made in either of these rulemaking dockets at this meeting; however, as both rulemakings may be discussed, the Commission is noticing both dockets to ensure no violation of the Government in the Sunshine Act requirements occurs.

[2] On February 1, 2006, the NRC issued Generic Letter 2006–002, Grid Reliability and the Impact on Plant Risk and the Operability of Offsite Power, OMB No. 3150–0011. On February 16, 2006, in Docket No. RM01–10–005, FERC issued *Interpretive Order Relating to the Standards of Conduct for Transmission Providers*, 114 FERC ¶ 61,155 (2006).

[1] *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs., Regulations Preambles ¶31,155 (2003), *order on reh'g*, Order No. 2004–A, III FERC Stats. & Regs. ¶31,161 (2004), 107 FERC ¶61,032 (2004), *order on reh'g*, Order No. 2004–B, III FERC Stats. & Regs. ¶31,166 (2004), 108 FERC ¶61,118 (2004), *order on reh'g*, Order No. 2004–C, 109 FERC ¶61,325 (2004), *order on reh'g*, Order No. 2004–D, 110 FERC ¶61,320 (2005), *National Fuel Gas Supply Corp., et al.* v. *FERC, Nos. 04–1188, et al.* (D.C. Cir. Filed June 9, 2004).

at the Scottsdale Plaza Resort located at 7200 North Scottsdale Road, Scottsdale, Arizona.

Agenda for Standards of Conduct Conference

April 7, 2006

9–9:45 Introductory Remarks
9:45—10:45 Industry Panel on Independent Functioning Requirements

- Creditworthiness and risk management functions.
- Application of Standards of Conduct to employees of holding company, service company, parent company or other non-transmission provider affiliates providing services to the Transmission Provider.

Staff Moderator: Lee Ann Watson.

Panelists: Douglas Smith, Member, Van Ness Feldman P.C., Janice Alperin, Vice President and Associate General Counsel, El Paso Corporation, Antonia Frost, Partner, Bruder Gentile and Marcoux.

10:45–11 Break
11–12 Panel on Integrated Resource Planning

- Discussion of how companies currently engage in Integrated Resource Planning.
- Discussion of concerns or problems that the industry is encountering in implementing the Standards of Conduct while performing Integrated Resource Planning.

Staff Moderator: Deme Anas.

Panelists: David Raskin, Partner, Steptoe and Johnson, LLP; Donna Attanasio, Partner, Dewey Ballantine; Tom DeBoer, Director, Rates and Regulatory Affairs, Puget Sound Energy.

12–1:30 Lunch Break
1:30–2:30 Industry Panel on Information Sharing Prohibitions—Do's and Don'ts

- Permissible communications with affiliated Transmission Providers.
- Communications in nomination/scheduling/confirmation process.
- Transaction specific communications with affiliated shippers.
- Communications between Transmission Providers and Marketing or Energy Affiliates during litigation proceedings/settlement negotiations or other docketed Commission proceedings.

Staff Moderator: Robert Pease.

Panelists: Sherry Nelson, FERC Standards of Conduct Compliance Officer, The Williams Companies; Michel Sweeney, Partner, Hunton & Williams LLP; Keshmira McVey, Chief Compliance Officer, Bonneville Power Administration.

2:30–2:45 Break
2:45–3:45 Staff Panel Responding to Written Questions

- Staff responding to written questions or inquiries that have been submitted before and during conference.

3:45–4 Concluding Remarks

* * * * *

As included in earlier notices, there is no registration fee to attend this conference. However, we request that those planning to attend the conference register online, until close of business on April 4, on the Commission's Web site at *https://www.ferc.gov/whats-new/registration/sc-0407-form.asp*.

A free audio webcast of this event is available through www.ferc.gov. Anyone with Internet access who desires to listen to this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. (Please note that Scottsdale, Arizona is not on Daylight Savings Time.) The event will contain a link to its webcast. The Capitol Connection provides technical support for the webcasts and offers access to the meeting via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

Transcripts of the meeting will be available immediately for a fee from Ace Reporting Company (202–347–3700 or 1–800–336–6646). They will be available for free on the Commission's eLibrary system and on the events calendar about two weeks after the conference.

Questions about the conference and workshop should be directed to: Demetra Anas, Office of Market Oversight and Investigations, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 202–502–8178. *Demetra.Anas@ferc.gov*.

Magalie R. Salas,

Secretary,

[FR Doc. E6–5286 Filed 4–10–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8157–2]

Science Advisory Board Staff Office; Notification of a Teleconference of the Science Advisory Board to Review a Draft Report by the Regulatory Environmental Modeling Guidance Review Panel of the Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference meeting of the chartered SAB to discuss a draft SAB report, *Review of Agency "Draft Guidance on the Development, Evaluation, and Application of Regulatory Environmental Models" and "Models Knowledge Base" by the Regulatory Environmental Modeling Guidance Review Panel of the EPA Science Advisory Board.*

DATES: The date for the teleconference is Wednesday, April 26, 2006, from 1:30–4 p.m. (Eastern Time).

ADDRESSES: The meeting will take place via telephone only.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the call-in number and access code to participate in the telephone conference may contact Mr. Thomas O. Miller, Designated Federal Officer (DFO), Science Advisory Board Staff Office (1400F), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or via telephone/voice mail at (202) 343–9982 or via e-mail at *miller.tom@epa.gov*. General information about the SAB, as well as any updates concerning the meeting announced in this notice, may be found on the SAB Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the SAB will hold a public teleconference on the date and time provided above. The purpose of this telephone conference is to conduct a final public review and discussion of the draft SAB report *Review of Agency "Draft Guidance on the Development, Evaluation, and Application of Regulatory Environmental Models" and "Models Knowledge Base" by the Regulatory Environmental Modeling Guidance Review Panel of the EPA Science Advisory Board*. The focus of the meeting is to consider whether: (i) The original charge questions to the SAB review panel have been adequately addressed in the draft report, (ii) the draft report is clear and logical; and (iii) the conclusions drawn, or recommendations made in the draft report, are supported by the body of the report.

Background: Background on the REM Guidance Review Panel activities can be found in the following **Federal Register** Notices 68 FR 46602, August 6, 2003; 70 FR 1243, January 6, 2005; 70 FR 12477, March 14, 2005; 70 FR 30948, May 31, 2005; 70 FR 41008, July 15, 2005; and

70 FR 54923, September 19, 2005. Information can also be found on the EPA SAB Web site at *http://www.epa.gov/sab/panels/cremgacpanel.html.*

Availability of Meeting Materials: A roster of participating SAB members and the meeting agenda will be posted on the SAB Web site prior to the meeting. The draft panel report is on the SAB Web site at *http://www.epa.gov/sab/pdf/rem draft 02–24–06.pdf.*

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB Panel to consider during the advisory process.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker with no more than a total of fifteen minutes for all speakers. Interested parties should contact the DFO, contact information provided above, in writing via e-mail by April 19, 2006, to be placed on the public speaker list for the teleconference.

Written Statements: Written statements should be received in the SAB Staff Office by April 19, 2006, so that the information may be made available to the Panel for their consideration. 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, WordPerfect, Word, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Meeting Accommodations: For information on access or services for individuals with disabilities, please contact Thomas Miller, Designated Federal Officer (DFO), at (202) 343–9982 or via e-mail at *miller.tom@epa.gov.* To request accommodation of a disability, please contact the DFO, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: April 5, 2006.

Anthony Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. E6–5324 Filed 4–10–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8157–1]

Science Advisory Board Staff Office Notification of an Upcoming Meeting of the Science Advisory Board Committee on Valuing the Protection of Ecological Systems and Services (C–VPESS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the SAB Committee on Valuing the Protection of Ecological Systems and Services (C–VPESS) to discuss a draft committee report and initial committee work on application of methods for valuing the protection of ecological systems and services.

DATES: A public meeting of the C–VPESS will be held from 9 a.m. to 5:30 p.m (Eastern Time) on May 9, 2006 and from 8:30 a.m. to 3:30 p.m. (Eastern Time) on May 10, 2006.

ADDRESSES: The meeting will take place at the SAB Conference Center, 1025 F Street, NW., Suite 3700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Members of the public wishing further information regarding the SAB C–VPESS meeting may contact Dr. Angela Nugent, Designated Federal Officer (DFO), via telephone at: (202) 343–9981 or e-mail at: *nugent.angela@epa.gov.* The SAB mailing address is: U.S. EPA, Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB, as well as any updates concerning the meetings announced in this notice, may be found in the SAB Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA 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: Background on the SAB C–VPESS and its charge was provided in 68 FR 11082 (March 7, 2003). The purpose of the meeting is for the SAB C–VPESS to discuss a draft advisory report calling for expanded and integrated approach for valuing the protection of ecological systems and services. The Committee will also discuss initial work on application of methods for valuing the protection of ecological systems and services.

These activities are related to the Committee's overall charge: To assess Agency needs and the state of the art and science of valuing protection of ecological systems and services and to identify key areas for improving knowledge, methodologies, practice, and research.

Availability of Meeting Materials: Materials in support of this meeting will be placed on the SAB Web site at: *http://www.epa.gov/sab/* in advance of this meeting.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB to consider during the advisory 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. Nugent, DFO, at the contact information noted above, by April 30, 2006, to be placed on the public speaker list for the May 9–10, 2006 meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by April 30, 2006, so that the information may be made available to the SAB 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).

Meeting Access: For information on access or services for individuals with disabilities, please contact Dr. Angela Nugent at (202) 343–9981 or *nugent.angela@epa.gov.* To request accommodation of a disability, please contact Dr. Nugent, preferably at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: April 3, 2006.

Anthony Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. E6–5327 Filed 4–10–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0005; FRL–7757–5]

Pennsylvania and Virginia State Plans for Certification of Applicators of Restricted Use Pesticides; Notice of Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In the **Federal Register** of October 28, 2005, EPA issued a notice of intent to approve amended Pennsylvania and Virginia Plans for the certification of applicators of restricted use pesticides. In this notice EPA solicited comments from the public on the proposed action to approve the amended Pennsylvania and Virginia Plans. The amended Certification Plans Pennsylvania and Virginia submitted to EPA contained several statutory, regulatory, and programmatic changes to their current Certification Plans. The proposed amendments establish new commercial categories for vertebrate pest control. One public comment was received that had no specific information relevant to the issues presented; therefore, no changes were made based on this comment. EPA hereby approves the amended Pennsylvania and Virginia Plans.

ADDRESSES: The amended Pennsylvania and Virginia Certification Plans can be reviewed at the locations listed under Unit I.B. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Fabiola Estrada, USEPA Region III, Pesticide/Asbestos Programs and Enforcement Branch (3WC32), 1650 Arch St., Philadelphia, PA 19103–2029; telephone number: (215) 814–2171; e-mail address: *estrada.fabiola@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those involved in agriculture and anyone involved with the distribution and application of pesticides for agricultural purposes. Others involved with pesticides in a non-agricultural setting may also be affected. In addition, it may be of interest to others, such as, those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. 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 an official public docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0247. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket facility 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/.*

In addition to the sources listed in this unit, you may obtain copies of the amended Pennsylvania and Virginia Certification Plans, other related documents, or additional information by contacting:

1. Fabiola Estrada at the address listed under **FOR FURTHER INFORMATION CONTACT.**

2. David Scott, Bureau of Plant Industry, Pennsylvania Department of Agriculture, 2301 North Cameron St., Harrisburg, PA 17110–9408; telephone number: (717) 772–5214; e-mail:*dascott@state.pa.us.*

3: Kathy Dictor, Virginia Department of Agriculture & Consumer Services, Office of Pesticide Services, 2221 Carbon Hill Drive, Midlothian, VA 23113; telephone number: (804) 786–0685; e-mail:*kdictor@vdacs.state.va.us.*

4. Michelle DeVaux, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–5891; e-mail address: *devaux.michelle@epa.gov.*

II. What Action is the Agency Taking?

EPA is approving the amended Pennsylvania and Virginia Certification Plans. This approval is based upon the EPA review of the Pennsylvania and Virginia Plans and finding them in compliance with FIFRA and 40 CFR part 171. Further, one public comment that had no specific information relevant to the issues presented was submitted to the **Federal Register** notice of October 28, 2005 (70 FR 62109) (FRL–7735–2), soliciting comments. No changes were made based on the comment received; therefore, the amended Pennsylvania and Virginia Certification Plans are approved.

List of Subjects

Environmental protection, Education, Pests and pesticides.

Dated: March 30, 2006.

William Early,

Acting Regional Administrator, Region III.

[FR Doc. E6–5326 Filed 4–10–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0084; FRL–7772–3]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA issued a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations in the **Federal Register** of February 22, 2006. The notice announced that 90 pesticide registrations would be canceled unless a cancellation request was withdrawn by August 21, 2006. The 90 registrations were listed in Table 1. This notice corrects information in Table 1 for one of the registrations. EPA Registration Number 000100–01074 (Cyclone Concentrate Herbicide) was erroneously included in the February 22, 2006 Notice, therefore with this technical correction EPA is removing EPA Registration Number 000100–01074 (Cyclone Concentrate Herbicide) from Table 1 of the February 22, 2006 **Federal Register** Notice. A request to voluntarily cancel EPA Registration Number 000100–01074 (Cyclone Concentrate Herbicide) was previously published in the **Federal Register** of October 28, 2005. The terms of the October 28, 2005 Notice take precedent over the erroneous inclusion of this registration

in the February 22, 2006 **Federal Register** Notice.

DATES: Unless the request to cancel EPA Registration Number 000100–01074 (Cyclone Concentrate Herbicide) is withdrawn by April 26, 2006 an order will be issued canceling this registration. The Agency will consider withdrawal requests postmarked no later than April 26, 2006.

FOR FURTHER INFORMATION CONTACT: John Jamula, Information Technology and Resources Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6426; e-mail address: *jamula.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, 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 number (ID) [EPA–HQ–OPP–2006–0084; FRL–7772–3]. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This 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.

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. What Action is the Agency Taking?

In accordance with section 6(f)(1) of FIFRA, as amended, EPA issued a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations (71 FR 9118, February 22, 2006) (FRL–7762–4). The notice announced that 90 pesticide registrations would be canceled unless a cancellation request was withdrawn by August 21, 2006. The 90 registrations were listed in Table 1. EPA Registration Number 000100–01074 (Cyclone Concentrate Herbicide) was erroneously included in the February 22, 2006 Notice. In this technical correction, EPA is removing the entry for EPA Registration Number 000100–01074 (Cyclone Concentrate Herbicide) from table 1 of the February 22, 2006 Notice (71 FR 9119). A request to voluntarily cancel EPA Registration Number 000100–01074 (Cyclone Concentrate Herbicide) was previously published in the **Federal Register** of October 28, 2005 (70 FR 62112) (FRL–7743–6) and the terms of the October 28, 2005 Notice are applicable to EPA Registration Number 000100–01074 (Cyclone Concentrate Herbicide) and take precedent over the erroneous inclusion of this registration in the February 22, 2006 **Federal Register** Notice and the terms of that Notice.

In FR Doc. E6–2492, in the issued of February 22, 2006, page 9119, in Table 1, the entry for Registration No. 000100–01074, product name: Cyclone Concentrate Herbicide, and chemical name: Paraquat dichloride, is removed in its entirety.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 28, 2006.

Robert Forrest,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. E6–5112 Filed 4–10–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2004–0014; FRL–8056–3]

Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; Notice of Data Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Data Availability.

SUMMARY: On August 16, 2005, EPA proposed to approve a number of new analytical methods for measuring *E. coli* and other microbiological pollutants in wastewater and sewage sludge. Today's notice announces the availability of new data supporting approval of an additional *E. coli* method. EPA is soliciting comment only on the data and method described in today's notice.

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

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–2004–0014, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *OW-docket@epamail.epa.gov* Attention Docket ID No. OW–2004–0014
- Mail: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 2046.
- Hand Delivery: EPA Water Center, EPA West Building, Room B102, 1301 Constitution Avenue NW., Washington, DC, Attention Docket ID No. OW–2004–0014. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2004–0014. 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 *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 Water Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Robin K. Oshiro, Office of Science and Technology, Office of Water (4303–T), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW.; Washington, DC 20460; telephone number: 202–566–1075; fax number: 202–566–1053; e-mail address: *Oshiro.robin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

EPA Regions, as well as States, Territories and Tribes authorized to implement the National Pollutant Discharge Elimination System (NPDES) program, issue permits that must comply with the technology-based and water quality-based requirements of the Clean Water Act (CWA). In doing so, NPDES permitting authorities, including States, Territories, and Tribes, make a number of determinations. These include the selection of pollutants to be measured, monitoring requirements, permit conditions (e.g., triggers), and, in many cases, limits in permits. EPA's NPDES regulations (applicable to all authorized State NPDES programs) require monitoring results to be reported at the intervals specified in the permit, but in no case less frequently than once per year. Monitoring results must be conducted according to test procedures approved under 40 CFR part 136 [see 40 CFR 122.41(j)(4), 122.44(i)(1)(iv) and 122.44(i)(2)]. Therefore, entities with NPDES permits may potentially be regulated by rulemaking actions relatd to the information announced in this notice. In addition, when an authorized State, Territory, or Tribe certifies Federal licenses under CWA section 401, thye must use the standardized analysis and sampling procedures. Categories and entities that could potentially be regulated by EPA's proposal in August 2005 include:

Category	Examples of potentially regulated entities
Federal, State, Territorial, and Indian Tribal Governments.	Federal, State, Territorial, and Tribal entities authorized to administer the NPDES permitting program; Federal, State, Territorial, and Tribal entities providing certification under Clean Water Act section 401.
Industry	Facilities that must conduct monitoring to comply with NPDES permits.
Municipalities	POTWs that must conduct monitoring to comply with NPDES permits.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the earlier proposal. This table lists types of entities that EPA is now aware could potentially be regulated. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability language at 40 CFR 122.1, (NPDES purpose and scope), 40 CFR 136.1 (NPDES permits and CWA), 40 CFR 503.32 (Sewage sludge and pathogens). If you have questions regarding the applicability of this action to a particular entity, consult the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://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:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Summary of New Information and Request for Comment

On August 16, 2005, EPA proposed to approve a number of new analytical methods for measuring *E. coli* and other microbiological pollutants in wastewater and sewage sludge. In that proposal, EPA solicited comment on the proposed methods and also solicited information about additional methods. During the comment period, EPA received data and information on an additional *E. coli* method, m-ColiBlue24®, in wastewater (comments OW–2004–0014–51, and 53). In today's action, EPA is announcing the availability of this new information that could support approval of m-ColiBlue24® for monitoring *E. coli* for use in wastewater. EPA has added these data to the docket as document number OW–2004–0014–60, and will consider it together with the data received during the comment period in its evaluation of methods to be approved in a final rule. Today's notice solicits comment on these data and information.

EPA is soliciting comment only on the additional information and data discussed in this notice. EPA is not requesting comment on other methods or on other aspects of the August 16, 2005, proposal.

Dated: March 30, 2006.

Benjamin H. Grumbles,

Assistant Administrator, Office of Water.

[FR Doc. E6–5325 Filed 4–10–06; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0278]

National Contact Center; Information Collection; National Contact Center Customer Evaluation Survey

AGENCY: Citizen Services and Communications, Federal Consumer Information Center, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding the National Contact Center customer evaluation survey. The clearance currently expires on June 30, 2006.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: June 12, 2006.

FOR FURTHER INFORMATION CONTACT: Tonya Beres, Federal Information Specialist, Office of Citizen Services and Communications, at telephone (202) 501–1803 or via e-mail to *tonya.beres@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0278, National Contact Center Customer Evaluation Survey, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection will be used to assess the public's satisfaction with the National Contact Center service, to assist in increasing the efficiency in responding to the public's need for Federal information, and to assess the effectiveness of marketing efforts.

B. Annual Reporting Burden

Respondents: 2,200.

Responses Per Respondent: 1.

Hours Per Response: .05 (3 minutes) for phone survey and .06 (4 minutes) for email survey.

Total Burden Hours: 119.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0278, National Contact Center Customer Evaluation Survey, in all correspondence.

Dated: April 4, 2006.

Michael W. Carleton,

Chief Information Officer.

[FR Doc. E6–5226 Filed 4–10–06; 8:45 am]

BILLING CODE 6820–CX–S

GENERAL SERVICES ADMINISTRATION

Federal Travel Regulation (FTR); Maximum Per Diem Rates for the States of California, Georgia, Illinois, New York, North Carolina, Ohio, South Carolina and Washington

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of Per Diem Bulletin 06–06, revised continental United States (CONUS) per diem rates.

SUMMARY: The General Services Administration (GSA) has reviewed the lodging rates for certain non-standard locations in the States of California, Georgia, Illinois, New York, North Carolina, Ohio, South Carolina and Washington, using more current lodging industry data, as well as data on where Federal travelers actually stay when visiting these locations. Also, GSA has reviewed the meals and incidental expenses (M&IE) rate for Aiken, South Carolina. The per diems prescribed in Bulletin 06–06 may be found at *http://www.gsa.gov/perdiem.*

DATES: This notice is effective May 1, 2006 and applies to travel performed on or after May 1, 2006.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Patrick McConnell, Office of Governmentwide Policy, Travel Management Policy, at (202) 501–2362. Please cite FTR Per Diem Bulletin 06–06.

SUPPLEMENTARY INFORMATION:

A. Background

After an analysis of the per diem rates established for FY 2006 (see the **Federal Register** notices at 70 FR 52100, September 1, 2005, 70 FR 59349, October 12, 2005, 70 FR 68457, November 10, 2005, and 71 FR 3518, January 23, 2006), the per diem rates are being changed in the following locations:

State of California
- Alameda County

State of Georgia
- Chatham County

State of Illinois
- Cook and Lake Counties

State of New York
- The boroughs of Manhattan, Brooklyn, Queens, the Bronx, and Staten Island

State of North Carolina
- Mecklenburg County

State of Ohio
- Hamilton and Clermont Counties

State of South Carolina
- Aiken County

State of Washington
- Pierce County

B. Procedures

Per diem rates are published on the Internet at *http://www.gsa.gov/perdiem* as FTR Per Diem Bulletins, notice of which is published in the **Federal Register** on a periodic basis. This process ensures timely increases or decreases in per diem rates established by GSA for Federal employees on official travel within CONUS. Notices published periodically in the **Federal Register**, such as this one, now constitute the only notification of revisions in CONUS per diem rates to agencies.

Dated: April 3, 2006.

Becky Rhodes,

Deputy Associate Administrator, Office of Travel, Transportation and Asset Management.

[FR Doc. E6–5322 Filed 4–10–06; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Availability of Funds for One Family Planning General Training and Technical Assistance Project in Public Health Service Region VI

AGENCY: Office of Public Health and Science, Office of Population Affairs.

ACTION: Notice.

Announcement Type: Initial Competitive Grant.

CFDA Number: 93.260.

DATES: To receive consideration, applications must be received by the Office of Public Health and Science (OPHS) Office of Grants Management no later than June 12, 2006. Applications will be considered as meeting the deadline if they are received by the OPHS Office of Grants Management no later than 5 p.m. Eastern time on the application due date. Applications will not be accepted by fax, nor will the submission deadline be extended. The application due date requirement specified in this announcement supercedes the instructions in the OPHS–1. Applications which do not meet the deadline will be returned to the applicant unread. See heading "APPLICATION and SUBMISSION INFORMATION" for additional information. Executive Order 12372 comment due date: The State Single Point of Contact (SPOC) has 60 days from the due date to submit any comments.

Executive Summary: This announcement seeks applications from public and nonprofit private entities to establish and operate one general training and technical assistance project in Public Health Service (PHS) Region VI (Arkansas, Louisiana, Oklahoma, Texas, and New Mexico). The purpose of the family planning general training program is to ensure that all levels of personnel working in Title X family planning service projects have the knowledge, skills, and abilities necessary for the effective delivery of high quality family planning services. General training also includes specialized technical assistance which consists of specific, specialized or highly skilled family planning training that is usually provided to a single organization based on identified need. The successful applicant will be responsible for the development and overall management of the general training program that provides training for Title X service grantee personnel in PHS Region VI.

I. Funding Opportunity Description

The Office of Population Affairs (OPA) announces the availability of approximately $480,000 in Fiscal Year (FY) 2006 funds, inclusive of indirect costs, to support one Family Planning General Training and Technical Assistance project in PHS Region VI, as authorized under section 1003 of the Public Health Service Act. The successful applicant will provide both training and specialized technical assistance to family planning personnel in order to maintain the high level of performance of family planning services projects funded under Title X of the PHS Act.

Applicant organizations must demonstrate significant experience in the design, development, implementation, successful completion, and evaluation of health-related training activities. In addition, the successful applicant must demonstrate skill and experience in providing training to diverse, community-based entities. The successful applicant will provide evidence of familiarity with family planning and related reproductive health issues, including program management principles, information/education/communication concepts, and the ability to translate evidence-based information into training activities.

Awards will be made only to those organizations or agencies which have met all applicable requirements and which demonstrate the capability of providing the proposed services.

Program Statute and Regulations

Title X of the PHS Act, 42 U.S.C. 300 *et seq.*, authorizes grants for projects to provide family planning services to persons from low-income families and others. Section 1001 of the Act, as amended, authorizes grants "to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents)." The broad range of services should include abstinence education. Section 1003 of the Act, as amended, authorizes the Secretary of Health and Human Services to award grants to entities to provide the training for personnel to carry out family planning service programs. Section 1008 of the Act, as amended, stipulates that "none of the funds appropriated under this title shall be used in programs where abortion is a method of family planning."

The regulations set out at 42 CFR part 59, subpart C, govern grants to provide training for family planning service providers. Prospective applicants should refer to the regulations in their entirety. Training provided must be in accordance with the requirements regarding the provision of family planning services under Title X. These requirements can be found in the Title X statute, the implementing regulations which govern project grants for family planning services (42 CFR part 59, subpart A), and the "Program Guidelines for Project Grants for Family Planning Services," (January 2001). In addition, any training regarding sterilization of clients as part of the Title X program should be consistent with 42 CFR part 50, subpart B ("Sterilization of Persons in Federally Assisted Family Planning Projects"). Copies of the Title X statute, regulations, and "Program Guidelines" can be obtained by contacting the OPHS Office of Grants Management, or may be downloaded from the Office of Population Affairs (OPA) web site at *http://opa.osophs.dhhs.gov.* Applicants should use the legislation, regulations, and other information included in this announcement to guide them in developing their applications.

II. Award Information

The Office of Family Planning (OFP)/OPA announces the availability of approximately $480,000 in FY 2006 funds, inclusive of indirect costs, to support one general training grant to assist in the establishment and operation of a regional training center to serve Title X service grantees in PHS Region VI. The grant will be funded in annual increments (budget periods) and may be approved for a project period of up to two years. Funding of the grant will be based on the Regional Health Administrator's (RHA's) assessment of such factors as the training and specialized technical assistance needs within the region; the applicant's experience and proposed work plan; availability and expertise of proposed personnel; and, the anticipated cost of the proposed project.

III. Eligibility Information

1. *Eligible Applicants:* Any public or nonprofit private entity which has a physical location within one of the States in PHS Region VI (Arkansas, Louisiana, Oklahoma, Texas, and New Mexico) is eligible to apply for a grant under this announcement. Faith-based organizations are eligible to apply for this Title X family planning general training and technical assistance grant.

2. *Cost Sharing:* A match of non-Federal funds is not required.

IV. Application and Submission Information

1. *Address to Request Application Package:* Application kits may be requested from, and applications submitted to: OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852; 240–453–8822. Application kits are also available online through the OPHS electronic grants management Web site at *https://egrants.osophs.dhhs.gov,* or the government-wide grants system, grants.gov at *http://www.grants.gov.* Application requests may be submitted by FAX at 240–453–8823. Instructions for use of the eGrants system can be found on the OPA Web site at *http://opa.osophs.dhhs.gov* or requested from the OPHS Office of Grants Management.

2. *Content and Form of Application Submission:* Applications must be submitted on the Form OPHS–1 and in the manner prescribed in the application kit. The application narrative should be limited to 50 double-spaced pages using an easily readable serif typeface such as Times Roman, Courier, or GC Times, 12-point font. The page limit does not include budget; budget justification; required forms, assurances, and certifications as part of the OPHS–1, "Grant Application"; or appendices. All pages, charts, figures and tables should be numbered. The application narrative should be numbered separately and clearly show the 50 page limit. If the application narrative exceeds 50 pages, only the first 50 pages of the application narrative will be reviewed. Appendices may provide curriculum vitae, organizational structure, examples of organizational capabilities, progress report for a continuing competitive application, or other supplemental information which supports the application. However, appendices are for supportive information only. All information that is critical to the proposed project should be included in the body of the application. Appendices should be clearly labeled.

For all non-governmental applicants, documentation of non-profit status must be submitted as part of the application. Any of the following constitutes acceptable proof of such status:

a. A reference to the Applicant organization's listing the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code;

b. A copy of a currently valid IRS tax exemption certificate;

c. A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals;

d. A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; For local, nonprofit affiliates of State or national organizations, a statement signed by the parent organization indicating that the applicant organization is a local nonprofit affiliate must be provided in addition to any one of the above acceptable proof of nonprofit status.

A Dun and Bradstreet Universal Numbering System (DUNS) number is required for all applications for Federal assistance. Organizations should verify that they have a DUNS number or take the steps needed to obtain one. Instructions for obtaining a DUNS number are included in the application package, or may be downloaded from the OPA web site.

Applications must include a one-page abstract of the proposed project. The abstract will be used to provide reviewers with an overview of the application, and will form the basis for the application summary in grants management documents.

Application Content

The applicant should demonstrate knowledge of evidence-based learning theory and adult learning behavior, and the applicability to proposed training activities. The design of all training programs, including all curricula and materials, must be consistent with Title X statute and regulations.

The applicant should demonstrate willingness to work closely with other Title X-funded training projects, including other regional training centers, the male training center, and the national training center(s). In addition, the applicant should demonstrate willingness to work with other Federal, State, and/or local government entities; family planning service providers; other community-based organizations; and other training providers (e.g., Health Resources and Services Administration [HRSA] AIDS Education Training Centers [AETCs]; Centers for Disease Control and Prevention [CDC] Prevention Training Centers [PTCs]; Substance Abuse and Mental Health Service Administration [SAMHSA] Addiction Technology Transfer Centers [ATTCs]; Administration for Children and Families [ACF] Infant Adoption Awareness Training Program [IAATP], etc.) in order to maximize resources and achieve program objectives.

The grantee will be responsible for all costs associated with training program administration and management, as well as any costs directly associated with Title X-sponsored training events (e.g., educational materials, classroom and training sites, etc.). The successful applicant will be expected to participate in at least two national meetings per year at the request of the Office of Family Planning, and should budget accordingly. Applicants should demonstrate flexibility in resource utilization, including training plan design, in order to respond to national training priority topics, new initiatives, and emerging program needs during each year of the project period.

Title X Program Priorities, Legislative Mandates, and Key Issues

The following priorities represent overarching goals for the Title X program. Proposals should be developed considering Title X program priorities, legislative mandates, and key issues as they relate to training needs within Title X service projects. Additionally, specific national training priorities will be identified for each year of the project period.

2006 Program Priorities

1. Assuring ongoing high quality family planning and related preventive health services that will improve the overall health of individuals;

2. Assuring access to a broad range of acceptable and effective family planning methods and related preventive health services that include natural family planning methods, infertility services, and services for adolescents; highly effective contraceptive methods; breast and cervical cancer screening and prevention that corresponds with nationally recognized standards of care; STD and HIV prevention education, counseling, and testing; extramarital abstinence education and counseling; and other preventive health services. The broad range of services does not include abortion as a method of family planning;

3. Encouraging participation of families, parents, and/or other adults acting in the role of parents in the decision of minors to seek family planning services, including activities that promote positive family relationships;

4. Improving the health of individuals and communities by partnering with community-based organizations (CBOs), faith-based organizations (FBOs), and

other public health providers that work with vulnerable or at-risk populations;

5. Promoting individual and community health by emphasizing family planning and related preventive health services for hard-to-reach populations, such as uninsured or under-insured individuals, males, persons with limited English proficiency, adolescents, and other vulnerable or at-risk populations.

Legislative Mandates

The following legislative mandates have been part of the Title X appropriations for each of the last several years. In developing a proposal, each applicant should describe how the proposed project will provide training that addresses each of these legislative mandates.

- "None of the funds appropriated in this Act may be made available to any entity under title X of the Public Health Service Act unless the applicant for the award certifies to the Secretary that it encourages family participation in the decision of minors to seek family planning services and that it provides counseling to minors on how to resist attempts to coerce minors into engaging in sexual activities;" and
- "Notwithstanding any other provision of law, no provider of services under title X of the Public Health Service Act shall be exempt from any State law requiring notification or the reporting of child abuse, child molestation, sexual abuse, rape, or incest."

Other Key Issues

In addition to the Program Priorities and Legislative Mandates, the following Key Issues have implications for Title X services projects and should be acknowledged in the program plan:

1. The increasing cost of providing family planning services;

2. The U.S. Department of Health and Human Service priorities and initiatives, including increasing access to health care; emphasizing preventive health measures, improving health outcomes; improving the quality of health care; and eliminating disparities in health; as well as Healthy People 2010 objectives for Family Planning (Chapter 9); Health Communication (Chapter 11); HIV (Chapter 13), and Sexually Transmitted Diseases (Chapter 25). (*http://www.health.gov/healthypeople*);

3. Departmental initiatives and legislative mandates, such as the Health Insurance Portability and Accountability Act (HIPAA); Infant Adoption Awareness Training Program (IAATP); providing unmarried adolescents with information, skills and support to encourage sexual abstinence; serving persons with limited English proficiency;

4. Integration of HIV/AIDS services into family planning programs; specifically, HIV/AIDS education, counseling and testing either on-site or by referral should be provided in all Title X family planning services projects. Education regarding the prevention of HIV/AIDS should incorporate the "ABC" message. That is, for adolescents and unmarried individuals, the message should include "A" for abstinence; for married individuals or those in committed relationships, the message is "B" for be faithful; and, for individuals who engage in behavior that puts them at risk for HIV, the message should include "A," "B," and "C" for correct and consistent condom use.

5. Utilization of electronic technologies, such as electronic grants management systems;

6. Data collection and reporting which is responsive to the current OMB-approved Family Planning Annual Report (FPAR) and other information needs for monitoring and improving family planning services;

7. Service delivery improvement through utilization of research outcomes focusing on family planning and related population issues; and

8. Utilizing practice guidelines and recommendations developed by recognized professional organizations and Federal agencies in the provision of evidence-based Title X clinical services.

National Training Priorities for 2006

Each year the OFP/OPA establishes national training priorities based on nationally identified training needs. The OFP/OPA will provide the successful applicant with guidance for addressing the 2006 training priorities at the time of grant award. A portion of the total grant award will be earmarked for addressing 2006 training priorities, and a final budget will be negotiated between the successful applicant and the OFP Regional Project Officer. The plan for addressing the training priorities must have approval of the OFP Project Officer and the OFP/OPA prior to implementation.

Knowledge, Skills, and Abilities

Applicants should demonstrate a broad range of expertise and skill in providing training programs, managing training resources, and working with consultants and service providers. Applicants should demonstrate the capacity to utilize electronic technologies and evidence-based training delivery techniques. Applicants should include evidence of the ability to provide training that prepares family planning project personnel to increase effectiveness in working with persons of diverse backgrounds, as well as with persons of differing educational and physical abilities.

The proposal should demonstrate the applicants's expertise and ability to develop, implement, and evaluate training in the areas of information, education and communication; program management; and clinical service delivery. The training proposal should reflect an understanding of the training needs relevant to the various levels of Title X personnel, both clinical and non-clinical. Applicants should indicate the ability to provide continuing education credits as appropriate (*e.g.*, continuing education credit for nurses, health educators, social workers, etc.). Within each of the areas mentioned above, at a minimum, the grantee will be expected to provide training for Title X personnel that includes the following topics:

Information, Education and Communication

- Increasing effectiveness in working with hard-to-reach and diverse populations, including racial, ethnic, cultural, and linguistic minorities, to reduce health disparities;
- Use of electronic technologies in program activities and management;
- Incorporation and/or use of various media modalities to assist in achieving program goals and objectives.

Program Management

- Improving the management skills of family planning grantee staff;
- Increasing the ability of family planning grantee staff to assess, plan, design, and utilize management information systems;
- Designing, implementing, and utilizing data reports in project operations;
- Utilizing financial systems to monitor, track, record, and control Title X and other financial resources according to Federal grants requirements;
- Incorporating current information related to privacy and transmission of client information into grantee operations [*e.g.*, compliance with the Health Insurance Portability and Accountability Act (HIPAA), as applicable];
- Improving program efficiency and enhancing cost savings and recovery mechanisms; and

• Collecting and reporting all data elements required for the Family Planning Annual Report (FPAR).

Clinical Activities

• Improving the performance of clinic staff (clinical and non-clinical providers) involved in health care delivery through continuing education and quality assurance activities;
• Educational clinical activities addressing intimate partner violence;
• Clinical topics including current acceptable and effective contraceptive methods and other issues and technologies which affect family planning service delivery and which are consistent with evidence-based, nationally recognized standards of care;
• Title X Program requirements and legislative mandates, including training on involving parents in the decision of minors to seek family planning services; counseling minors on resisting attempts to coerce them into engaging in sexual activity; and compliance with state laws regarding reporting or notification of child abuse, child molestation, sexual abuse, rape, or incest;
• Provision of abstinence education;
• Integrating HIV prevention activities into Title X services;
• Incorporating the "ABC" approach to HIV prevention counseling; and
• Best practices for providing non-directive counseling, as described in the Title X family planning services projects regulations at 42 CFR 59.5(a)(5).

Specialized Technical Assistance

In addition to providing general training on the issues mentioned above, successful applicants must also demonstrate the capacity to develop and implement a system for providing technical assistance to Title X service providers in PHS Region VI. Technical assistance consists of specific, specialized or highly skilled family planning training that is usually provided to a single organization based on an identified need. The objective of this assistance is to provide projects with the technical resources needed to address Title X priorities and key issues impacting family planning, and/or to better manage the project.

A portion of the total grant award will be earmarked for technical assistance, and a final budget will be negotiated between the successful applicant and the OFP Regional Project Officer.

All technical assistance provided with grant funds must have prior approval of the OFP Project Officer.

Evaluation

The applicant is responsible for developing and implementing an evaluation plan which assesses the overall training program, as well as each training event and technical assistance provided. The plan should include evaluation of the content of training events, delivery mechanisms utilized, accessability for Title X providers, and how well the offerings met the needs of the trainee and sponsoring agency. Evaluation of technical assistance should include an assessment of whether the expertise of the selected consultant matched the technical assistance needed, as well as whether the assistance resulted in the improved knowledge, skills, and/or abilities required.

3. Submission Dates and Times

Submission Mechanisms

The Office of Public Health and Science (OPHS) provides multiple mechanisms for the submission of applications, as described in the following sections. Applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of applications submitted using any of these mechanisms. Applications submitted to the OPHS Office of Grants Management after the deadlines described below will not be accepted for review. Applications which do not conform to the requirements of the grant announcement will not be accepted for review and will be returned to the applicant.

Applications may only be submitted electronically via the electronic submission mechanisms specified below. Any applications submitted via any other means of electronic communication, including facsimile or electronic mail, will not be accepted for review. While applications are accepted in hard copy, the use of the electronic application submission capabilities provided by the OPHS eGrants system or the Grants.gov Web site Portal is encouraged.

Electronic grant application submissions must be submitted no later than 5 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement using one of the electronic submission mechanisms specified below. All required hardcopy original signatures and mail-in items must be received by the OPHS Office of Grants Management no later than 5 p.m. eastern time on the next business day after the deadline date specified in the **DATES** section of the announcement.

Applications will not be considered valid until all electronic application components, hardcopy original signatures, and mail-in items are received by the OPHS Office of Grants Management according to the deadlines specified above. Application submissions that do not adhere to the due date requirements will be considered late and will be deemed ineligible.

Applicants are encouraged to initiate electronic applications early in the application development process, and to submit early on the due date or before. This will aid in addressing any problems with submissions prior to the application deadline.

Electronic Submissions via the Grants.gov Web site Portal

The Grants.gov Web site Portal provides organizations with the ability to submit applications for OPHS grant opportunities. Organizations must successfully complete the necessary registration processes in order to submit an application. Information about this system is available on the Grants.gov Web site, *http://www.grants.gov.*

In addition to electronically submitted materials, applicants may be required to submit hard copy signatures for certain Program related forms, or original materials as required by the announcement. It is imperative that the applicant review both the grant announcement, as well as the application guidance provided within the Grants.gov application package, to determine such requirements. Any required hard copy materials, or documents that require a signature, must be submitted separately via mail to the OPHS Office of Grants Management, and, if required, must contain the original signature of an individual authorized to act for the applicant agency and the obligations imposed by the terms and conditions of the grant award.

Electronic applications submitted via the Grants.gov Web site Portal must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. All required mail-in items must be received by the due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation.

Upon completion of a successful electronic application submission via the Grants.gov Web site Portal, the applicant will be provided with a confirmation page from Grants.gov indicating the date and time (eastern time) of the electronic application submission, as well as the Grants.gov Receipt Number. It is critical that the applicant print and retain this

confirmation for their records, as well as a copy of the entire application package.

All applications submitted via the Grants.gov Web site Portal will be validated by Grants.gov. Any applications deemed "Invalid" by the Grants.gov Web site Portal will not be transferred to the OPHS eGrants system, and OPHS has no responsibility for any application that is not validated and transferred to OPHS from the Grants.gov Website Portal. Grants.gov will notify the applicant regarding the application validation status. Once the application is successfully validated by the Grants.gov Web site Portal, applicants should immediately mail all required hard copy materials to the OPHS Office of Grants Management to be received by the deadlines specified above. It is critical that the applicant clearly identify the Organization name and Grants.gov Application Receipt Number on all hard copy materials.

Once the application is validated by Grants.gov, it will be electronically transferred to the OPHS eGrants system for processing. Upon receipt of both the electronic application from the Grants.gov Web site Portal, and the required hardcopy mail-in items, applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of the application submitted using the Grants.gov Web site Portal.

Applicants should contact Grants.gov regarding any questions or concerns regarding the electronic application process conducted through the Grants.gov Web site Portal.

Electronic Submissions via the OPHS eGrants System

The OPHS electronic grants management system, eGrants, provides for applications to be submitted electronically. Information about this system is available on the OPHS eGrants website, *https://egrants.osophs.dhhs.gov*, or may be requested from the OPHS Office of Grants Management at (240) 453–8822.

When submitting applications via the OPHS eGrants system, applicants are required to submit a hard copy of the application face page (Standard Form 424) with the original signature of an individual authorized to act for the applicant agency and assume the obligations imposed by the terms and conditions of the grant award. If required, applicants will also need to submit a hard copy of the Standard Form LLL and/or certain Program related forms (*e.g.*, Program Certifications) with the original signature of an individual authorized to act for the applicant agency.

Electronic applications submitted via the OPHS eGrants system must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. The applicant may identify specific mail-in items to be sent to the Office of Grants Management separate from the electronic submission; however these mail-in items must be entered on the eGrants Application Checklist at the time of electronic submission, and must be received by the due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation.

Upon completion of a successful electronic application submission, the OPHS eGrants system will provide the applicant with a confirmation page indicating the date and time (Eastern Time) of the electronic application submission. This confirmation page will also provide a listing of all items that constitute the final application submission including all electronic application components, required hardcopy original signatures, and mail-in items, as well as the mailing address of the OPHS Office of Grants Management where all required hard copy materials must be submitted.

As items are received by the OPHS Office of Grants Management, the electronic application status will be updated to reflect the receipt of mail-in items. It is recommended that the applicant monitor the status of their application in the OPHS eGrants system to ensure that all signatures and mail-in items are received.

Mailed or Hand-Delivered Hard Copy Applications

The address to submit hard-copy applications is OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852, 240–453–8822. Applicants who submit applications in hard copy (via mail or hand-delivered) are required to submit an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Mailed or hand-delivered applications will be considered as meeting the deadline if they are received by the OPHS Office of Grant Management on or before 5 p.m. eastern time on the deadline date specified in the **DATES** section of the announcement. The application deadline date requirement specified in this announcement supersedes the instructions in the OPHS–1. Applications that do not meet the deadline will be returned to the applicant unread.

4. Intergovernmental Review

Applicants under this announcement are subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," as implemented by 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for the state in which the applicant is located. The application kit contains the currently available listing of the SPOCs that have elected to be informed of the submission of applications. This information can also be found on the Office of Management and Budget Web site, *www.whitehouse.gov/omb/grants/spoc.* For those states not represented on the listing, further inquiries should be made by the applicant regarding the submission to the relevant SPOC. The SPOC should forward any comments to the OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, Maryland 20852. The SPOC has 60 days from the due date as listed in the **DATES** section of this announcement to submit any comments. For further information, contact the OPHS Office of Grants Management at 240–453–8822.

5. Funding Restrictions

The allowability, allocability, reasonableness and necessity of direct and indirect costs that may be charged to OPHS grants are outlined in the following documents: OMB Circular A-21 (Institutions of Higher Education); OMB Circular A–87 (State and Local Governments); OMB Circular A–122 (Nonprofit Organizations); and 45 CFR part 74, Appendix E (Hospitals). Copies of the Office of Management and Budget (OMB) Circulars are available on the Internet at *http://www.whitehouse.gov/omb/grants/grants_circulars.html.*

Indirect costs are limited to eight percent (8%) of modified total direct costs as a flat amount for reimbursement under training grants (Grants Policy Directive Part 3.01: Post-Award-Indirect cost and other Cost Policies, HHS transmittal 98.01).

6. Other Submission Requirements

None.

V. Application Review Information

1. Criteria

1. The degree to which the project plan adequately provides for the requirements set forth in the Title X regulations at 42 CFR § 59.205 (20 points total for this section);

2. The extent to which the training program promises to fulfill the family planning service delivery needs of the area to be served, which may include among other things:

(i) Development of a capability within family planning service projects to provide pre- and in-service training to their own staffs;

(ii) Improvement of the family planning service delivery skills of family planning and health services personnel;

(iii) Improvement in the utilization and career development of paraprofessional and paramedical manpower in family planning services;

(iv) Expansion of family planning services, particularly in rural areas, through new or improved approaches to program planning and deployment of resources; (20 points total for this section)

3. The administrative and management capability and competence of the applicant (20 points);

4. The extent to which the proposed training and technical assistance program will increase the delivery of services to people, particularly low-income groups, with a high percentage of unmet need for family planning services (15 points);

5. The competence of the project staff in relation to the services to the services to be provided (15 points); and

6. The capacity of the applicant to make rapid and effective use of the grant assistance, including evidence of flexibility in the utilization of resources and training plan design (10 points).

2. Review and Selection Process

Each eligible application will be reviewed by a panel of independent reviewers and will be evaluated based on the criteria listed above. In addition to the independent review panel, there will be staff reviews of each application for programmatic and grants management compliance.

Final award decisions will be made collaboratively by the Regional Health Administrator (RHA) for PHS Region VI. In making grant award decisions, one grant will be awarded which best promotes the purposes of sections 1001 (family planning services) and 1003 (family planning training) of the Public Health Service Act, within the limits of funds available for such projects. The decision will take into account the reasonableness of the estimated cost considering the available funding, and the benefits expected.

VI. Award Administration Information

1. Award Notices

The OPA does not release information about individual applications during the review process. When final funding decisions have been made, each applicant will be notified by letter of the outcome. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award (NGA), signed by the Director of the OPHS Office of Grants Management. This document specifies to the grantee the amount of money awarded, the purposes of the grant, the length of the project period, terms and conditions of the grant award, and the amount of funding, if any, to be contributed by the grantee to project costs. In addition, the NGA identifies the Grants Specialist and the OFP Project Officer assigned to the grant.

This grant will be awarded for a project period of up to two years. The grant will be funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon satisfactory progress of the project, efficient and effective use of grant funds, and the continued availability of funds.

2. Administrative and National Policy Requirements

In accepting this award, the grantee stipulates that the award and any activities thereunder are subject to all provisions of 45 CFR parts 74 and 92, currently in effect or implemented during the period of the grant.

The successful applicant will be responsible for the overall management of activities within the scope of the approved project plan, and will be required to work closely with the OFP Project Officer in PHS Region VI. The Project Officer will review and approve the regional training plan, technical assistance requests, and plans for the use of regional resources as part of this grant. In addition, both the OFP/OPA Central Office and the Regional Office will review and approve training plans related to the identified annual national training priorities.

The OPHS requires all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. This is consistent with the OPHS mission to protect and advance the physical and mental health of the American people.

The HHS Appropriations Act requires that when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, grantees shall clearly state the percentage and dollar amount of the total costs of the program or project which will be financed with Federal money and the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

Federal grant support must be acknowledged in any publication developed or training provided using Title X funds. All publications developed or purchased with Title X funds must be consistent with the requirements of the program. The grantee will be expected to make available, at cost, all materials developed with Title X funds as requested by other Title X projects.

3. Reporting

Each year of the project period, the grantee is required to submit a non-competing application which includes an annual progress report, project work plan, budget, and budget justification for the upcoming year. The progress report must contain, at a minimum, a report on the evaluation of the training program as a whole, as well as the following data related to training activities supported with grant funds:

For "on-site" training events: (a) Title of training event; (b) location; (c) topic(s) covered; (d) presenter(s) (as applicable); (e) number of participants; (f) agencies sponsoring participants; and (g) evaluation summary; (h) credit hours or CEUs available.

For "distance learning" training events: (a) Title of training; (b) number/location (downlink sites, web hits, media copies, etc., as appropriate); (c) topic(s) covered; (d) presenters; (e) agencies participating; (g) evaluation summary; (h) credit hours or CEUs available. In addition, grantees must maintain and submit a log of all technical assistance provided which includes, at a minimum: (a) grantee/delegate agency requiring technical assistance; (b) topic/content; (c) number of days of technical assistance required; (d) consultant(s) hired to provide technical assistance; and (e) outcome of technical assistance provided.

Grantees are required to submit an annual Financial Status Report within 90 days after the end of each budget period. Grantees who receive $500,000 or more of Federal funds must undergo

an independent audit in accordance with OMB Circular A–133.

VII. Agency Contacts

Administrative and Budgetary Requirements

For information related to administrative and budgetary requirements, contact Karen Campbell in the OPHS Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852; by phone at 240–453–8822, or by email at *kcampbell@osophs.dhhs.gov*.

Program Requirements

For information related to family planning program requirements, contact the Regional Program Consultant for Family Planning in PHS Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)—Evelyn Glass, by phone at 214–767–3088, or by email at *eglass@osophs.dhhs.gov*.

VIII. Other Information

There will be an opportunity for a technical assistance conference call to be held within one month after publication of this Notice in the **Federal Register**. For more information regarding this opportunity, including date, registration information, and how to join the call, please consult the OPA Web site at *http://opa.osophs.dhhs.gov*.

Dated: March 29, 2006.

Alma L. Golden,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. E6–5262 Filed 4–10–06; 8:45 am]

BILLING CODE 4150–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panels (SEP): Research Center and Occupational Safety and Health Training Projects Grants, PAR–05–126

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Research Center and Occupational Safety and Health Training Projects Grants, PAR–05–126.

Time And Date: 10 a.m.–12 p.m., April 25, 2006 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to: Research Center and Occupational Safety and Health Training Projects Grants, PAR–05–126.

FOR FURTHER INFORMATION CONTACT: Charles N. Rafferty, Ph.D., Designated Federal Official, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, NE, Mailstop E–74, Atlanta, GA 30333, Telephone Number 404–498–2582.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 5, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–5241 Filed 4–10–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0130]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food Labeling; Trans Fatty Acids in Nutrition Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements of FDA's regulations requiring that trans fatty acids be declared in the Nutrition Facts panel of conventional foods and dietary supplements on a separate line without a percent Daily Value (%DV).

DATES: Submit written or electronic comments on the collection of information by June 12, 2006.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 through the use of automated collection techniques, when appropriate, and other forms of information technology.

Food Labeling; Trans Fatty Acids in Nutrition Labeling—21 CFR 101.9(c)(2)(ii) and 101.36(b)(2) (OMB Control Number 0910–0515)—Extension

Section 403(q) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(q)) establishes the requirements for nutrition labeling of foods. In particular, section 403(q)(1)(A) and (q)(1)(B) require that the label or labeling of a food bear nutrition information on the amount of nutrients present in a product. Section 403(q)(2) of the act permits FDA to require information about nutrients not specified in section 403(q)(1) if that additional information will assist consumers in maintaining healthy dietary practices. Section 403(q)(5)(F) of the act specifies the nutrition information that must be on the label or labeling of dietary supplements. Under these provisions of the act, FDA issued regulations in § 101.9(c)(2) (21 CFR 101.9(c)(2)) that require information on the amounts of fat and certain fatty acids in food products to be disclosed in the Nutrition Facts panel. Similarly, FDA issued regulations in § 101.36(b) (21 CFR 101.36(b)) that specify the nutrition information that must be on the label or labeling of dietary supplements. In particular, §§ 101.9(c)(2)(ii) and 101.36(b)(2) require that the amount of trans fatty acids present in a food, including dietary supplements, must be declared on the nutrition label of conventional foods and dietary supplements on a separate line immediately under the line for the declaration of saturated fat.

Description of Respondents: Persons and businesses, including small businesses.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating Costs
101.9(c)(2)(ii)	10,490	27	278,100	2	556,200	$155,200
101.36(b)(2)	910	32	29,500	2	59,000	$16,500
Totals					615,200	$171,700

[1]There are no capital costs or maintenance costs associated with this collection of information.

FDA believes that the burden associated with the disclosure of trans fatty acid information on labels or in labeling food and dietary supplement products is largely a one-time burden created by the need for firms to revise the labels for those existing products that contain trans fatty acids.

FDA estimated that there were approximately 10,490 firms producing food products and 910 firms producing dietary supplement products that, because they contain trans fatty acids, were affected by §§ 101.9 and 101.36. The agency estimated that these firms needed to revise approximately 278,100 food labels and 29,500 dietary supplement labels, although only about 25 percent of these label changes would have to be made earlier than the firms planned. Because these firms were already disclosing information on total fat, saturated fat, and other significant nutrients on their product labels, based upon its knowledge of food and dietary supplement labeling, FDA estimated that firms would require less than 2 hours per product to comply with the nutrition labeling requirements of §§ 101.9 and 101.36.

Multiplying the total number of responses by the hours per response gives the total hours. FDA estimated operating costs by combining testing and relabeling costs ($44.9 million + $126.8 million). This total was then apportioned between §§ 101.9 and 101.36 according to the proportion of responses for each section. Based on the labeling cost model, FDA expected that, with a compliance period of over 2 years, 75 percent of firms will coordinate labeling revisions required by the trans fat final rule with other planned labeling changes for their products.

Dated: April 3, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–5219 Filed 4–10–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0136]

Agency Information Collection Activities; Proposed Collection; Comment Request; Interstate Shellfish Dealers Certificate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on Form FDA 3038, Interstate Shellfish Dealers Certificate.

DATES: Submit written or electronic comments on the collection of information by June 12, 2006.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.

Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 through the use of automated collection techniques, when appropriate, and other forms of information technology.

Interstate Shellfish Dealers Certificate (OMB Control Number 0910–0021)—Extension

Under 42 U.S.C. 243, FDA is required to cooperate with and aid State and local authorities in the enforcement of their health regulations and is authorized to assist States in the prevention and suppression of communicable diseases. Under this authority, FDA participates with State regulatory agencies, some foreign nations, and the molluscan shellfish industry in the National Shellfish Sanitation Program (NSSP).

NSSP is a voluntary, cooperative program to promote the safety of molluscan shellfish by providing for the classification and patrol of shellfish growing waters and for the inspection and certification of shellfish processors. Each participating State and foreign nation monitors its molluscan shellfish processors and issues certificates for those that meet the State or foreign shellfish control authority's criteria. Each participating State and nation provides a certificate of its certified shellfish processors to FDA on Form FDA 3038, "Interstate Shellfish Dealer's Certificate." FDA uses this information to publish the "Interstate Certified Shellfish Shippers List," a monthly comprehensive listing of all molluscan shellfish processors certified under the cooperative program. If FDA did not collect the information necessary to compile this list, participating States would not be able to identify and keep out shellfish processed by uncertified processors in other States and foreign nations. Consequently, NSSP would not be able to control the distribution of uncertified and possibly unsafe shellfish in interstate commerce, and its effectiveness would be nullified.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
3038	39	62	2,418	.10	242

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on FDA's experience and the number of certificates received in the past 3 years.

Dated: April 3, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–5222 Filed 4–10–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0408]

Regulatory Site Visit Training Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA's) Center for Biologics Evaluation and Research (CBER) is reannouncing the invitation for participation in its Regulatory Site Visit Training Program (RSVP). This training program is intended to give CBER's regulatory review, compliance, and other relevant staff an opportunity to visit biologics facilities. These visits are intended to allow CBER staff to directly observe routine manufacturing practices and to give staff a better understanding of the biologics industry, including its challenges and operations. This notice invites biologics facilities interested in participating in this program to contact CBER for more information.

DATES: Submit written or electronic requests for participation in this program by May 11, 2006.

ADDRESSES: If your biologics facility is interested in offering a site visit or learning more about this training opportunity for CBER staff, you should submit a request to participate in the program to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic requests to *http://www.fda.gov/dockets/ecomments.*

If your biologics facility has previously responded to the notice announced in the **Federal Register** of September 23, 2004 (69 FR 57033), and you wish to continue to be considered for this year's program, you should notify CBER of your continued interest by sending an e-mail to *matt@cber.fda.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Lonnie Warren-Myers, Division of Manufacturers Assistance and Training, Center for Biologics Evaluation and Research (HFM–49), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–2000, FAX: 301–827–3079, e-mail: *matt@cber.fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

CBER regulates biological products including blood and blood products, vaccines, and cellular, tissue, and gene therapies. CBER is committed to advancing the public health through innovative activities that help ensure the safety, effectiveness, and timely delivery of biological products to patients. To support this primary goal, CBER has initiated various training and development programs to promote high performance of its regulatory review, compliance, and other relevant staff. CBER seeks to continuously enhance and update review efficiency and quality, and the quality of its regulatory efforts and interactions, by providing

staff with a better understanding of the biologics industry and its operations.

CBER initiated its RSVP in 2005. This program is intended to improve CBER's understanding of current practices, regulatory impacts and needs, and communication between CBER staff and industry. CBER is reannouncing the invitation for participation in its RSVP, and is requesting those firms who previously applied and are still interested in participating to reaffirm their interest, as well as encouraging new interested parties to apply.

II. RSVP

A. Regulatory Site Visits

In this program, over a period of time to be agreed upon with the facility, small groups of CBER staff may observe operations of biologics establishments, including, for example, blood and tissue establishments. The visits may include packaging facilities, quality control and pathology/toxicology laboratories, and regulatory affairs operations. These visits, or any part of the program, are not intended as a mechanism to inspect, assess, judge, or perform a regulatory function, but are meant to improve mutual understanding and to provide an avenue for open dialog between the biologics industry and CBER.

B. Site Selection

All travel expenses associated with the site visits will be the responsibility of CBER. Therefore, selection of potential facilities will be based on the coordination of CBER's priorities for staff training as well as the limited available resources for this program. In addition to logistical and other resource factors to consider, a key element of site selection is a successful compliance record with CBER or another agency for which we have a memorandum of understanding.

Dated: March 31, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–5221 Filed 4–10–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2000D–1341]

Draft Guidance for Industry: Center for Biologics and Evaluation Pilot Licensing Program for Immunization of Source Plasma Donors Using Immunogen Red Blood Cells Obtained from an Outside Supplier; Withdrawal of Guidance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of a draft guidance that was issued on July 11, 2001.

DATES: April 11, 2006.

FOR FURTHER INFORMATION CONTACT: Pamela Pope, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 11, 2001 (66 FR 36287), FDA announced the availability of a draft guidance entitled "Guidance for Industry: CBER Pilot Licensing Program for Immunization of Source Plasma Donors Using Immunogen Red Blood Cells Obtained from an Outside Supplier." This draft guidance described a pilot program in which biologics manufacturers could self-certify conformance to licensing criteria prescribed by FDA. This action was intended to reduce unnecessary burdens for industry without diminishing public health protection.

The draft guidance is being withdrawn because FDA has determined that there is a lack of industry interest in pursuing the pilot licensing program outlined in the draft guidance.

Dated: March 31, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–5220 Filed 4–10–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, NEI P30/R24 Review Meeting.

Date: April 20, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sofitel Lafayette Square, 806 15th Street, NW., Washington, DC 20005.

Contact Person: Samuel Rawlings, PhD, Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, 5635 Fishers Lane, Suite 1300, MSC 9300, Bethesda, MD 20892–9300, 301–451–2020.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: April 3, 2006.

David Clary,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3415 Filed 4–10–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (Ntp); Office of Chemical Nomination and Selection; Announcement of and Request for Public Comment on Toxicological Study Nominations to the NTP

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health.

ACTION: Notice; request for comments and additional information.

SUMMARY: The NTP continuously solicits and accepts nominations for toxicological studies to be undertaken by the program. Nominations of substances of potential human health concern are received from federal agencies, the public, and other interested parties. These nominations are subject to several levels of review before selections for testing are made and toxicological studies are designed and implemented. This notice (1) provides brief background information

and study recommendations regarding 10 nominations for study by the NTP (Table 1), (2) solicits public comment on the nominations and study recommendations, and (3) requests the submission of additional relevant information for consideration by the NTP in its continued review of these nominations. An electronic copy of this announcement, supporting documents for each nomination, and further information on the NTP and the NTP Study Nomination and Review Process can be accessed through the NTP Web site (*http://ntp.niehs.nih.gov/*; select "Nominations to the Testing Program").

DATES: Comments or information should be submitted by May 10, 2006.

ADDRESSES: Correspondence should be addressed to Dr. Scott A. Masten, Director, Office of Chemical Nomination and Selection, NIEHS/NTP, 111 T.W. Alexander Drive, P. O. Box 12233, Research Triangle Park, North Carolina 27709; telephone: 919–541–5710; FAX: 919–541–3647; e-mail: *masten@niehs.nih.gov*.

SUPPLEMENTARY INFORMATION:

Background Information

The NTP actively seeks to identify and select for study chemicals and other substances for which sufficient information is not available to adequately evaluate potential human health hazards. The NTP accomplishes this goal through a formal open nomination and selection process. Nominations can be submitted to the NTP at *http://ntp.niehs.nih.gov/* select "Nominations to the Testing Program" or by contacting Dr. Scott Masten (see **ADDRESSES** above). Substances considered appropriate for study generally fall into two broad yet overlapping categories: (1) Substances judged to have high concern as possible public health hazards based on the extent of human exposure and/or suspicion of toxicity and (2) substances for which toxicological data gaps exist and additional studies would aid in assessing potential human health risks, e.g. by facilitating cross-species extrapolation or for evaluating dose-response relationships. Nominations are also solicited for studies that permit the testing of hypotheses to enhance the predictive ability of future NTP studies, address mechanisms of toxicity, or fill significant gaps in the knowledge of the toxicity of classes of chemical, biological, or physical agents.

Study nominations may entail the evaluation of a variety of health-related effects including, but not limited to, reproductive and developmental toxicity, genetic toxicity, immunotoxicity, neurotoxicity, metabolism and disposition, and carcinogenicity in appropriate experimental models. In reviewing and selecting nominations for study, the NTP also considers legislative mandates that require responsible private sector organizations to evaluate their products for health and environmental effects. The possible human health consequences of anticipated or known human exposure, however, remain the over-riding factor in the NTP's decision to study a particular substance.

Nominations undergo a multi-step, formal process of review. Briefly, during the entire nomination review and selection process, the NTP works with staff at other federal agencies and interested parties to supplement information about nominated substances and to ensure that regulatory and public health needs are addressed. The nomination review and selection process is accomplished through the participation of representatives from the NIEHS, other federal agencies represented on the Interagency Committee for Chemical Evaluation and Coordination (ICCEC), the NTP Board of Scientific Counselors (BSC)—an external scientific advisory body, the NTP Executive Committee—the NTP federal interagency policy body, and the public. Preliminary study recommendations for each nomination are developed and refined by the nominator, NTP staff, and the ICCEC. Preliminary study recommendation for the nominations may be refined as the formal review process continues. NTP also considers recommendations from the BSC and the NTP Executive Committee, public comments received on the nominations, and other available information in selecting candidate substances for study. The NTP initiates appropriate toxicology and carcinogenicity studies as time and resources permit.

The nomination review and selection process is described in further detail on the NTP Web site (*http://ntp.niehs.nih.gov/*; select "Nominations to the Testing Program").

Request for Comments and Additional Information

The NTP invites interested parties to submit written comments or supplementary information on the nominated substances and study recommendations that appear in Table 1. The NTP welcomes toxicology and carcinogenesis study information from completed, ongoing, or anticipated studies, as well as information on current U.S. production levels, use or consumption patterns, human exposure, environmental occurrence, or public health concerns for any of the nominated substances. The NTP is interested in identifying appropriate animal and non-animal experimental models for mechanistic-based research, including genetically modified rodents and higher-throughput in vitro test methods, and as such, solicits comments regarding the use of specific in vivo and in vitro experimental approaches to address questions relevant to the nominated substances and issues under consideration. The BSC will discuss the nominations listed in Table 1 at a public meeting on June 13, 2006. A separate **Federal Register** notice will be published in the future about this meeting. Comments or additional information may be submitted at any time; however, to ensure adequate time for consideration prior to the June 13, 2006 BSC meeting, comments should be submitted by May 10, 2006. The NTP will not respond to submitted comments; however, all information received will be become part of the official record that the NTP considers in its ongoing review of these nominations. Persons submitting comments should include their name, affiliation, mailing address, phone, fax, e-mail address, and sponsoring organization (if any) with the submission. Written submissions will be made publicly available electronically on the NTP website as they are received (*http://ntp.niehs.nih.gov/* select "Nominations to the Testing Program").

Background Information on the NTP Office of Chemical Nomination and Selection

The NTP Office of Chemical Nomination and Selection (OCNS) manages the solicitation, receipt, and review of NTP toxicology study nominations. The OCNS conducts an initial review of each study nomination received to determine whether the substance or issue has been adequately studied or has been previously considered by the NTP. For nominations not eliminated from consideration or deferred at this stage, the OCNS initiates a formal review process, as described above. The OCNS also ensures adequate background information is available to support the review for each nomination and corresponds with interested parties regarding the status of NTP study nominations. For further information on the OCNS visit the NTP Web site (*http://ntp.niehs.nih.gov* select "Nominations to the Testing Program") or contact Dr. Masten (see **ADDRESSES** above).

Dated: March 28, 2006.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences and National Toxicology Program.

TABLE 1.—STUDY RECOMMENDATIONS FOR SUBSTANCES NOMINATED TO THE NTP FOR TOXICOLOGICAL STUDIES

Substance [CAS No.]	Nominated by [1]	Nomination Rationale	Study Recommendations [2]
Arbutin 497–76–7]	NIEHS	Consumer exposure through food, cosmetics, and dietary supplements; lack of adequate toxicological data; suspicion of toxicity based on chemical structure.	—In vitro and in vivo metabolism and disposition studies. —In vitro and in vivo genotoxicity studies. —Emphasis on understanding gastrointestinal metabolism and disposition, identifying experimental animal model representative of humans, and development of appropriate biomarkers.
tert-Butylacrylamide [107–58–4]	NCI	High production volume (HPV); potential worker and consumer exposures; lack of adequate toxicological data; suspicion of toxicity based on chemical structure.	—Metabolism and disposition studies. —Subchronic toxicity studies. —Mammalian genotoxicity studies. —Coordinate studies with voluntary data development activities of the Extended HPV (EHPV) Program.
Ceric oxide [1306–38–3]	NIEHS	Widespread industrial use and potential for increasing exposure; demonstrated pulmonary toxicity; lack of toxicity data for nanoscale form. —Toxicological characterization including chemical disposition and toxicokinetics. —Comparative inhalation toxicity studies of microscale and nanoscale forms. —Dermal penetration studies.	
Diazonaphthoquinone derivatives Sodium 1,2-naphthoquinone-2-diazide-5-sulfonate [2657–00–3] 2,3,4-Trihydroxybenzophenone tris(1,2-naphthoquinonediazide-5-sulfonate) [5610–94–6] 2,3,4-Trihydroxybenzophenone 1,2-naphthoquinonediazide-5-sulfonate [68510–93–0].	NIEHS	Moderate production volume; potential worker exposures from production and use of photoresists; lack of adequate toxicological data.	—In vitro toxicity studies evaluating genotoxicity, immunotoxicity and phototoxicity. —Dermal penetration studies.
3-Dimethylaminopropyl methacrylamide [5205–93–6].	NCI	High production volume (HPV); potential worker and consumer exposures; lack of adequate toxicological data; demonstrated toxicity in short-term studies.	—Metabolism and disposition studies. —Genotoxicity studies. —Subchronic toxicity studies. —Coordinate studies with voluntary data development activities of the Extended HPV (EHPV) Program.
Flame retardants Antimony trioxide [1309–64–4] Decabromodiphenyl oxide [1163–19–5].	Consumer Product Safety Commission Staff.	Anticipated increased use in upholstered furniture and bedding and potential consumer exposures from these uses; insufficient toxicity data to assess potential health risks.	See specific chemicals below: —Chronic toxicity studies (oral route). —Consider studies of nanoscale form if used in or released during flame retardant applications. —Developmental neurotoxicity studies. —Studies only to be performed if adequate private sector study not identified or planned.
Tris (chloropropyl) phosphate, mixture of four isomers [13674–84–5; 76025–08–6; 76649–15–5; 6145–73–9].			—Subchronic and chronic toxicity studies (oral route). —Studies to focus on commercial mixture or major isomers present in commercially used mixtures.
Phosphonic acid, (3-((hydroxymethyl) amino)-3-oxopropyl)-, dimethyl ester [20120–33–6].			—Subchronic and chronic toxicity studies (oral route). —Dermal absorption studies.

TABLE 1.—STUDY RECOMMENDATIONS FOR SUBSTANCES NOMINATED TO THE NTP FOR TOXICOLOGICAL STUDIES—Continued

Substance [CAS No.]	Nominated by [1]	Nomination Rationale	Study Recommendations [2]
Tris (hydroxymethyl) phosphine oxide [1067–12–5].	.....	.....	—Subchronic and chronic toxicity studies (oral route). —Dermal absorption studies.
Aromatic phosphates tert-Butylphenyl diphenyl phosphate [56803–37–3] 2-Ethylhexyl diphenyl phosphate [1241–94–7] Isodecyl diphenyl phosphate [29761–21–5] Phenol, isopropylated, phosphate (3:1) [68937–41–7] Tricresyl phosphate [1330–78–5] Triphenyl phosphate [115–86–6].	.....	.....	For one or more representative aromatic phosphates: —Subchronic and chronic toxicity studies (oral route). —Neurotoxicity and/or developmental neurotoxicity studies. —Coordinate with the U.S. Environmental Protection Agency to pursue additional testing by manufacturers.
Gypsum, natural and synthetic forms [13397–24–5].	Mount Sinai-Irving J. Selikoff Center for Occupational and Environmental Medicine Operative Plasterers' and Cement Masons' International Association of the United States and Canada.	Widespread worker exposures in numerous occupations and to the general population after destruction of the World Trade Centers in 2001; limited toxicity data to assess potential health risks.	—Short-term pulmonary toxicity studies. —Comparative studies of intratracheal versus inhalation routes of administration. —Studies are of relatively low priority given low suspicion of toxicity.
N-methyl-3-oxobutanamide [20306–75–6].	NCI	High production volume; potential worker and environmental exposures; lack of adequate toxicological data.	—In vitro and in vivo genotoxicity studies. —Include structurally-related diketene compounds and N-phenyl derivatives.
Phenoxyethyl acrylate [48145–04–6].	NCI	High production volume; potential worker and consumer exposures; lack of adequate toxicological data.	—Defer pending review of voluntary data submission through the Extended HPV (EHPV) Program.
Trifluoromethylbenzene [98–08–8]	NCI	High production volume and potential for increased use; potential worker exposures; lack of adequate toxicological data; demonstrated toxicity in short-term studies.	Defer pending review of 1) production data through the 2006 Toxic Substances Control Act (TSCA) Inventory Update Rule, and 2) Organization for Economic Cooperation and Development (OECD) Screening Information Data Set (SIDS) program output.

[1] National Institute of Environmental Health Sciences (NIEHS); National Cancer Institute (NCI)

[2] The term "toxicological characterization" in this table includes studies for genotoxicity, subchronic toxicity, and chronic toxicity/carcinogenicity as determined to be appropriate during the conceptualization and design of a research program to address toxicological data needs. Other types of studies (*e.g.*, metabolism and disposition, immunotoxicity, and reproductive and developmental toxicity) may be conducted as part of a complete toxicological characterization; however, these types of studies are not listed unless they are specifically recommended.

[FR Doc. E6–5217 Filed 4–10–06; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4889–N–07]

Change of Effective Date of 2004 Amendatory Notice for Designation of Difficult Development Areas Under Section 42 of the Internal Revenue Code of 1986

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: This notice changes the extended effective date language applicable to 2003 Difficult Development Areas that were not so designated in 2004 in HUD's November 2, 2004, notice to include the date of December 17, 2004, to allow its applicability to projects affected by a misinterpretation of the November 2, 2004, notice on the part of a Low-Income Housing Tax Credit-allocating agency.

FOR FURTHER INFORMATION CONTACT: With questions related narrowly to the issue of the effective dates in this notice, Kurt G. Usowski, Associate Deputy Assistant Secretary for Economic Affairs, Office of Policy Development and Research, 451 Seventh Street, SW., Washington, DC 20410–6000, telephone (202) 708–2770, or e-mail *Kurt_G._Usowski@hud.gov*. A text telephone is available for persons with hearing or speech impairments at (202) 708–9300. (These are not toll-free telephone numbers.)

Copies Available Electronically: This notice is available electronically on the Internet (World Wide Web) at *http://www.huduser.org/datasets/qct.html*.

SUPPLEMENTARY INFORMATION: On December 19, 2003 (68 FR 7092), HUD published in the **Federal Register** the notice designating Difficult Development Areas (DDAs) and Qualified Census Tracts (QCTs) for calendar year 2004 (the 2004 notice). The 2004 notice provided that the lists of Difficult Development Areas are effective if the credits are allocated after December 31, 2003; and, in the case of a building described in section

42(h)(4)(B) of the Internal Revenue Code (Code), the lists are effective if the bonds are issued and the building is placed in service after December 31, 2003.

HUD typically issues a notice in the **Federal Register** in the last quarter of a calendar year designating Difficult Development Areas for the forthcoming calendar year. HUD attempts to publish the designation notice early enough to allow low-income housing tax credit (LIHTC) allocating agencies sufficient time to ensure applicant projects in DDAs and QCTs. HUD did not publish the 2004 notice until December 19, 2003, which did not provide adequate time before the effective date for allocating agencies or applicants for tax credits or tax-exempt bond financing to take actions to meet the conditions necessary to capture the benefits of the 2003 DDA designations before they expired.

Therefore, on November 2, 2004 (69 FR 63551), HUD published a notice amending the 2004 notice to extend 2003 eligibility for areas that were designated as 2003 DDAs in a notice published on December 12, 2002 (67 FR 76451) (the 2003 notice) but were not so designated in the 2004 notice. The November 2, 2004, notice (the 2004 amendatory notice) established an applicant for LIHTCs must submit to its credit-allocating agency a complete application filed after December 31, 2002, and before December 17, 2004. (Emphasis added).

It has come to HUD's attention that the phrasing of the end date of the effective time period of the extended 2003 Difficult Development Areas as "before December 17, 2004," was misinterpreted by an LIHTC-allocating agency in establishing its due date for applications. This LIHTC-allocating agency required that applications be submitted on or before December 17, 2004. The result was that some applications for LIHTC assistance for projects to be located in the extended 2003 Difficult Development Areas came in one day past the end of the extended effective period of the 2003 Difficult Development Areas, which ended on December 16, 2004. HUD has determined that financing arrangements for these affordable housing developments, made in good faith and contingent on the applicability of the extended 2003 Difficult Development Areas, should not be jeopardized by any confusion caused by misinterpretation of its notice.

Therefore, through this notice, HUD changes the 2004 amendatory notice so that the effective date language pertaining to 2003 Difficult Development areas that were not designated 2004 Difficult Development Areas reads "on or before December 17, 2004," everywhere such phrases appear in the 2004 amendatory notice.

Dated: April 5, 2006.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

[FR Doc. E6–5242 Filed 4–10–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Crocodile Lake National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the Final Comprehensive Conservation Plan and Finding of No Significant Impact for Crocodile Lake National Wildlife Refuge in Monroe County, Florida.

SUMMARY: The Fish and Wildlife Service announces that a Final Comprehensive Conservation Plan and Finding of No Significant Impact for Crocodile Lake National Wildlife Refuge are available for distribution. The plan was prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969, and describes how the refuge will be managed for the next 15 years.

ADDRESSES: A copy of the plan may be obtained by writing to the National Key Deer Refuge, 28950 Watson Boulevard, Big Pine Key, Florida 33043. The plan may also be accessed and downloaded from the Service's Internet Web site *http://southeast.fws.gov/planning/*.

SUPPLEMENTARY INFORMATION: Crocodile Lake National Wildlife Refuge is located on North Key Largo in Monroe County, Florida, approximately 40 miles southeast of Miami. The refuge was established in April 1980 under the authorities of the Endangered Species Act of 1973 (as amended), and the Land and Water Conservation Fund Act of 1965 (as amended in 1976). It currently covers 6,700 acres, including 650 acres of open water. It contains a mosaic of habitat types including tropical hardwood hammock, mangrove forests, and salt marshes. These habitats are vital for hundreds of plants and animals, including six federally listed species.

The availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for a 60-day public review and comment period was announced in the Federal Register on August 16, 2005 (70 FR 48187). The plan and environmental assessment identified and evaluated three alternatives for managing the refuge over the next 15 years. Alternative 2 was chosen as the "preferred alternative." Under Alternative 2, 6,700 acres of refuge lands will be conserved, maintained, and enhanced. Increased efforts related to habitat restoration, exotics control, pest management, and monitoring are characteristics of this alternative. The increased management action will help to achieve the long-term goals and objectives in a timelier manner. This alternative will result in a more ecosystem-based management approach will views the refuge as a single system rather than separate habitat types. Federally listed species will still be primary concern, but needs of other resident and migratory wildlife will also be considered. This alternative will be the most effective for meeting the purposes of the refuge by conserving habitats and associated wildlife. It best achieves national, ecosystem, and refuge-specific goals and objectives and positively addresses significant issues and concerns expressed by the public.

FOR FURTHER INFORMATION CONTACT: Van Fischer, Natural Resource Planner, National Key Deer Refuge Complex; telephone: 305/872–2239; Fax: 305/872–3675; E-mail: *van_fischer@fws.gov*.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: February 23, 2006.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 06–3434 Filed 4–10–06; 8:45am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Reviews of 70 Species in Idaho, Oregon, Washington, and Hawaii, and Guam

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the initiation of a 5-year review of 70 species under section 4(c)(2)(B) of the Endangered Species Act (Act). The purpose of a 5-year review is to ensure that the classification of a species as threatened or endangered on the List of

Endangered and Threatened Wildlife and Plants is accurate and consistent with the best scientific and commercial data currently available. We are requesting submission of any such information that has become available since the original listing of each of the 70 species identified in Table 1 below. Based on the results of these 5-year reviews, we will determine whether any species should be proposed for removal from the list or its listing status should be changed pursuant to section 4(c)(2)(B) of the Act.

DATES: We must receive your information no later than June 12, 2006. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: See "Public Solicitation of New Information" section for instructions on how to submit information.

FOR FURTHER INFORMATION CONTACT: For species-specific information, contact the appropriate individual named in "Public Solicitation of New Information."

SUPPLEMENTARY INFORMATION:

Why Is a 5-year Review Conducted?

Under the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*), we maintain a List of Endangered and Threatened Wildlife and Plants (List) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Then, on the basis of such reviews under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error (50 CFR 424.11(d)). Any change in Federal classification would require a separate rulemaking process. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the 70 species listed in Table 1.

TABLE 1.—SUMMARY OF THE LISTING INFORMATION FOR THE FOLLOWING 70 SPECIES IN IDAHO, OREGON, WASHINGTON, HAWAII, AND GUAM.

Common name	Scientific name	Status	Where listed	Final listing rule
Animals:				
Sucker, Warner	*Catostomus warnerensis*	Threatened	U.S.A. (OR)	50 FR 39117 (27–SEP–85)
Chub, Hutton tui	*Gila bicolor* ssp.	Threatened	U.S.A. (OR)	50 FR 12302 (28–MAR–85)
Chub, Borax Lake	*Gila boraxobius*	Endangered	U.S.A. (OR)	47 FR 43957 (05–OCT–82)
Dace, Foskett speckled	*Rhinichthys osculus* ssp.	Threatened	U.S.A. (OR)	50 FR 12302 (28–MAR–85)
Snail, Utah valvata	*Valvata utahensis*	Endangered	U.S.A. (ID, UT)	57 FR 59244 (14–DEC–92)
Springsnail, Bruneau Hot	*Pyrgulopsis bruneauensis*	Endangered	U.S.A. (ID)	63 FR 32981 (17–JUN–98)
Limpet, Banbury Springs	*Lanx* sp.	Endangered	U.S.A. (ID)	57 FR 59244 (14–DEC–92)
Caribou, woodland	*Rangifer tarandus caribou*	Endangered	U.S.A. (ID, WA); Canada (SE. B.C.).	49 FR 7390 (29–FEB–84)
Akepa, Maui (honeycreeper).	*Loxops coccineus ochraceus*	Endangered	U.S.A. (HI)	35 FR 16047 (13–OCT–70)
Creeper, Oahu	*Paroreomyza maculata*	Endangered	U.S.A. (HI)	35 FR 16047 (13–OCT–70)
Finch, Laysan (honeycreeper).	*Telespyza cantans*	Endangered	U.S.A. (HI)	32 FR 4001 (11–MAR–67)
Kingfisher, Guam Micronesian.	*Halcyon cinnamomina cinnamomina.*	Endangered	Western Pacific Ocean U.S.A. (Guam).	49 FR 33885 (27–AUG–84)
Nukupu'u (honeycreeper)	Hemignathus lucidus	Endangered	U.S.A. (HI)	32 FR 4001 (11–MAR–67), 35 FR 16047 (13–OCT–70)
Po'ouli (honeycreeper)	*Melamprosops phaeosoma*	Endangered	U.S.A. (HI)	40 FR 44151 (25–SEP–75)
Plants:				
MacFarlane's four-o'clock	*Mirabilis macfarlanei*	Threatened	U.S.A. (ID, OR)	61 FR 10693 (15–MAR–96)
Liliwai	*Acaena exigua*	Endangered	U.S.A. (HI)	57 FR 20772 (05–MAY–92)
Olulu	*Brighamia insignis*	Endangered	U.S.A. (HI)	59 FR 9304 (02–FEB–94)
Pua 'ala	*Brighamia rockii*	Endangered	U.S.A. (HI)	57 FR 46325 (08–OCT–92)
'Oha wai	*Clermontia peleana*	Endangered	U.S.A. (HI)	59 FR 10305 (04–MAR–94)
Haha	*Cyanea dunbariae*	Endangered	U.S.A. (HI)	61 FR 53130 (10–OCT–96
Haha	*Cyanea macrostegia* ssp. *gibsonii* [*Cyanea gibsonii*].	Endangered	U.S.A. (HI)	56 FR 47686 (20–SEP–91)
Haha	*Cyanea mceldowneyi*	Endangered	U.S.A. (HI)	57 FR 20772 (05–MAY–92)
Haha	*Cyanea procera*	Endangered	U.S.A. (HI)	57 FR 46325 (08–OCT–92)
Haha	*Cyanea undulata*	Endangered	U.S.A. (HI)	56 FR 47695 (20–SEP–91)
Ha'iwale	*Cyrtandra subumbellata*	Endangered	U.S.A. (HI)	61 FR 53089 (10–OCT–96)
No common name	*Delissea rhytidosperma*	Endangered	U.S.A. (HI)	59 FR 9304 (25–FEB–94)
Oha	*Delissea subcordata*	Endangered	U.S.A. (HI)	61 FR 53089 (10–OCT–96)
No common name	*Diellia pallida*	Endangered	U.S.A. (HI)	59 FR 9304 (25–FEB–94)
Na'ena'e	*Dubautia herbstobatae*	Endangered	U.S.A. (HI)	56 FR 55770 (29–OCT–9)
Nioi	*Eugenia koolauensis*	Endangered	U.S.A. (HI)	59 FR 14482 (28–MAR–9)
Hawaiian gardenia (=Na'u).	*Gardenia brighamii*	Endangered	U.S.A. (HI)	50 FR 33 (21–AUG–85)
Nanu	*Gardenia mannii*	Endangered	U.S.A. (HI)	61 FR 53089 (10–OCT–96)
Kio'ele	*Hedyotis coriacea*	Endangered	U.S.A. (HI)	57 FR 20772 (15–MAY–92)
No common name	*Hedyotis parvula*	Endangered	U.S.A. (HI)	56 FR 55770 (29–OCT–91)

TABLE 1.—SUMMARY OF THE LISTING INFORMATION FOR THE FOLLOWING 70 SPECIES IN IDAHO, OREGON, WASHINGTON, HAWAII, AND GUAM.—Continued

Common name	Scientific name	Status	Where listed	Final listing rule
Kopa	*Hedyotis schlechtendahliana* var. *remyi*.	Endangered	U.S.A. (HI)	64 FR 48307 (03–SEP–9)
Clay's hibiscus	*Hibiscus clayi*	Endangered	U.S.A. (HI)	59 FR 9304 (25–FEB–94)
Hau kuahiwi	*Hibiscadelphus giffardianus*	Endangered	U.S.A. (HI)	61 FR 53137 (10–OCT–96)
Hau kuahiwi	*Hibiscadelphus hualalaiensis*	Endangered	U.S.A. (HI)	61 FR 53137 (10–OCT–96)
Kula wahine noho	*Isodendrion pyrifolium*	Endangered	U.S.A. (HI)	59 FR 10305 (04–MAR–94)
Kohe malama malama o kanaloa.	*Kanaloa kahoolawensis*	Endangered	U.S.A. (HI)	64 FR 48307 (03–SEP–99)
Cooke's koki'o	*Kokia cookei*	Endangered	U.S.A. (HI)	44 FR 62470 (30–OCT–79)
Kamakahala	*Labordia cyrtandrae*	Endangered	U.S.A. (HI)	61 FR 53089 (10–OCT–96)
Kamakahala	*Labordia triflora*	Endangered	U.S.A. (HI)	64 FR 48307 (03–SEP–99)
No common name	*Lobelia monostachya*	Endangered	U.S.A. (HI)	61 FR 53089 (10–OCT–96)
No common name	*Lysimachia maxima*	Endangered	U.S.A. (HI)	61 FR 53130 (10–OCT–96)
Alani	*Melicope adscendens*	Endangered	U.S.A. (HI)	59 FR 62346 (05–DEC–94)
Alani	Melicope mucronulata	Endangered	U.S.A. (HI)	57 FR 20772 (15–MAY–92)
Alani	*Melicope zahlbruckneri*	Endangered	U.S.A. (HI)	61 FR 53137 (10–OCT–96)
Kolea	*Myrsine juddii*	Endangered	U.S.A. (HI)	61 FR 53089 (10–OCT–96)
No common name	*Neraudia angulata*	Endangered	U.S.A. (HI)	56 FR 55770 (29–OCT–91)
No common name	*Neraudia ovata*	Endangered	U.S.A. (HI)	61 FR 53137 (10–OCT–9)
Kulu'i	*Nototrichium humile*	Endangered	U.S.A. (HI)	56 FR 55770 (29–OCT–91)
Lau 'ehu	*Panicum niihauense*	Endangered	U.S.A. (HI)	61 FR 53108 (10–OCT–96)
No common name	*Phyllostegia hirsuta*	Endangered	U.S.A. (HI)	61 FR 53089 (10–OCT–96)
No common name	*Phyllostegia kaalaensis*	Endangered	U.S.A. (HI)	61 FR 53089 (10–OCT–96)
No common name	*Phyllostegia parviflora*	Endangered	U.S.A. (HI)	61 FR 53108 (10–OCT–96)
No common name	*Phyllostegia waimeae*	Endangered	U.S.A. (HI)	59 FR 9304 (25–FEB–94)
Lo'ulu	*Pritchardia kaalae*	Endangered	U.S.A. (HI)	61 FR 53089 (10–OCT–96)
Lo'ulu	*Pritchardia viscosa*	Endangered	U.S.A. (HI)	61 FR 53070 (10–OCT–96)
No common name	*Sanicula mariversa*	Endangered	U.S.A. (HI)	56 FR 55770 (29–OCT–91)
Diamond Head Schiedea	*Schiedea adamantis*	Endangered	U.S.A. (HI)	49 FR 6099 (17–FEB–84)
No common name	*Schiedea kaalae*	Endangered	U.S.A. (HI)	56 FR 55770 (29–OCT–91)
No common name	*Schiedea kauaiensis*	Endangered	U.S.A. (HI)	61 FR 53108 (10–OCT–96)
No common name	*Silene alexandri*	Endangered	U.S.A. (HI)	57 FR 46325 (08–OCT–92)
No common name	*Silene perlmanii*	Endangered	U.S.A. (HI)	56 FR 55770 (29–OCT–91)
Popolo ku mai	*Solanum incompletum*	Endangered	U.S.A. (HI)	59 FR 56333 (10–NOV–94)
No common name	*Stenogyne kanehoana*	Endangered	U.S.A. (HI)	57 FR 20592 (13–MAY–92)
No common name	*Tetramolopium filiforme*	Endangered	U.S.A. (HI)	56 FR 55770 (29–OCT–91)
Pamakani	*Viola chamissoniana* ssp. *chamissoniana*.	Endangered	U.S.A. (HI)	56 FR 55770 (29–OCT–91)
No common name	*Viola helenae*	Endangered	U.S.A. (HI)	56 FR 47695 (20–SEP–91)

What Information Is Considered in the Review?

A 5-year review considers all new information available at the time of the review. In conducting these reviews, we consider the best scientific and commercial data that has become available since the current listing determination or most recent status review, such as:

A. Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions including, but not limited to, amount, distribution, and suitability;

C. Conservation measures that have been implemented that benefit the species;

D. Threat status and trends (see five factors under heading "How Do We Determine Whether a Species is Endangered or Threatened?"); and

E. Other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act requires that we determine whether a species is endangered or threatened based on one or more of the five following factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

Our assessment of these factors is required, under section 4(b)(1) of the Act, to be based solely on the best scientific and commercial data available.

What Could Happen as a Result of This Review?

If we find information concerning the 70 species listed in Table 1 indicating that a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from threatened to endangered; (b) reclassify the species from endangered to threatened; or (c) remove the species from the List. If we find that a change in classification is not warranted, the species will remain on the List under its current status.

Public Solicitation of New Information

To ensure that these 5-year reviews are complete and based on the best available scientific and commercial information, we solicit new information from the public, governmental agencies, Tribes, the scientific community, environmental entities, industry, and

any other interested parties concerning the status of the species.

If you wish to provide information for any species included in these 5-year reviews, submit your comments and materials to the Field Supervisors at the appropriate Fish and Wildlife Office listed below. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. To the extent consistent with applicable law, 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 offices where the comments are submitted.

For the species under review, submit information and direct species specific questions to the addresses and individuals as follows:

For the Warner sucker, Hutton tui chub, Borax Lake chub, and the Foskett speckled dace, submit information to the following address: Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Bend Field Office, 20310 Empire Avenue, Suite A 100, Bend, OR 97701, or at *FW1OR5yearReview@fws.gov*. For information concerning these species, contact Alan Mauer at 541–383–7146.

For the Bruneau hot springsnail, Banbury Springs limpet (lanx), MacFarlane's four-o'clock, and the Utah valvata snail, submit information to the following address: Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Snake River Fish and Wildlife Office, 1387 South Vinnell Way, Suite 368, Boise, ID 83709, or at *fws1srbocomments@fws.gov*. For information concerning these species, contact Susan Burch at 208–378–5262.

For the Woodland caribou (Selkirk Mountain), submit information to the following address: Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Upper Columbia Fish and Wildlife Office, 11103 E. Montgomery Drive, Spokane, WA 99206, or at *fw1caribou@fws.gov*. For information concerning these species, contact Suzanne Audet at 509–893–8002.

For the Hawaiian and Guam species, submit information to the following address: Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Buld., Room 3–122, Honolulu, HI 96850, or at *pifwo-5yr-review@fws.gov*. For information concerning these species, contact Gina Shultz at 808–792–9400.

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: April 4, 2006.

David J. Wesley,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. E6–5251 Filed 4–10–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for D'Arbonne National Wildlife Refuge in Ouachita and Union Parishes, LA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service announces that a Draft Comprehensive Conservation Plan and Environmental Assessment for D'Arbonne National Wildlife Refuge are available for review and comment. The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing wildlife observation, wildlife photography, and environmental education and interpretation.

Significant issues addressed in the draft plan include: Bottomland hardwood forest management and restoration, integrity of mixed pine and hardwood forests, invasive plants, waterfowl management, neotropical migratory birds, species of concern, and level of visitor services.

DATES: An open house will be held to provide clarification and explanation of the plan to the public. Mailings, a news release to newspapers and radio, and flyers will be used to inform the public of the date and time for the open house. Individuals should comment on the Draft Comprehensive Conservation Plan and Environmental Assessment for D'Arbonne National Wildlife Refuge no later than May 11, 2006.

ADDRESSES: Requests for copies of the draft plan and environmental assessment should be addressed to he Planning Team Leader, D'Arbonne National Wildlife Refuge, 11372 Highway 143, Farmerville, Louisiana 71241; or by calling 318/726–4222, extension 5. The plan and environmental assessment may also be accessed and downloaded from the Service's Internet Web site *http://southeast.fws.gov/planning*. Comments on the draft plan may be submitted to the above address or via electronic mail to *Lindy Garner@fws.gov*. Please include your name and return address in your Internet message. 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.

SUPPLEMENTARY INFORMATION: The Service developed three alternatives for managing the refuge and chose Alternative A as the preferred alternative.

Alternatives

Alternative A, the preferred alternative, emphasizes management actions that mimic or enhance natural ecological processes. The biological program would be enhanced with an increase in inventory and monitoring programs so that adaptive management could be more effectively implemented. Adaptive management would primarily benefit migratory bird management and forest management. Migratory bird use and nesting success on the refuge would be closely evaluated utilizing research partnerships. Partnerships would be developed to establish scientifically valid protocols and collaborative research projects for data that would

provide information on flora and fauna response to habitat management. Upland forest management would focus on restoring the biological integrity of a mixed pine and hardwood forest by reintroducing a more historic fire regime, while still providing minimum red-cockaded woodpecker habitat as required in the recovery guidelines. A historic fire regime will ultimately benefit red-cockaded woodpeckers by creating a more herbaceous understory. Bottomland hardwood forest management would include an increase in inventory data that would better define current forest condition, and allow an increase in the number of acres treated. Treatment would open the canopy cover (*i.e.*, decrease basal area) and increase understory vegetation. The open field would modify the natural ecological process in order to maintain it in a grassy field unit and moist-soil unit for this specialized habitat required for high priority species. Water control structures and pumping capability would be maintained to enhance moist-soil management for the benefit of wintering waterfowl. Invasive species would be mapped and protocols established for a more intensive control effort. Partnerships would continue to be fostered for several biological programs, hunting regulations, law enforcement issues, and research projects.

Public use would be similar to current management. Deer hunting would be allowed while monitoring the availability, diversity, and deer use of understory woody and herbaceous plants. This would allow the refuge to better understand the pressure being exerted on the habitat, and therefore make better habitat and harvest recommendations. Youths would be allowed to hunt turkey. Fishing events and boat launch facilities would be improved. Environmental education, wildlife observation, and wildlife photography would be accommodated at present levels, with minimal disturbance to wildlife and habitat. An enhanced, interpretive nature trail, interpretive panels, and "check-out kits" for teachers would be developed. Law enforcement would work to gain better compliance with refuge regulations.

Alternative B would focus resources toward obtaining biological information derived from inventorying and monitoring, while providing an artificial habitat for a diversity of wildlife that emphasizes red-cockaded woodpeckers. Funding and staffing would be directed to these priorities, resulting in a reduction of visitor services. The biological program would be enhanced for extensive baseline inventorying and monitoring. Partners would be sought to help with the information needs for current condition of refuge habitat and monitoring for changes in wildlife trends. Additional research projects would be implemented by granting opportunities and partnerships with other agencies and universities. Upland forest management would focus on red-cockaded woodpecker guidelines for minimizing hardwoods and maintaining a grassy understory in the entire mixed-pine and upland forests, resulting in an intensive prescribed burning program and the monitoring of forest conditions. Bottomland hardwood forest management would be developed on an intensive inventory to define current condition, and management would be limited to monitoring natural successional changes. The open field would be allowed to go through natural succession to bottomland hardwood forest and the moist-soil unit and open grassy field unit would not be maintained. Invasive plant control would become a priority for the foresters and biologists to establish baseline information of location and density and protocols for control. Partnerships would continue to be fostered for several biological programs, hunting regulations, law enforcement issues, and research projects.

Public use would be limited, with custodial-level maintenance. Public use would be monitored more closely for impacts to wildlife, and, with negative impacts, new restrictions or closures would result. Deer hunting would be allowed when data were available to demonstrate the population was exceeding the habitat carrying capacity and a population reduction was necessary. An extensive survey for monitoring the deer population and its association with the habitat condition would be implemented. Several species (*e.g.*, quail, woodcock, feral hogs, and coyotes) would no longer be hunted due to low population counts and the cost of providing oversight and law enforcement to conduct the hunts. Fishing would continue as under current management on Bayou D'Arbonne, but the area of overflow in the open field would be closed. Fishing would not be allowed during the wintering period and would be monitored for future impacts. Environmental education, wildlife observation, and wildlife photography would be accommodated at present levels, but public access would be limited to July–October and February–April to minimize disturbance to migratory birds.

Alternative C would continue current management and public use. Refuge management programs would continue to be developed and implemented, with limited baseline biological information and limited monitoring. Wildlife surveys would still be completed for presence and absence of species and to alert refuge staff to large-scale changes in population trends. Cooperation with partners for monitoring waterfowl, eagle, fish, and deer herd surveys would continue. Upland forest management would continue focusing on red-cockaded woodpecker guidelines for minimizing hardwoods and maintaining a grassy understory in a portion of the mixed pine and upland forests. Bottomland hardwood forest management would continue at current rate of thinning for a closed canopy forest and at retaining as much water tupelo and bald cypress as possible. The open field area, where flooding occurs from overflow of Bayou D'Arbonne, would be maintained as a moist-soil unit, with mowing outside of the levee to provide an open grassy field. A third of the open field area would continue on natural reforestation. Management for invasive plants would continue with opportunistic mapping and treatment. Partnerships would continue with Louisiana Department of Wildlife and Fisheries for several biological programs, hunting regulations, and law enforcement issues. The Partners for Fish and Wildlife Program would still develop projects with interested parties for carbon sequestration and invasive plant control.

Hunting and fishing would continue to be the priority focus of public use on the refuge, with no expansion of current opportunities. Environmental education, wildlife observation, and wildlife photography would be accommodated at present levels, with a few interpretive sites added.

D'Arbonne National Wildlife Refuge, established in 1975, is located within the Lower Mississippi River floodplain in north Louisiana, approximately 6 miles north of West Monroe, Louisiana. The refuge's 17,421 acres include deep overflow swamp, bottomland hardwood forest, and upland mixed-pine/hardwoods in Union and Ouachita Parishes. D'Arbonne refuge provides habitat for thousands of wintering waterfowl, wading and waterbirds, and year-round habitat for nesting wood ducks, squirrel, deer, river otters, and raccoon. Hunting and fishing opportunities are permitted on most areas of the refuge, which is open year-round for wildlife observation, nature photography, and hiking.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1977, Public Law 105–57.

Dated: January 23, 2006.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 06–3443 Filed 4–10–06; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Gaming on Trust Lands Acquired After October 17, 1988

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of consultation with tribal governments.

SUMMARY: On March 15, 2006, a letter was mailed to Tribal Leaders to provide consultation with tribal governments on the development of proposed regulations which will establish standards for implementing Section 20 of the Indian Gaming Regulatory Act.

FOR FURTHER INFORMATION CONTACT: George Skibine, Office of Indian Gaming Management, Acting Deputy Assistant Secretary—Policy and Economic Development, Mail Stop 3657–MIB, 1849 C Street, NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: In accordance with Executive Order 13175, the Department of the Interior will engage in consultation with tribal governments on the development of proposed regulations which will establish standards for implementing Section 20 of the Indian Gaming Regulatory Act. In keeping with the policy commitment of the Department of the Interior on government-to-government consultation, we will conduct consultation sessions and receive input on the proposed regulations on the dates and locations as set forth in the attached March 15, 2006 letter.

Dated: April 4, 2006.

James E. Cason,

Associate Deputy Secretary.

BILLING CODE 4310–4N–P

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

TAKE PRIDE IN AMERICA

MAR 15 2006

Dear Tribal Leader:

The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§2701-2721, was signed into law on October 17, 1988. Section 20 of IGRA, 25 U.S.C. § 2719, contains specific provisions that will apply when gaming is to occur on lands that the Secretary of the Interior acquires in trust for an Indian tribe after October 17, 1988.

In accordance with Executive Order 13175, the Department of the Interior will engage in consultation with tribal governments on the development of proposed regulations which will establish standards for implementing Section 20 of IGRA. This section provides that Indian tribes cannot conduct class II or class III gaming on lands acquired in trust after October 17, 1988, unless one of several exceptions applies. The proposed rule will establish the criteria that will be considered by the Department to determine whether a parcel of land acquired in trust after October 17, 1988, qualifies under any of the exceptions listed in 25 U.S.C. § 2719.

As a result of and in keeping with the policy commitment of the Department of the Interior on government-to-government consultation, we are providing you with a copy of the proposed draft regulations developed by the Office of Indian Gaming Management. The Department will conduct consultation sessions on the following dates and at the following locations in order to receive input on these draft regulations.

March 30, 2006 9:00am-12:00pm
Mohegan Sun Casino and Resort
1 Mohegan Sun Blvd.
Uncasville, Connecticut 06382

April 5, 2006 2:00pm-5:00pm
Albuquerque Convention Ctr.
San Miguel Rm 330 Tijeras NW
Albuquerque, New Mexico

April 18, 2006 9:00am-12:00pm
Radisson Hotel Sacramento
500 Leisure Lane
Sacramento, California

April 20, 2006 9:00am-12:00pm
Crown Plaza
2200 Freeway Blvd.
Minneapolis, Minnesota

Comments may be mailed or hand delivered to the Office of Indian Gaming Management, 1849 C Street N.W., MS-3657-MIB, Washington, D.C. 20240. If you need additional information regarding the consultation process please contact the Office of Indian Gaming Management at
(202)219-4066. Thank you for your interest in Indian gaming issues.

Sincerely,

George T. Skibine
Acting Deputy Assistant Secretary
for Policy and Economic Development

Enclosure

[FR Doc. 06–3477 Filed 4–10–06; 8:45 am]
BILLING CODE 4310–4N–C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–0777–XZ–241A]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held May 10, 2006 from 10 a.m. to 5 p.m. and May 11, 2006 from 8 a.m. to 2 p.m.

ADDRESS: Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Ken Smith, (719) 269–8500.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Royal Gorge Field Office and San Luis Valley, Colorado. Planned agenda topics on May 10, 2006 include: The BLM fine system, and the Council will tour a Trials Event site. On May 11, 2006 agenda topics will include presentations and discussions on the Recreation Enhancement Act, access to public land and Trials Events. All meetings are open to the public. The public is encouraged to make oral comments to the Council on May 10 at 10:15 a.m. or written statements may be submitted for the Councils consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. The public is also welcome to attend the field tour on May 10, however they may need to provide their own transportation. Summary minutes for the Council Meeting will be maintained in the Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Meeting Minutes and agenda (10 days prior to each meeting) are also available at: *http://www.blm.gov/rac/co/frrac/co_fr.htm.*

Dated: April 5, 2006.

Roy L. Masinton,

Royal Gorge Field Manager.

[FR Doc. E6–5243 Filed 4–10–06; 8:45 am]
BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–922–06–1310–FI; COC64226]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC64226 from Elm Ridge Exploration Company, LLC for lands in Moffat County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303–239–3767.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $155 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC64226 effective December 1, 2005, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: April 5, 2006.

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E6–5341 Filed 4–10–06; 8:45 am]
BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–922–06–1310–FI; COC64227]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC64227 from Elm Ridge Exploration Company, LLC for lands in Moffat County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303–239–3767.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $155 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC64227 effective December 1, 2005, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: April 5, 2006.

Milada Krasilinec,

Land Law Examiner.

[FR Doc. E6–5342 Filed 4–10–06; 8:45 am]
BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1420–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9:00 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet their administrative needs. The lands surveyed are:

This supplemental plat was prepared to show new lots 5, 6, 7, 8, 9, and 10 in section 7, in T. 56 N., R. 2 E., Boise Meridian, Idaho, was accepted January 30, 2006.

The plat representing the corrective dependent resurvey of portions of the south and west boundaries, in T. 1 S., R. 1 W., Boise Meridian, Idaho, was accepted February 1, 2006.

The plat representing the dependent resurvey of portions of the subdivisional lines and of the subdivision of sections 5, 7, 8, and 17, and the further subdivision of sections 7, 8, 17, and 21, in T. 2 N., R. 5 W., Boise Meridian, Idaho, was accepted February 22, 2006.

This supplemental plat was prepared to add the new area of lot 10, section 30, which was inadvertently omitted, in T. 4 N., R. 46 E., Boise Meridian, Idaho, was accepted February 23, 2006.

This supplemental plat was prepared to correct the bearing and distance from the true point for Angle Point No. 6, Tract 37, to the 2003–2004 witness corner for Angle Point No. 6, Tract 37, in T. 10 S., R. 23 E., Boise Meridian, Idaho, was accepted February 24, 2006.

This supplemental plat was prepared to create two new lots in section 13, in T. 4 N., R. 17 E., Boise Meridian, Idaho, was accepted March 8, 2006.

This supplemental plat was prepared to show amended lottings created by the segregation of Mineral Survey Nos. 780A and 3498, in sections 9 and 16, in T. 2 N., R. 24 E., Boise Meridian, Idaho, was accepted March 8, 2006.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 14 and 23, in T. 8 N., R. 3 E., Boise Meridian, Idaho, was accepted March 15, 2006.

These surveys were executed at the request of the Bureau of Indian Affairs to meet certain administrative and management purposes. The lands surveyed are:

The plat representing the dependent resurvey of portions of the subdivisional lines and the subdivision of section 21, and the further subdivision of section 21, and certain metes-and-bounds surveys in section 21, in T. 7 S., R. 35 E., Boise Meridian, Idaho, was accepted February 3, 2006.

The plat representing the dependent resurvey of portions of the north boundary, the subdivisional lines, and the original 1890 meanders of the Clearwater River in sections 6 and 7, and the subdivision of sections 6 and 7, the survey of the 2003–2005 left bank of the Clearwater River in sections 6 and 7, and the 2003–2005 survey of certain partition lines in sections 6 and 7, in T. 36 N., R. 3 W., Boise Meridian, Idaho, was accepted March 20, 2006.

The plat representing the dependent resurvey of portions of the east boundary and subdivisional lines, and the subdivision of section 12, in T. 36 N., R. 4 W., Boise Meridian, Idaho, was accepted March 20, 2006.

The plat representing the dependent resurvey of a portion of the Idaho—Nevada State Boundary (south boundary), the west boundary, portions of the north boundary and subdivisional lines, the dependent resurvey of the subdivision and the further subdivision of sections 5, 6, 7, 8, 17, 18, 19, 20, 28, 29 and 30, and the subdivision of section 21, in T. 16 S., R. 3 E., Boise Meridian, Idaho, was accepted March 23, 2006.

The plat representing the dependent resurvey of a portion of the west boundary and subdivisional lines and the dependent resurvey of the subdivision and the further subdivision of sections 31 and 32, in T. 15 S., R. 3 E., Boise Meridian, Idaho, was accepted March 24, 2006.

These surveys were executed at the request of the U.S.D.A. Forest Service to meet certain administrative and management purposes. The lands surveyed are:

The plat representing the dependent resurvey of portions of the subdivisional lines and the original 1906 meanders of the Salmon River in section 22, and the subdivision of section 22, in T. 24 N., R. 2 E., Boise Meridian, Idaho, was accepted January 26, 2006.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the survey of the Brundage Mountain Exchange Boundary, in sections 1 and 12, in T. 19 N., R. 2 E., Boise Meridian, Idaho, was accepted March 15, 2006.

Dated: April 5, 2006.

Stanley G. French,

Chief Cadastral Surveyor for Idaho.

[FR Doc. E6–5247 Filed 4–10–06; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Charter Renewal; Yakima River Basin Conservation Advisory Group Renewal

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of charter renewal.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is renewing the charter for the Yakima River Basin Conservation Advisory Group (CAG). The purpose of the CAG is to provide recommendations to the Secretary of the Interior and the State of Washington on the structure and implementation of the Yakima River Basin Water Conservation Program. In consultation with the State, the Yakama Nation, Yakima River basin irrigators, and other interested and related parties, six members and a facilitator are appointed to serve on the CAG.

The basin conservation program is structured to provide economic incentives with cooperative Federal, State, and local funding to stimulate the identification and implementation of structural and nonstructural cost-effective water conservation measures in the Yakima River basin. Improvements in the efficiency of water delivery and use will result in improved streamflows for fish and wildlife and improve the reliability of water supplies for irrigation.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Esget, Manager, Yakima River Basin Water Enhancement Program, telephone 509–575–5848, extension 267.

Certification

I hereby certify that renewal of the Yakima River Basin Conservation Advisory Group is in the public interest in connection with the performance of duties imposed on the Department of the Interior.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 06–3438 Filed 4–10–06; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

April 5, 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 Office of Disability Employment Policy, 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: Office of Disability Employment Policy (ODEP).

Type of Review: Revision of currently approved collection.

Title: Employment Assistance and Recruiting Network (EARN) Employer and Provider Enrollment Form, and Surveys..

OMB Number: 1230–0003.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, local, or tribal government.

Number of Respondents: 1,669.

Form	Estimated number of annual responses	Average response time (hours)	Estimated annual burden hours
Provider Enrollment Form (EARN–1)	1,473	0.25	368
Employer Enrollment Form (EARN–2)	196	0.25	49
Employer Survey (EARN–3)	40	0.17	7
Provider Survey (EARN–4)	79	0.17	13
Total	1,788		437

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Employer Assistance & Recruiting Network (EARN) is a nationwide service designed to provide employers with a technical, educational, and informational resource to simplify and encourage the recruiting and hiring of qualified workers. Historically, disability programs required employers to do much of the work in the finding and hiring of people with disabilities. ODEP designed EARN to alleviate these barriers and do much of the work for the employer. EARN's recruiting service links employers with employment service providers who refer candidates with disabilities.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E6–5270 Filed 4–10–06; 8:45 am]

BILLING CODE 4510–FK–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

133rd Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 133rd open meeting of the full Advisory Council on Employee Welfare and Pension Benefit Plans will be held on May 5, 2006.

The session will take place in Room S–2508, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. The purpose of the open meeting, which will run from 1:45 p.m. to approximately 4:30 p.m., is to swear in the new members, introduce the Council Chair and Vice Chair, receive an update from the Assistant Secretary of Labor for the Employee Benefits Security Administration, and determine the topics to be addressed by the Council in 2006.

Organizations or members of the public wishing to submit a written statement may do so by submitting 25 copies on or before April 25, 2006 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements received on or before April 25, 2006 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by April 25 at the address indicated.

Signed at Washington, DC this 31st day of March, 2006.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. E6–5271 Filed 4–10–06; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,209]

Computer Sciences Corporation, Financial Services Group, East Hartford, Connecticut; Notice of Revised Determination On Remand

On January 27, 2006, the U.S. Court of International Trade (USCIT) issued a third remand order directing the Department of Labor (Department) to further investigate workers' eligibility to apply for Trade Adjustment Assistance (TAA) in the matter of *Former Employees of Computer Sciences Corporation* v. *United States Secretary of Labor* (Court No. 04–00149).

The initial determination for the workers of Computer Sciences Corporation, Financial Services Group, East Hartford, Connecticut ("CSC") was issued on October 24, 2003 and published in the **Federal Register** on November 28, 2003 (68 FR 66878). The Department's negative determination was based on the findings that the subject worker group provided business and information consulting, specialized application software, and technology outsourcing support to customers in the financial services industry, and that the workers did not produce an article within the meaning of Section 222 of the Trade Act of 1974.

The Department issued a Notice of Negative Determination on Reconsideration on February 3, 2004 and published the Notice in the **Federal Register** on February 24, 2004 (69 FR 8488). The Department determined that while CSC produced software, the workers were ineligible to apply for TAA because CSC neither shifted software production abroad nor imported software like or directly competitive with that produced at the subject facility.

On July 29, 2004, the Department issued a Negative Determination on Reconsideration on Remand for the workers of the subject firm on the basis that packing functions did not shift to India, that all storing and copying functions remained in the United States, and that CSC did not import software like or directly competitive with software produced at the subject facility. The Department's Notice was published in the **Federal Register** on August 10, 2004 (69 FR 48526).

On August 24, 2005, the Department issued a Notice of Negative Determination on Remand. The Notice of the second remand determination was published in the **Federal Register** on September 1, 2005 (70 FR 52129). The Department determined that the Vantage-One software code produced by CSC, not embodied on a physical medium, is not an article, that CSC did not shift production of an article abroad, and that there were no increased imports of software like or directly competitive with the software produced at the subject facility.

Since the publication of the last remand determination, the Department has revised its policy to acknowledge that, at least in the context of this case, there are tangible and intangible articles and to clarify that the production of intangible articles can be distinguished from the provision of services. Software and similar intangible goods that would have been considered articles for the purposes of the Trade Act if embodied in a physical medium will now be considered to be articles regardless of their method of transfer.

The Department stresses that it will continue to implement the longstanding precedent that firms must produce an article to be certified under the Act. This determination is not altered by the fact the provision of a service may result in the incidental creation of an article. For example, accountants provide services for the purposes of the Act even though, in the course of providing those services, they may generate audit reports or similar financial documents that might be articles on the Harmonized Tariff Schedule of the United States. Because the new policy may have ramifications beyond this case of which the Department is not fully cognizant, the new policy will be further developed in rulemaking.

Moreover, because it is the Department's practice to apply current policy instead of the policy which existed during the investigative period if doing so is favorable to the workers, the Department conducted the third remand investigation under the new policy.

After careful review of the facts, the Department has determined that the subject firm produced an intangible article (financial software for Vantage-One) that would have been considered an article if embodied in a physical medium, that employment at the subject facility declined during the relevant period, that CSC shifted production of the such software abroad, and that CSC increased imports of software like or directly competitive with that produced at the subject facility.

Conclusion

After careful review of the facts generated through the immediate remand investigation, I determine that increased imports of software like or directly competitive with that produced by the subject firm contributed importantly to the total or partial separation of a significant number of workers at the subject facility. In accordance with the provisions of the Act, I make the following certification:

All workers of Computer Sciences Corporation, Financial Services Group, East Hartford, Connecticut, who became totally or partially separated from employment on or after September 22, 2002, through two years from the issuance of this revised determination, are eligible to apply for Trade Adjustment Assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 24th day of March 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–5278 Filed 4–10–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,486]

Electronic Data Systems Corporation, I Solutions Center, Fairborn, Ohio; Notice of Revised Determination on Remand

The United States Court of International Trade (USCIT) remanded to the Secretary of Labor for further investigation the case of *Former Employees of Electronic Data Systems Corporation* v. *U.S. Secretary of Labor* (Court No. 03–00373).

On January 15, 2003, the Department of Labor (Department) issued a negative determination regarding the eligibility of workers at Electronic Data Systems (EDS) Corporation, I Solutions Center, Fairborn, Ohio to apply for Trade Adjustment Assistance (TAA). The determination was based on the Department's finding that the workers at the subject facility performed information technology services, and did not produce or support the production of an article. Therefore, the workers did not satisfy the eligibility criteria of section 222 of the Trade Act of 1974. 19 U.S.C. 2272. On February 6, 2003, the Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for Electronic Data Systems Corporation, I Solutions Center, Fairborn, Ohio was published in the **Federal Register** (68 FR 6211).

In a letter dated March 4, 2003, the petitioner requested administrative reconsideration of the Department's

negative determination, and included additional information indicating that all usage and copyrights of the computer programs, job control language, documentation, etc. produced at the Fairborn facility were transferred to the client upon sale. The Department determined that the information submitted did not constitute an adequate basis for reconsideration and affirmed its finding that the workers of Electronic Data Systems Corporation, I Solutions Center, Fairborn, Ohio were not eligible to apply for TAA, because they did not produce an article within the meaning of Section 222 of the Trade Act. Accordingly, the Department issued a Notice of Negative Determination Regarding Application for Reconsideration on April 15, 2003. The Notice was published in the **Federal Register** on April 24, 2003 (68 FR 20180).

After the petitioner sought review by the USCIT, the Court remanded the case to the Department. On January 31, 2005, the Department issued a Negative Determination on Remand based on the finding that workers of the subject facility did not produce an article, nor did they support, either directly or through an appropriate subdivision of EDS, the production of an article within the meaning of the Trade Act. The investigation revealed that the products designed and/or developed at the Fairborn facility were not mass-replicated to any physical carrier medium.

After another review, on November 14, 2005, the USCIT remanded the case to the Department, giving rise to the current investigation and determination.

Since the publication of the last remand determination, the Department has revised its policy to acknowledge that, at least in the context of this case, there are tangible and intangible articles and to clarify that the production of intangible articles can be distinguished from the provision of services. Software and similar intangible goods that would have been considered articles for the purposes of the Trade Act if embodied in a physical medium will now be considered to be articles regardless of their method of transfer.

The Department stresses that it will continue to implement the longstanding precedent that firms must produce an article to be certified under the Act. This determination is not altered by the fact the provision of a service may result in the incidental creation of an article. For example, accountants provide services for the purposes of the Act even though, in the course of providing those services, they may produce audit reports or similar financial documents that may be articles on the Harmonized Tariff Schedule of the United States. Because the new policy may have ramifications beyond this case of which the Department is not fully cognizant, the new policy will be further developed in rulemaking.

Because it is the Department's practice to apply current policy instead of the policy which existed during the investigative period if doing so is favorable to the workers, the Department conducted the second remand investigation under the new policy.

The second remand investigation revealed that the financial applications software work performed at the subject facility was divided into three categories: maintenance, enhancements, and service agreements.

Maintenance comprised approximately [business confidential] percent of the work performed at the subject facility and, as the term "maintenance" implies, was a service-oriented activity. The maintenance services performed at the subject facility generally involved "minor updates to tables, defect fixes to programs or data, monitoring operating performance, and other activities that do not materially affect the original functional specifications for existing software."

Software enhancements accounted for approximately [business confidential] percent of the subject facility's total work load, and generally involved "modifications to (usually small) portions of a program or system that is meant to incorporate new functional specifications but does not significantly alter the fundamental intent, architecture, or structure of the application." These modifications involved both modifying existing code and writing new code modules to be added to the program's existing code.

Some enhancements, particularly those that make very minor alterations to existing code, do appear to be services. However, a significant portion of the enhancements developed at the subject facility involves the development of new code that adds new functionality and represents the essence of what constitutes software. Therefore, the Department has determined that a significant portion of the software enhancements developed by the subject worker group are articles for the purposes of the Trade Act.

This does not mean that any activity which added functionality to an article would be considered production of an article. For example, the installation of a car radio is clearly a service, even though the radio is clearly an article. In the case at hand, the subject firm performs a service by installing software enhancements, but they also produce an article in that they write the code for (produce) the significant enhancements themselves.

While most software maintenance and enhancement activities were provided for under the general contract between EDS and General Motors Acceptance Corporation (GMAC), the development of wholly new software (the most clear cut production activity taking place at the subject facility) only took place as the result of "Service Agreements" or supplementary contracts between EDS and GMAC. Service agreements covered all three categories of work (maintenance, enhancements, and new software), and comprised the remaining percent of work performed at the subject facility. EDS estimates that somewhere between [business confidential] percent of the service agreements carried out at the subject facility involved the development of completely new software, thus [business confidential] percent of the total work performed at the subject facility involved the development of completely new software.

Based on findings that the former employees spent a considerable amount of their work time on the development of significant enhancements that include new code, and the development of totally new software, the Department has determined that a significant portion of the workers of the subject facility were engaged in the production of an article (financial applications software). Given that those workers were not differentiated as to whether they worked on maintenance, enhancement or new software, the Department will consider all workers within the facility as a part of the petitioning worker group.

The second remand investigation revealed that a significant portion of the production of software enhancements was shifted to Mexico during the period under investigation. Moreover, while no production of wholly new software occurred in Mexico during the period under investigation, the Mexican workers were being trained in the production of new software during the relevant period and the production of such software now occurs in Mexico. Thus, a shift of new software production to Mexico was also already underway. Based on a review of the record developed on remand, the Department determines that the software produced in Mexico is like or directly competitive to that produced at the subject facility. Moreover, previous investigation established that the requisite declines in

employment occurred at the subject facility during the relevant period.

Conclusion

After careful review of the facts generated through the remand investigation, I determine that a shift in production of financial applications software like or directly competitive to that produced at the subject facility to Mexico contributed importantly to the total or partial separation of a significant number of workers at the subject facility. In accordance with the provisions of the Act, I make the following certification:

"All workers of Electronic Data Systems Corporation, I Solutions Center, Fairborn, Ohio, who became totally or partially separated from employment on or after December 27, 2001, through two years from the issuance of this revised determination, are eligible to apply for Trade Adjustment Assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 24th day of March 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–5279 Filed 4–10–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,688]

Lands'End, A Subsidiary of Sears Roebuck and Company, Business Outfitters CAD Operations, Dodgeville, Wisconsin; Notice of Revised Determination on Remand

In an Order issued on December 7, 2005, the United States Court of International Trade (USCIT) granted the motion filed by the Department of Labor (Department) for voluntary remand in *Former Employees of Lands' End Business Outfitters* v. *United States Secretary of Labor,* Court No. 05–00517.

The Department denied Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) to workers of Lands' End, a Subsidiary of Sears Roebuck and Company, Business Outfitters CAD Operations, Dodgeville, Wisconsin, (Lands' End) because the workers' separations were due to the subject company's decision to move computer assisted design operations abroad. The subject worker group is engaged in computerizing embroidery and logo designs which are utilized by the production division of Lands' End, also located in Dodgeville, Wisconsin. The Notice of determination was issued on March 25, 2005, and published in the **Federal Register** on May 2, 2005 (70 FR 22710).

On June 6, 2005, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The Notice of determination was published in the **Federal Register** on June 20, 2005 (70 FR 35456). In the request for reconsideration, the petitioners alleged that workers produce digitized embroidery designs, that production shifted overseas, and that imports had increased following the shift of production abroad.

A negative determination on reconsideration was issued on July 28, 2005. The Notice of determination was published in the **Federal Register** on August 9, 2005 (70 FR 46190). During the reconsideration investigation, the Department was informed that the workers create digitized embroidery designs from customers' logos. The designs are owned by the customers. The digitized designs are readable by the embroidery machines at Dodgeville, Wisconsin, and are embroidered onto clothing and luggage produced by Lands' End. Alternatively, the customer may give the design to another apparel manufacturer for the production of the logo design on clothing and luggage. The Department found that the production of digitized embroidery designs shifted overseas, and that the designs are electronically returned to Dodgeville, Wisconsin. Because the Department's policy required that articles be tangible for purposes of the Trade Act, it was determined that the workers did not produce an article and were not covered by the Trade Act.

Since the issuance of the voluntary remand order, the Department has revised its policy to acknowledge that, at least in the context of this case, there are tangible and intangible articles and to clarify that the production of intangible articles can be distinguished from the provision of services. Software and similar intangible goods that would have been considered articles for the purposes of the Trade Act if embodied in a physical medium will now be considered to be articles regardless of their method of transfer.

The Department stresses that it will continue to implement the longstanding precedent that firms must produce an article to be certified under the Act. This determination is not altered by the fact the provision of a service may result in the incidental creation of an article. For example, accountants provide services for the purposes of the Act even though, in the course of providing those services, they may generate audit reports or similar financial documents that might be articles on the Harmonized Tariff Schedule of the United States. Because the new policy may have ramifications beyond this case of which the Department is not fully cognizant, the new policy will be further developed in rulemaking.

Moreover, because it is the Department's practice to apply current policy instead of the policy which existed during the investigative period if doing so is favorable to the workers, the Department conducted the remand investigation under the new policy.

After careful review of the facts, the Department has determined that: the petitioners are former employees of Land's End Business Outfitters CAD operations of Dodgeville, Wisconsin; that the workers' firm produced an intangible article (digitized embroidery designs) that would have been considered an article if embodied in a physical medium; that employment at the subject facility declined during the relevant period; that the workers' firm shifted digitized embroidery design production abroad; and that the workers' firm increased imports of articles like or directly competitive with the digitized embroidery designs produced at the subject facility.

In accordance with Section 246 the Trade Act of 1974, as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply ATAA.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

Additional investigation has determined that the workers possess skills that are not easily transferable. A significant number or proportion of the worker group are age fifty years or over. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts generated through the remand investigation, I determine that increased imports of digitized embroidery designs like or directly competitive with those produced by the subject firm contributed importantly to the total or partial separation of a significant number of workers at the subject facility. In accordance with the

provisions of the Act, I make the following certification:

"All workers of Lands' End, a Subsidiary of Sears Roebuck and Company, Business Outfitters CAD Operations, Dodgeville, Wisconsin, who became totally or partially separated from employment on or after March 3, 2004, through two years from the issuance of this revised determination, are eligible to apply for Trade Adjustment Assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974."

Signed at Washington, DC this 24th day of March 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–5277 Filed 4–10–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 21, 2006.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 21, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 29th day of March 2006.

Erica R. Cantor

Director, Division of Trade Adjustment Assistance.

APPENDIX—

[TAA Petitions Instituted Between 3/6/06 and 3/10/06]

TA-W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
58965	Monmouth Ceramics, Inc. (Comp)	Monmouth, IL	03/06/06	03/06/06
58966	Quintiles, Inc. (Wkrs)	Morrisville, NC	03/06/06	03/01/06
58967	Spectrum Brands (Wkrs)	Fennimore, WI	03/06/06	03/03/06
58968	Maryland Plastics, Inc. (State)	Federalsburg, MD	03/07/06	03/03/06
58969	Panel Products (Wkrs)	White City, OR	03/07/06	03/06/06
58970	ADC (State)	Shakopee, MN	03/07/06	03/06/06
58971	Sotco, Inc. (Comp)	West Paducah, KY	03/07/06	02/17/06
58972	Elite Furniture Mfg. (Comp)	High Point, NC	03/07/06	03/06/06
58973	Arcona Leather Technologies, LLC (Wkrs)	Hudson, NC	03/07/06	02/24/06
58974	Affinia Group (Comp)	North East, PA	03/07/06	03/07/06
58974A	Affinia Group (Comp)	Erie, PA	03/07/06	03/07/06
58975	Nazar Rubber Company (Union)	Toledo, OH	03/07/06	03/07/06
58976	Berkshire Weaving Corp. (Comp)	Lancaster, SC	03/07/06	03/01/06
58977	Oce' Imagistics, Inc. (State)	Melbourne, FL	03/10/06	03/07/06
58978	Confluent Photonics Corp. (Comp)	Salem, NH	03/10/06	03/09/06
58979	Tension Envelopes Corp. (State)	Minnetonka, MN	03/10/06	03/07/06
58980	Stora Enso (Comp)	Stevens Point, WI	03/10/06	03/07/07
58981	Cardinal Brands, Inc. (Comp)	Topeka, KS	03/10/06	03/08/06
58982	Guildcraft of California (State)	Rancho Dominguez, CA	03/10/06	03/08/06
58983	Hersey Meters (Comp)	Cleveland, NC	03/10/06	03/08/06
58984	Independent Steel Casting Co., Inc. (UAW)	New Buffalo, MI	03/10/06	03/02/06
58985	York International (Wkrs)	Bristol, VA	03/10/06	03/02/06
58986	Galerie DBA Ross Acquisitions (Wkrs)	Wellston, OH	03/10/06	03/06/06
58987	Lady Ester Lingerie Corporation (Comp)	Berwick, PA	03/10/06	03/08/06
58988	Orlandi Valuta (Wkrs)	Cerritos, CA	03/10/06	03/09/06
58989	Thermalcast, LLC (Wkrs)	Worcester, MA	03/10/06	02/09/06
58990	H.W. Close Plant Springs Global (Wkrs)	Fort Lawn, SC	03/10/06	03/01/06
58991	Lear Corporation (Wkrs)	Lebanon, VA	03/10/06	03/06/06
58992	Georgia Pacific Corp. (Union)	Gaylord, MI	03/10/06	03/09/06
58993	Ark-Les Custom Products Corporation (Comp)	New Berlin, WI	03/10/06	03/03/06
58994	Commercial Furniture Group, Inc. (Comp)	Morristown, TN	03/10/06	03/09/06
58995	Moore Wallace, Inc. (Comp)	Nacogdoches, TX	03/10/06	03/08/06

[FR Doc. E6–5276 Filed 4–10–06; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,472]

Visteon Systems, LLC, Bedford, Indiana; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974, as amended (19 U.S.C. 2813), the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 20, 2006, applicable to workers of Visteon Systems LLC, Bedford, Indiana. The notice was published in the **Federal Register** on February 3, 2006 (71 FR 5895).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce automotive components (fuel delivery modules, washer reservoirs, and canister vent valves).

The Department inadvertently limited the certification to workers engaged in employment related to the production that was shifted from the Bedford, Indiana plant to Mexico, fuel delivery modules. Since the workers are not separately identifiable by product, the Department intended to include all workers of the firm. Accordingly, the Department is amending the certification to correct.

The amended notice applicable to TA–W–58,472 is hereby issued as follows:

"All workers of Visteon Systems, LLC, Bedford, Indiana, totally or partially separated from employment on or after November 30, 2004, through January 20, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974."

Signed at Washington, DC, this 22nd day of March 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–5275 Filed 4–10–06; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Veterans Employment and Training Service

Office of the Assistant Secretary for Veterans Employment and Training; Advisory Committee on Veterans' Employment and Training; Notice of Open Meeting

The Advisory Committee on Veterans' Employment and Training was established pursuant to Section 8 of the Veterans' Benefits Amendments Act of 1991 (Pub. L. 102–16) and codified in Title 38 U.S. Code 4110. The Committee is responsible for assessing the employment and training needs of the nation's veterans; for evaluating the effectiveness with which existing Department of Labor programs deliver required services to our nation's veterans; and for making recommendations to the Secretary of Labor on the Department of Labor's employment and training programs for veterans.

The Advisory Committee on Veterans Employment and Training will meet on Tuesday, May 9, 2006 beginning at 9:30 a.m. at the U.S. Department of Labor, 200 Constitution Ave, NW., Room S–2508, Washington, DC.

The Committee will discuss issues related to the employment and training needs of veterans, and the effectiveness of programs that provide those services. Individuals needing special accommodations should notify Ruth Samardick at (202) 693–4706 by May 1, 2006.

Signed in Washington, DC, this 5th day of April, 2006.

Charles S. Ciccolella,

Assistant Secretary, Veterans Employment and Training.

[FR Doc. E6–5269 Filed 4–10–06; 8:45 am]
BILLING CODE 4510–79–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before May 26, 2006. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means (Note the new address for requesting schedules using e-mail):

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001
E-mail: *requestschedule@nara.gov*
FAX: 301–837–3698

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer

into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

(Note the New Address for Requesting Schedules Using E-Mail)

1. Department of Agriculture, Office of Inspector General (N1–16–06–1, 4 items, 4 temporary items). Litigation files, including cases that involve the enforcement of Inspector General subpoenas. Also scheduled are electronic copies of records created using electronic mail and word processing.

2. Department of Defense, National Geospatial-Intelligence Agency (N1–537–06–1, 2 items, 2 temporary items). Travel activities database records, and preliminary inquiry files accumulated on personnel who are suspected of security violations. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

3. Department of Health and Human Services, Food and Drug Administration (N1–88–04–5, 30 items, 27 temporary items). Records accumulated in the Office of the Commissioner including, non-significant research project files and working files, patient advocate records, crisis management records, trade agreements and international arrangements, country files, international travel records, export program records, and an electronic system for tracking exports. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are significant research project files, official international arrangements, and final export policy documents. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of Homeland Security, Transportation Security Administration (N1–560–04–14, 5 items, 5 temporary items). Records accumulated in the Office of Security Technology including, correspondence, memorandums, briefing materials, studies, and other documents regarding the joint planning, operational integration, and management of transportation security technologies. Also included are electronic copies of records created using electronic mail and word processing.

5. Department of Homeland Security, U.S. Coast Guard (N1–26–05–6, 4 items, 4 temporary items). Case files relating to the enforcement of recreational boating laws and regulations. Records include inspection reports, notes on alleged violations, and documentation of any penalties. Also included are electronic copies of records created using electronic mail and word processing.

6. Department of Homeland Security, U.S. Coast Guard (N1–26–05–12, 3 items, 3 temporary items). Maritime facility security plans and electronic mail and word processing copies relating to emergency procedures, vessel interface, communications, security measures, assessments, and vulnerability summaries.

7. Department of the Interior, Minerals Management Service (N1–473–06–2, 2 items, 2 temporary items). Records include the official record set and reference copies of well logs made by geophysical instruments. This schedule, which applies to records in all media, also reduces the retention period for the official record set from permanent to disposable in 75 years.

8. Department of Justice, Criminal Division (N1–60–05–4, 4 items, 4 temporary items). Records maintained by the Child Exploitation and Obscenity Section to monitor prosecutions under the Deadbeat Parents Punishment Act. Included are reference case files relating to the prosecutions of parents who refuse to pay child support. The U.S. Attorney's Office is responsible for prosecuting and maintaining the recordkeeping copy of these cases. Also included are electronic copies of records created using electronic mail and word processing.

9. Department of Justice, Justice Management Division (N1–60–05–10, 1 item, 1 temporary item). Card index used to track new employees from applicant stage to appointment. This schedule authorizes the agency to apply the proposed disposition instructions only to this closed series.

10. Department of Justice, Bureau of Prisons (N1–129–05–11, 9 items, 7 temporary items). Inputs, outputs, master files, and system documentation associated with an obsolete DOS-based electronic information system used to document all psychological services delivered to inmates. Also included are inputs and outputs of the new web-based system and electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are the master files and documentation of the web-based system.

11. Department of Justice, Bureau of Prisons (N1–129–06–1, 3 items, 3 temporary items). Records relating to General Equivalency Diploma testing accommodation referrals for inmates with physical, emotional, cognitive, and/or chronic health disabilities. Also included are electronic copies of records created using electronic mail and word processing applications.

12. Department of Justice, Bureau of Prisons (N1–129–06–5, 3 items, 3 temporary items). Records relating to inmate safety training and inmate injuries. Also included are electronic copies of records created using electronic mail and word processing applications.

13. Department of Justice, Drug Enforcement Administration (N1–170–06–1, 6 items, 6 temporary items). Inputs, outputs, master files, system documentation, and electronic mail and word processing copies associated with an electronic information system used to track the shipment of listed chemicals.

14. Department of Justice, Federal Bureau of Investigation (N1–65–06–4, 2 items, 2 temporary items). Office of General Counsel copies of White House

investigation name check consent forms. Also included are electronic copies of records created using electronic mail and word processing applications. Recordkeeping copies of these files are covered by a previously approved permanent disposition authority.

15. Department of State, Office of the Under Secretary for Global Affairs and Coordinator (N1–59–06–3, 8 items, 4 temporary items). Reference files and extra copies of reports and publications maintained by the Office to Monitor and Combat Trafficking in Persons. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of country files, congressional liaison files, program files, reports, and publications.

16. Department of Transportation, Federal Motor Carrier Safety Administration (N1–557–06–1, 17 items, 15 temporary items). Records of the Office of Research and Analysis including correspondence files, contract and grant documentation, and reference files. Also scheduled are electronic mail and word processing copies of records. Proposed for permanent retention are recordkeeping copies of publications and completed research products. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

17. Department of the Treasury, Internal Revenue Service (N1–58–06–1, 3 items, 3 temporary items). Records relating to the management, operations, and content of the public Web site.

18. Department of the Treasury, Internal Revenue Service (N1–58–06–3, 1 item, 1 temporary item). Completed copies of Form 8886 submitted by taxpayers to report tax shelter transactions and maintained by the Office of Tax Shelter Analysis.

19. Environmental Protection Agency, Office of Administration and Resources Management (N1–412–06–20, 6 items, 6 temporary items). Inputs, outputs, master files, documentation, and software associated with an electronic information system used to track purchases of supplies and services.

20. Library of Congress, Congressional Research Service (N1–297–06–1, 7 items, 5 temporary items). Policy records below the Office of the Director level, draft correspondence and briefing material, research and background files, training materials, and internal electronic database tracking records used to monitor the response status to congressional requests. Proposed for permanent retention are recordkeeping copies of Director and Deputy Director policy records, and intellectual content records such as policy analyses, economic studies, and fact sheets of particular interest to Congress. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

Dated: April 5, 2006.

Michael J. Kurtz,

Assistant Archivist for Records Services, Washington, DC.

[FR Doc. E6–5264 Filed 4–10–06; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND PLACE: April 18, 2006.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is open to the public.

Matters To Be Considered:

7776—Highway Accident Report

Multivehicle Collision on Interstate 90, Hampshire-Marengo Toll Plaza, Near Hampshire, Illinois, October 1, 2003.

NEWS/PRESS MEDIA CONTACT: Ted Lopatkiewicz Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Chris Bisett at (202) 314–6305 by Friday, April 14, 2006.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at *www.ntsb.gov*.

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: April 7, 2006.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 06–3501 Filed 4–7–06; 1:44 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection: Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 150, "Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters under Section 274"

2. *Current OMB approval number:* 3150–0032.

3. *How often the collection is required:* 10 CFR 150.16(b), 150.17(c), and 150.19(c) require the submission of reports following specified events, such as the theft or unlawful diversion of licensed radioactive material. The source material inventory reports required under 10 CFR 150.17(b) must be submitted annually by certain licensees.

4. *Who is required or asked to report:* Agreement State licensees authorized to possess source or special nuclear material at certain types of facilities, or at any one time and location in greater than specified amounts. In addition, persons engaging in activities in non-Agreement States, in areas of exclusive Federal jurisdiction within Agreement States, or in offshore waters.

5. *The estimated number of annual respondents:* 10.

6. *The number of hours needed annually to complete the requirement or request:* 35 hours.

7. *Abstract:* 10 CFR part 150 provides certain exemptions from NRC regulations for persons in Agreement States. Part 150 also defines activities in Agreement States and in offshore waters over which NRC regulatory authority continues, including certain information collection requirements. The information is needed to permit NRC to make reports to other governments and the International Atomic Energy Agency in accordance with international agreements. The information is also used to carry out NRC's safeguards and inspection programs.

Submit, by June 12, 2006, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge

at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5 F53, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *infocollects@nrc.gov*.

Dated at Rockville, Maryland, this 4th day of April 2006.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E6–5260 Filed 4–10–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. IA–05–052; ASLBP No. 06–845–01–EA]

Atomic Safety and Licensing Board; In the Matter of David Geisen; Notice of Hearing (Enforcement Order)

April 5, 2006.

Before Administrative Judges: Michael C. Farrar, Chairman, E. Roy Hawkens. Nicholas G. Trikouros.

This proceeding stems from an immediately-effective Enforcement Order issued on January 4, 2006, by the Nuclear Regulatory Commission Staff against Mr. David Geisen, prohibiting him from "engaging in NRC-licensed activities" for five years because of certain actions the NRC Staff believes he took in 2001 when he was employed at the Davis-Besse Nuclear Power Plant, located some 25 miles east of Toledo near Oak Harbor, Ohio. That Order, published in the **Federal Register** (71 FR 2571) on January 17, 2006, detailed the Staff's assertions that Mr. Geisen had deliberately provided materially incomplete and inaccurate information in connection with an issue affecting the continued operation of the Davis-Besse facility, and provided Mr. Geisen with the opportunity, under 10 CFR 2.202(b), to request a hearing to contest the matters set out in the Order. Through counsel, Mr. Geisen timely filed such a request on February 23, 2006.

This Atomic Safety and Licensing Board was established on March 16, 2006, to consider Mr. Geisen's hearing request. With the NRC Staff having indicated no objection thereto, we granted that request on March 27, 2006, in a Memorandum and Order that also granted the hearing requests of two other former Davis-Besse employees who were the subjects of immediately-effective Staff Enforcement Orders likewise suspending them from employment in the regulated nuclear industry.

In light of the foregoing, and consistent with 10 CFR 2.318(a) (*see also id.* §§ 2.203 and 2.312(a)), please take notice that a hearing will be conducted in this proceeding. The hearing will be governed by the specific hearing procedures set forth in 10 CFR Part 2, Subpart G (10 CFR 2.700–2.713), which procedures supplement the general rules set forth in 10 CFR Part 2, Subpart C (10 CFR 2.300–2.390). During the course of the proceeding, the Board may, among other measures, hold oral arguments (*id.* § 2.331) and pre-hearing conferences (*id.* § 2.329), and may conduct evidentiary hearings (*id.* § 2.711). The public is invited to attend any oral argument, pre-hearing conference, or evidentiary hearing unless otherwise ordered by the Commission (*id.* §§ 2.327–2.328). The time and place of any such sessions will be fixed by subsequent order(s); notices thereof will be published in the **Federal Register** and/or made available to the public at the NRC Public Document Room, located in One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and through the NRC Web site, *http://www.nrc.gov*.

In the same March 27, 2006 Memorandum and Order in which it granted Mr. Geisen's hearing request, this Board called for oral argument on the Staff's March 20, 2006, motion to hold this matter in abeyance pending the outcome of the criminal proceeding brought by the government against Mr. Geisen based on substantially the same allegations (Mr. Geisen's response to the Staff's motion was duly filed on March 30, 2006). The oral argument on the motion will be held on Tuesday, April 11, 2006, at 10 a.m. in the courtroom at the NRC's Rockville, Maryland Headquarters, on the third floor of the Two White Flint North Building at 11545 Rockville Pike. That oral argument, which is not expected to last more than approximately 90 minutes, will be open for the public to observe.

Documents relating to this proceeding are available for public inspection at the NRC's Public Document Room or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *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 may contact the NRC Public Document Room reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

It is so ordered.

April 5, 2006.

For the Atomic Safety and Licensing Board.

Michael C. Farrar,

Chairman, Administrative Judge, Rockville, Maryland.

[FR Doc. E6–5255 Filed 4–10–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. IA–05–053; ASLBP No. 06–846–02–EA]

Atomic Safety And Licensing Boards; In the Matter of Dale L. Miller; Notice of Hearing (Enforcement Order)

April 5, 2006.

Before Administrative Judges: Michael C. Farrar, Chairman, E. Roy Hawkens, Nicholas G. Trikouros.

This proceeding stems from an immediately-effective Enforcement Order issued on January 4, 2006, by the Nuclear Regulatory Commission Staff against Mr. Dale L. Miller, prohibiting him from "engaging in NRC-licensed activities" for five years because of certain actions the NRC Staff believes he took in 2001 when he was employed at the Davis-Besse Nuclear Power Plant, located some 25 miles east of Toledo near Oak Harbor, Ohio. That Order, published in the **Federal Register** (71 FR 2579) on January 17, 2006, detailed the Staff's assertions that Mr. Miller had deliberately provided materially incomplete and inaccurate information in connection with an issue affecting the continued operation of the Davis-Besse facility, and provided Mr. Miller with the opportunity, under 10 CFR 2.202(b), to request a hearing to contest the matters set out in the Order. Through counsel, Mr. Miller timely filed such a request on February 23, 2006.

This Atomic Safety and Licensing Board was established on March 16, 2006, to consider Mr. Miller's hearing request. With the NRC Staff having indicated no objection thereto, we granted that request on March 27, 2006, in a Memorandum and Order that also

granted the hearing requests of two other former Davis-Besse employees who were the subjects of immediately-effective Staff Enforcement Orders likewise suspending them from employment in the nuclear industry.

In light of the foregoing, and consistent with 10 CFR 2.318(a) (*see also id.* §§ 2.203 and 2.312(a)), please take notice that a hearing will be conducted in this proceeding. The hearing will be governed by the specific hearing procedures set forth in 10 CFR part 2, subpart G (10 CFR 2.700–2.713), which procedures supplement the general rules set forth in 10 CFR Part 2, Subpart C (10 CFR 2.300–2.390). During the course of the proceeding, the Board may, among other measures, hold oral arguments (*id.* § 2.331) and pre-hearing conferences (*id.* § 2.329), and may conduct evidentiary hearings (*id.* § 2.711). The public is invited to attend any oral argument, pre-hearing conference, or evidentiary hearing unless otherwise ordered by the Commission (*id.* §§ 2.327–2.328). The time and place of any such sessions will be fixed by subsequent order(s); notices thereof will be published in the **Federal Register** and/or made available to the public at the NRC Public Document Room, located in One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and through the NRC Web site, *http://www.nrc.gov*.

In the same March 27, 2006 Memorandum and Order in which it granted Mr. Miller's hearing request, this Board convened a conference call for April 13, 2006, during which it will discuss with counsel the status of their negotiations concerning an agreement on a discovery process and schedule. Depending on those negotiations and other pending matters, the Board may shortly thereafter set an initial scheduling order for the proceeding.

Documents relating to this proceeding are available for public inspection at the NRC's Public Document Room or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *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 may contact the NRC Public Document Room reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

It is so ordered.

April 5, 2006.

For The Atomic Safety and Licensing Board.

Michael C. Farrar,

Chairman, Administrative Judge, Rockville, Maryland.

[FR Doc. E6–5259 Filed 4–10–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. IA–05–054; ASLBP No. 06–847–03-EA]

Atomic Safety and Licensing Boards; In the Matter of Steven P. Moffitt; Notice of Hearing (Enforcement Order)

April 5, 2006.

Before Administrative Judges: Michael C. Farrar, Chairman; E. Roy Hawkens; and Nicholas G. Trikouros.

This proceeding stems from an immediately-effective Enforcement Order issued on January 4, 2006, by the Nuclear Regulatory Commission Staff against Mr. Steven P. Moffitt, prohibiting him from "engaging in NRC-licensed activities" for five years because of certain actions the NRC Staff believes he took in 2001 when he was employed at the Davis-Besse Nuclear Power Plant, located some 25 miles east of Toledo near Oak Harbor, Ohio. That Order, published in the **Federal Register** (71 FR 2581) on January 17, 2006, detailed the Staff's assertions that Mr. Moffitt had deliberately provided materially incomplete and inaccurate information in connection with an issue affecting the continued operation of the Davis-Besse facility, and provided Mr. Moffitt with the opportunity, under 10 CFR 2.202(b), to request a hearing to contest the matters set out in the Order. Through counsel, Mr. Moffitt timely filed such a request on February 23, 2006.

This Atomic Safety and Licensing Board was established on March 16, 2006, to consider Mr. Moffitt's hearing request. With the NRC Staff having indicated no objection thereto, we granted that request on March 27, 2006, in a Memorandum and Order that also granted the hearing requests of two other former Davis-Besse employees who were the subjects of immediately-effective Staff Enforcement Orders likewise suspending them from employment in the nuclear industry.

In light of the foregoing, and consistent with 10 CFR 2.318(a) (*see also id.* §§ 2.203 and 2.312(a)), please take notice that a hearing will be conducted in this proceeding. The hearing will be governed by the specific hearing procedures set forth in 10 CFR Part 2, Subpart G (10 CFR 2.700–2.713), which procedures supplement the general rules set forth in 10 CFR Part 2, Subpart C (10 CFR 2.300–2.390). During the course of the proceeding, the Board may, among other measures, hold oral arguments (*id.* § 2.331) and pre-hearing conferences (*id.* § 2.329), and may conduct evidentiary hearings (*id.* § 2.711). The public is invited to attend any oral argument, pre-hearing conference, or evidentiary hearing unless otherwise ordered by the Commission (*id.* §§ 2.327–2.328). The time and place of any such sessions will be fixed by subsequent order(s); notices thereof will be published in the **Federal Register** and/or made available to the public at the NRC Public Document Room, located in One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and through the NRC Web site, *http://www.nrc.gov*.

In the same March 27, 2006 Memorandum and Order in which it granted Mr. Moffitt's hearing request, this Board convened a conference call for April 13, 2006, during which it will discuss with counsel the status of their negotiations concerning an agreement on a discovery process and schedule. Depending on those negotiations and other pending matters, the Board may shortly thereafter set an initial scheduling order for the proceeding.

Documents relating to this proceeding are available for public inspection at the NRC's Public Document Room or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *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 may contact the NRC Public Document Room reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

It is so ordered.

For the Atomic Safety and Licensing Board.

April 5, 2006.

Michael C. Farrar,

Chairman, Administrative Judge, Rockville, Maryland.

[FR Doc. E6–5258 Filed 4–10–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–34998]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Gibraltar Laboratories, Inc.'s Facility in Fairfield, NJ

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Steven Courtemanche, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5075, fax (610) 337–5269; or by e-mail: *src@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Gibraltar Laboratories, Inc., for Materials License No. 29–30516–01, to authorize release of its facility in Fairfield, New Jersey for unrestricted use and terminate the license. NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed action is to authorize the release of the licensee's Fairfield, New Jersey facility for unrestricted use and terminate the license. Gibraltar Laboratories, Inc., was authorized by NRC from 1999 to use radioactive materials for research and development purposes at the site. On August 27, 2003, Gibraltar Laboratories, Inc., requested that NRC release the facility for unrestricted use. This licensing action was voided because insufficient information was provided by Gibraltar Laboratories, Inc., to allow for the release of the facility for unrestricted use. On October 11, 2005, Gibraltar Laboratories, Inc., provided the additional information requested on August 27, 2003. Gibraltar Laboratories, Inc., has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in subpart E of 10 CFR part 20 for unrestricted release.

The NRC staff has prepared an EA in support of the license amendment. The facility was remediated and surveyed prior to the licensee requesting the license amendment. The NRC staff has reviewed the information and final status survey submitted by Gibraltar Laboratories, Inc. Based on its review, the staff has determined that there are no additional remediation activities necessary to complete the proposed action. Therefore, the staff considered the impact of the residual radioactivity at the facility and concluded that since the residual radioactivity meets the requirements in subpart E of 10 CFR part 20, a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the license amendment to terminate the license and release the facility for unrestricted use. The NRC staff has evaluated Gibraltar Laboratories, Inc.'s request and the results of the surveys and has concluded that the completed action complies with the criteria in subpart E of 10 CFR part 20. The staff has found that the radiological environmental impacts from the action are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3, "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities" (ML042310492, ML042320379, and ML042330385). Additionally, no non-radiological or cumulative impacts were identified. On the basis of the EA, the NRC has concluded that there are no significant environmental impacts from the proposed action, and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: Environmental Assessment [ML060830021]; Initial request for termination of license with survey results for Gibraltar Laboratories, Inc., 122 Fairfield Road, Fairfield, New Jersey, dated August 27, 2003 [ML032461491]; Request for Additional Information (RAI) dated September 11, 2003 [ML032541251]; Gibraltar Laboratories, Inc.'s response dated November 13, 2003 [ML033370153]; Facsimile from Gibraltar Laboratories, Inc., received November 14, 2003, with additional information concerning survey instruments [ML033380939]; Voidance of Licensing Action by U.S. NRC pending submission of required information [ML033240028]; and Final Status Survey Results for Gibraltar Laboratories, Inc., 122 Fairfield Road, Fairfield, New Jersey, dated October 11, 2005 [ML052940339]. 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 (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Documents related to operations conducted under this license not specifically referenced in this Notice may not be electronically available and/or may not be publicly available. Persons who have an interest in reviewing these documents should submit a request to NRC under the Freedom of Information Act (FOIA). Instructions for submitting a FOIA request can be found on the NRC's Web site at *http://www.nrc.gov/reading-rm/foia/foia-privacy.html*.

Dated at King of Prussia, Pennsylvania, this 28th day of March, 2006.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety Region I.

[FR Doc. E6–5213 Filed 4–10–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–33468]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Multipixel Systems, Inc.'s Facility in Ramsey, NJ

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Steve Hammann, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone (610) 337–5399, fax (610) 337–5269; or by e-mail: *sth2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Multipixel Systems, Inc. for Materials License No. 45–25288–01, to authorize release of its facility in Ramsey, New Jersey for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed action is to authorize the release of the licensee's Ramsey, New Jersey facility for unrestricted use. Multipixel Systems, Inc. was authorized by NRC from 1999 to use radioactive materials for research and development and instrument calibration purposes at the site. On November 23, 2005, Multipixel Systems, Inc. requested that NRC release the facility for unrestricted use. Multipixel Systems, Inc. has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in Subpart E of 10 CFR Part 20 for unrestricted release.

The NRC staff has prepared an EA in support of the license amendment. The facility was remediated and surveyed prior to the licensee requesting the license amendment. The NRC staff has reviewed the information and final status survey submitted by Multipixel Systems, Inc. Based on its review, the staff has determined that there are no additional remediation activities necessary to complete the proposed action. Therefore, the staff considered the impact of the residual radioactivity at the facility and concluded that since the residual radioactivity meets the requirements in Subpart E of 10 CFR Part 20, a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the license amendment to release the facility for unrestricted use. The NRC staff has evaluated Multipixel Systems, Inc.'s request and the results of the surveys and has concluded that the completed action complies with the criteria in Subpart E of 10 CFR Part 20. The staff has found that the radiological environmental impacts from the action are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3, "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities" (ML042310492, ML042320379, and ML042330385). Additionally, no non-radiological or cumulative impacts were identified. On the basis of the EA, the NRC has concluded that there are no significant environmental impacts from the proposed action, and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: Environmental Assessment ML060860071; Letter dated August 23, 2004 [ML042470096]; Amendment Request Letter dated November 23, 2005 [ML053460312]; Phone Log dated December 19, 2005 [ML060240513]; and Additional Information Letter dated January 12, 2006 [ML060240285]. 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 (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Documents related to operations conducted under this license not specifically referenced in this Notice may not be electronically available and/or may not be publicly available. Persons who have an interest in reviewing these documents should submit a request to NRC under the Freedom of Information Act (FOIA). Instructions for submitting a FOIA request can be found on the NRC's Web site at *http://www.nrc.gov/reading-rm/foia/foia-privacy.html*.

Dated at King of Prussia, Pennsylvania this 28th day of March, 2006.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E6–5257 Filed 4–10–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–32749]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Neose Technology, Inc's Facility in Horsham, PA

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Steve Hammann, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5399, fax (610) 337–5269; or by e-mail: *sth2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Neose Technology, Inc. for Materials License No. 37–28751–01, to authorize release of its facility in Horsham, Pennsylvania for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed action is to authorize the release of the licensee's Horsham, Pennsylvania facility for unrestricted use. Neose Technology, Inc. was authorized by NRC from 1992 to use radioactive materials for research and development purposes at the site. On August 1, 2005, Neose Technology, Inc. requested that NRC release the facility for unrestricted use. Neose Technology, Inc. has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in Subpart E of 10 CFR part 20 for unrestricted release.

The NRC staff has prepared an EA in support of the license amendment. The facility was remediated and surveyed prior to the licensee requesting the license amendment. The NRC staff has reviewed the information and final status survey submitted by Neose Technology, Inc. Based on its review, the staff has determined that there are no additional remediation activities

necessary to complete the proposed action. Therefore, the staff considered the impact of the residual radioactivity at the facility and concluded that since the residual radioactivity meets the requirements in Subpart E of 10 CFR Part 20, a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the license amendment to release the facility for unrestricted use. The NRC staff has evaluated Neose Technology, Inc.'s request and the results of the surveys and has concluded that the completed action complies with the criteria in Subpart E of 10 CFR part 20. The staff has found that the radiological environmental impacts from the action are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3, "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities" (ML042310492, ML042320379, and ML042330385). Additionally, no non-radiological or cumulative impacts were identified. On the basis of the EA, the NRC has concluded that there are no significant environmental impacts from the proposed action, and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: Environmental Assessment [ML060830161]; Final Status Survey Results for Neose Technologies, Inc., 102 Witmer Road, Horsham, Pennsylvania [ML052590494]; and Response from Neose Technologies, Inc. dated October 27, 2005 [ML053120105]. 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 (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Documents related to operations conducted under this license not specifically referenced in this Notice may not be electronically available and/or may not be publicly available. Persons who have an interest in reviewing these documents should submit a request to NRC under the Freedom of Information Act (FOIA). Instructions for submitting a FOIA request can be found on the NRC's Web Site at *http://www.nrc.gov/reading-rm/foia/foia-privacy.html*.

Dated at King of Prussia, Pennsylvania this 28th day of March, 2006.

For The Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E6–5214 Filed 4–10–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 030–06111 And 070–00781]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact For License Amendment For the Pennsylvania Department of Environmental Protection, Harrisburg, PA

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Stephen Hammann, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region 1, U.S. Nuclear Regulatory Commission, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone: (610) 337–5399; fax number: (610) 337–5269; e-mail: *STH2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering the issuance of amendments to Material License Nos. 37–03698–01 and SNM–719, issued to the Pennsylvania Department of Environmental Protection (PADEP) (the licensee), to authorize release of its Evangelical Press Building, 3rd and Reilly Streets, Harrisburg, Pennsylvania, for unrestricted use, and has prepared an Environmental Assessment (EA) in support of this amendment in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed amendment is to allow for the release of the licensee's Harrisburg, Pennsylvania facility for unrestricted use. The PADEP was authorized by the NRC in 1962 to use radioactive materials for instrument calibration, sample preparation, analysis of environmental samples, and measuring the physical properties of materials at the site. On August 19, 2005, the PADEP requested that NRC release the facility for unrestricted use. PADEP has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in Subpart E of 10 CFR part 20 for unrestricted release.

The staff has prepared an EA in support of the proposed license amendment. The facility was surveyed and remediated as necessary by the licensee. The NRC staff has reviewed the information and final status survey submitted by PADEP. Based on its review, the staff has determined that there are no additional remediation activities necessary to complete the proposed action. Therefore, the staff considered the impact of the residual radioactivity at the facility and concluded that since the residual radioactivity meets the requirements in Subpart E of 10 CFR Part 20, a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

The staff has prepared an EA in support of the proposed license amendments to release the site for unrestricted use. The staff has found that the radiological environmental impacts from the proposed amendment are bounded by the impacts evaluated by NUREG 1496, Volumes 1–3, "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License termination of NRC-Licensed Facilities" (ML042310492, ML042320379, and ML042330385). The staff has also found that the non-radiological impacts are not significant. On the basis of the EA, NRC has concluded that there are no significant environmental impacts from the proposed amendment and has determined not to prepare an environmental impact statement.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site,

you can access the NRC"s Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: Environmental Assessment [ML060820173]; Request for Amendment dated August 19, 2005 [ML060550247]; NRC's request for additional information dated September 28, 2005 [ML052720490]; and Final Status Survey Results dated November 7, 2005 [ML060550248]. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Documents related to operations conducted under these licenses not specifically referenced in this Notice may not be electronically available and/or may not be publicly available. Persons who have an interest in reviewing these documents should submit a request to NRC under the Freedom of Information Act (FOIA). Instructions for submitting a FOIA request can be found on the NRC's Web site at *http://www.nrc.gov/reading-rm/foia/foia-privacy.html*.

Dated at King of Prussia, Pennsylvania this 23rd day of March, 2006.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region 1.

[FR Doc. E6–5261 Filed 4–10–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–28]

PPL Susquehanna, LLC; Independent Spent Fuel Storage Installation; Environmental Assessment and Finding of No Significant Impact

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of an environmental assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sebrosky, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–1132; Fax number: (301) 415–8555; e-mail: *jms3@nrc.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption to PPL Susquehanna, LLC (PPL) pursuant to 10 CFR 72.7, from specific provisions of 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), 72.212(b)(7), and 72.214. The licensee wants to use the Transnuclear, Inc. (TN) NUHOMS® Storage System, Certificate of Compliance No. 1004 (CoC or Certificate) Amendment No. 8 (61BT dry shielded canister), to store spent nuclear fuel under a general license in an Independent Spent Fuel Storage Installation (ISFSI) associated with the operation of the Susquehanna Steam Electric Station (SSES), Units 1 and 2, located in Luzerne County, Pennsylvania. PPL is requesting an exemption from CoC No. 1004 to allow loading of Framatome ANP 9x9–2 fuel assemblies in the NUHOMS®–61BT dry shielded canister (DSC).

Environmental Assessment (EA)

Identification of Proposed Action: The proposed action would exempt PPL from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), 72.212(b)(7), and 72.214 and enable PPL to use the TN NUHOMS®–61BT DSC with modifications at SSES. These regulations specifically require storage in casks approved under the provisions of 10 CFR part 72 and compliance with the conditions set forth in the CoC for each dry spent fuel storage cask used by an ISFSI general licensee. The TN NUHOMS® CoC provides requirements, conditions, and operating limits in Attachment A, Technical Specifications. The proposed action would exempt PPL from the requirements of 10 CFR 72.212(a)(2), 10 CFR 72.212(b)(7) and 10 CFR 72.214 from a condition in Amendment 8 to CoC No. 1004 so that Framatome ANP 9x9–2 fuel assemblies can be loaded in a NUHOMS®–61BT DSC. Specifically, the exemption would be from CoC No. 1004 Attachment A, Technical Specification, Table 1–1d, "BWR Fuel Assembly Design Characteristics for the NUHOMS®–61BT DSC," which allows for the storage of General Electric (or equivalent) 9x9–2 fuel assemblies that contain 66 full and 8 partial fuel rods. The exemption would allow PPL to store Framatome ANP 9x9—2 fuel assemblies that contain 79 full fuel rods and no partial fuel rods in the NUHOMS®–61BT DSC.

PPL committed in its January 31, 2006, submittal to a maximum decay heat load per fuel assembly of 210 watts. This is less than the CoC No. 1004 Attachment A, Technical Specification, Table 1–1c maximum decay heat limit of 300 watts per assembly. In addition, in its March 6, 2006, supplement PPL provided the parameters found in Table 1 below associated with the Framatome ANP 9x9–2 fuel assembly.

TABLE 1.—PARAMETERS FOR FRAMATOME ANP 9X9–2 FUEL ASSEMBLY

Manufacturer	Framatome ANP.
Version	FANP9.
Number of Fuel Rods per Assembly.	79 full.
Fuel Pellet Outside Diameter (inches).	0.3565.
Clad Outside Diameter (inches).	0.424.
Water Rod Inside Diameter (inches).	0.364.
Array	9x9.
Active Fuel Length (inches).	150.
Pitch (inches)	0.572.
Clad Thickness (inches).	0.030.
Water Rod Outside Diameter (inches).	0.425.

The NRC has determined that the exemption, if granted, will contain the following 3 conditions:

(1) PPL will be limited to loading a total of five 61BT DSCs under this exemption if granted,

(2) PPL shall limit the decay heat level per fuel assembly to 210 watts to ensure cask loadings are bounded by the analyses supporting TN CoC No. 1004, Amendment No. 8., and (3) the exemption will pertain only to Framatome ANP 9x9 –2 fuel assemblies that meet the nominal un-irradiated design parameters contained in Table 1 above.

The proposed action is in accordance with the licensee's request for exemption dated January 31, 2006, as supplemented March 6, 2006.

Need for the Proposed Action: The proposed action is needed because SSES will lose full core offload capability in December 2006 following the receipt and staging of new fuel for the scheduled 2007 Unit 2 refueling outage. PPL has determined that it is necessary to start the dry fuel storage (DFS) campaign in May 2006 to ensure full core offload capability. PPL had originally scheduled a DFS campaign to begin in October of 2006. However, because of recent SSES Unit 1 fuel channel performance problems, 54 fuel channels were replaced and stored in

the spent fuel pool. As a result of this fuel channel problem, a possible Unit 2 mid-cycle maintenance outage may be necessary to inspect and replace, if necessary, any affected fuel channels. This mid-cycle outage is tentatively scheduled for the Fall of 2006 and access to the spent fuel pool is needed to store fuel channels that are replaced. This activity would conflict with loading dry fuel storage casks. There is also a conflict with performing the DFS campaign in the Summer of 2006. Specifically, PPL has contracted to perform a spent fuel pool cleanout beginning in June 2006 so adequate pool space is restored to support the Unit 2 2007 refueling outage. The DFS campaign and the spent fuel pool cleanout campaign cannot occur simultaneously. Rescheduling the spent fuel cleanout campaign for later in the year is difficult. In summary, space available in the spent fuel pool has become limited much sooner than anticipated, and PPL is requesting the exemption to support a DFS campaign in May 2006. A DFS campaign in May 2006 will also allow PPL flexibility for fuel storage options related to managing decay heat loads within the spent fuel pool.

The proposed action is necessary because the NRC has not yet received an amendment to CoC No. 1004 to allow loading of a Framatome ANP 9x9–2 in a NUHOMS® 61BT DSC. The staff would have to review such an amendment request and only after making the appropriate findings would the staff initiate 10 CFR 72.214 rulemaking to implement the change. This process typically takes at least 10 months from the receipt of the amendment request for simple license amendments. Complex license amendments can take over 30 months. Therefore, an amendment to allow loading of Framatome ANP 9x9–2 fuel assemblies in the NUHOMS® -61BT DSC can not be completed in time to support PPL's stated needs.

Environmental Impacts of the Proposed Action: The NRC has completed its evaluation of the proposed action and concludes that there will be no significant environmental impact if the exemption is granted. The staff has determined that the proposed action would not endanger life or property. The potential environmental impact of using the NUHOMS® system was initially presented in the Environmental Assessment (EA) for the Final Rule to add the TN Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel to the list of approved spent fuel storage casks in 10 CFR 72.214 (59 FR 65898, dated December 22, 1994). The potential environmental impact of using the NUHOMS® -61BT DSC was initially presented in the Environmental Assessment (EA) for the Final Rule to add the 61BT DSC to the Standardized NUHOMS® system, Amendment No. 3 (66 FR 34523, dated June 29, 2001).

The staff performed a safety evaluation of the proposed exemption. The staff has determined that the Framatome ANP 9x9–2 assemblies, which PPL plans to load into the 61BT DSC are bounded by the design basis fuel assemblies for the 61BT DSC previously evaluated by the staff. The staff's thermal safety evaluation review notes that PPL committed to only loading Framatome ANP 9x9–2 fuel assemblies with a maximum decay heat load per assembly of 210 watts. This is less than the CoC No. 1004 Attachment A, Technical Specification, Table 1–1c maximum decay heat limit of 300 watts per assembly and is therefore bounding. In the criticality area, the staff evaluated the criticality code and the selected cross sectional data that were used by PPL and determined that they were sufficiently documented and validated, and that they are appropriate for the Framatome 9x9–2 fuel assembly. The staff also performed independent confirmatory criticality calculations for normal conditions of storage and transfer based on the parameters for the Framatome ANP 9x9–2 fuel assembly identified in Table 1 above. Based on its review of the representations and information supplied by the applicant, and the confirmatory analyses performed by staff, the staff concludes that the nuclear criticality safety design has been adequately described and evaluated by the applicant, and finds reasonable assurance that the Framatome ANP 9x9–2 fuel meets the criticality safety requirements of 10 CFR part 72.

The loading of Framatome ANP 9x9–2 fuel assemblies in the NUHOMS® 61BT DSC does not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

The exemption only affects the requirements associated with the fuel assemblies that can be loaded in the casks and does not affect non-radiological plant effluents or any other aspects of the environment. Therefore, there are no significant non-radiological impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternative to the Proposed Action: Because there is no significant environmental impact associated with the proposed action, alternatives with equal or greater environmental impact were not evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the exemption would result in no change in the current environmental impact.

Agencies and Persons Consulted: This exemption request was discussed with Mr. Brad Fuller of the Pennsylvania Department of Environmental Protection Bureau of Radiation Protection on March 6, 2006. He stated that the State had no comments on the technical aspects of the exemption. The NRC staff has determined that a consultation under Section 7 of the Endangered Species Act is not required because the proposed action will not affect listed species or critical habitat. The NRC staff has also determined that the proposed action is not a type of activity having the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

Conclusion: The staff has reviewed the exemption request submitted by PPL. Allowing loading of Framatome 9x9–2 fuel assemblies in the NUHOMS® 61BT DSC would have no significant impact on the environment.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing Environmental Assessment, the Commission finds that the proposed action of granting the exemption from specific provisions of 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), 72.212(b)(7), and 10 CFR 72.214, to allow PPL to load of Framatome ANP 9x9–2 fuel assemblies in the NUHOMS® 61BT DSC, subject to conditions, will not significantly impact the quality of the human environment. Accordingly, the Commission has determined that an environmental impact statement for the proposed exemption is not warranted.

In accordance with 10 CFR 2.390 of NRC's "Rules of Practice," final NRC records and documents regarding this proposed action are publically available in the records component of NRC's Agencywide Documents Access and

Management System (ADAMS). The request for exemption dated January 31, 2006, and March 6, 2006, was docketed under 10 CFR part 72, Docket No. 72–28. These documents may be inspected at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. 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 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 31st day of March, 2006.

For the Nuclear Regulatory Commission.

Joseph M. Sebrosky,

Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 06–3416 Filed 4–10–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–009]

System Energy Resources, Inc. Notice of Availability of the Final Environmental Impact Statement for an Early Site Permit (ESP) at the Grand Gulf ESP Site

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC or the Commission) has published NUREG–1817, "Environmental Impact Statement for an Early Site Permit (ESP) at the Grand Gulf ESP Site—Final Report." The site is located near the Town of Port Gibson in Claiborne County, Mississippi. The application for the ESP was submitted by letter dated October 16, 2003, pursuant to Title 10 of the *Code of Federal Regulations* Part 52 (10 CFR Part 52). A notice of receipt and availability of the application, which included the environmental report (ER), was published in the **Federal Register** on November 14, 2003 (68 FR 64665). A notice of acceptance for docketing of the application for the ESP was published in the **Federal Register** on December 1, 2003 (68 FR 67219). A notice of intent to prepare an environmental impact statement (EIS) and to conduct the scoping process was published in the **Federal Register** on December 31, 2003 (68 FR 75656). A notice of availability of the draft EIS was published in the **Federal Register** on April 28, 2005 (70 FR 22155).

The purpose of this notice is to inform the public that NUREG–1817, "Environmental Impact Statement for an Early Site Permit (ESP) at the Grand Gulf ESP Site—Final Report," is available for public inspection in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20852, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS), and will also be placed directly on the NRC Web site at *http://www.nrc.gov*. ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. In addition, the Harriette Person Memorial Library, located at 606 Main Street, Port Gibson, Mississippi, has agreed to make the final EIS available for public inspection.

FOR FURTHER INFORMATION CONTACT: James H. Wilson, Environmental Branch A, Division of License Renewal, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001. Mr. Wilson may be contacted by telephone at 301–415–1108 or by e-mail at *jhw1@nrc.gov*.

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

For the Nuclear Regulatory Commission

Frank P. Gillespie,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E6–5256 Filed 4–10–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: Updated notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on April 25 and 26, 2006. A sample of agenda items to be discussed during the public sessions includes: (1) Updates on Proposed Regulations to Include Discrete Radium Sources and Accelerator-Produced Radioactive Materials in 10 CFR Part 35; (2) RIS on Visitor Dose Limits; (3) Part 35, Training and Experience; (4) Supply of High Enriched Uranium for Molybdenum-99 Generation; (5) Training and Experience for Use of Microspheres for Therapy; (6) ACMUI Review of Medical Events Involving I–131. To review the agenda see: *http://www.nrc.gov/reading-rm/doc-collections/acmui/agenda/* or contact, via e-mail: *mss@nrc.gov*.

Purpose: Discuss issues related to 10 CFR 35, Medical Use of Byproduct Material.

Date and Time for Closed Session Meeting: April 25, 2006, from 8 a.m. to 10:15 a.m. This session will be closed so that NRC staff can brief the ACMUI on information relating solely to internal personnel rules and can discuss protected information of an investigatory nature. Time may be added to the closed session or an additional closed session may be added as needed.

Dates and Times for Public Meetings: April 25, 2006, from 10:30 a.m. to 5 p.m.; and April 26, 2006, from 8 a.m. to 11:30 a.m.

ADDRESSES: *Address for Public Meetings:* The meeting will be held at National Institute of Health (NIH). The address and room number is below: National Institute of Health, Natcher Conference Center, 45 Center Drive, Bethesda, MD 20892.

April 25—Balcony B.
April 26—Room E1/E2.

Security on the NIH Campus

All non-NIH employees are required to provide picture IDs upon entering the campus whether walking on to campus or driving on to campus, and all belongings are subject to searches. Increased security procedures are in place at all entrances to the NIH campus, including drive-in and walk-in access gates. Please allow adequate time when making your plans to attend the conference functions at the Natcher Conference Center. Preregistration will expedite the security process. Visitor parking is extremely limited and driving to the NIH campus for this event is not recommended.

Metrorail Service and Map

The NIH Campus is very accessible by the Washington D.C. area Metrorail (Metro) system. The Natcher Conference Center (Building 45) is located a short walk from the Medical Center Metro stop located on the Red Line. Note the signs and directions to the gated campus security entrance located behind the metro stop. For more details about the Washington DC area Metrorail services

and stops, please visit *http://www.wmata.com/* or go directly to *http://www.wmata.com/metrorail/systemmap.cfm* for an overview map of the metro stops. For more information on shuttle bus services to the NIH campus, please visit *http://dtts.ors.od.nih.gov/NIHShuttle/scripts/shuttle_map_live.asp.*

Driving to the NIH Campus

If you will be driving to the NIH campus, please note that all non-NIH registered vehicles must enter at the Rockville Pike-South Drive or Georgetown Road-Center Drive entrance for inspection. Follow the direction signs to Building 45. Please allow extra time for compliance with these security measures. Visitors must park in designated visitor parking lots. Visitor Parking is extremely difficult to find at NIH. Visitor parking at the Natcher Conference Center is available at $12 per day; however, parking is limited and visitors to the NIH campus are encouraged to take public transportation. For a detailed map of the NIH campus please visit *http://dtts.ors.od.nih.gov/visitor_access_map.htm.*

FOR FURTHER INFORMATION CONTACT: Mohammad S. Saba, telephone (301) 415–7608; e-mail *mss@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Conduct of the Meeting

Leon S. Malmud, M.D., will chair the meeting. Dr. Malmud will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Mohammad S. Saba, U.S. Nuclear Regulatory Commission, Mail Stop T8F03, Washington DC 20555. Alternatively, an e-mail can be submitted to *mss@nrc.gov.* Submittals must be postmarked or e-mailed by April 23, 2006, and must pertain to the topics on the agenda for the meeting.

2. Questions from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection on NRC's Web site (*http://www.nrc.gov*) and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738, telephone (800) 397–4209, on or about July 20, 2006.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, U.S. Code of Federal Regulations, Part 7.

Dated at Rockville, Maryland, this 4th day of April, 2006.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E6–5254 Filed 4–10–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of 10, 17, 24, May 1, 8, 15, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of April 10, 2006—Tentative

There are no meetings scheduled for the Week of April 10, 2006.

Week of April 17, 2006—Tentative

There are no meetings scheduled for the Week of April 17, 2006.

Week of April 24, 2006—Tentative

Monday, April 24, 2006

2 p.m. Meeting with Federal Energy Regulatory Commission (FERC) FERC Headquarters, 888 First St., NE., Washington, DC 20426 Room 2C (Public Meeting). (Contact: Mike Mayfield, (301) 415–3298.)

This meeting will be webcast live at the Web address, *http://www.ferc.gov.*

Wednesday, April 26, 2006

1 p.m. Discussion of Management Issues (Closed—ex. 2).

Thursday, April 27, 2006

1:30 p.m. Meeting with Department of Energy (DOE) on New Reactor Issues (Public Meeting).

This meeting will be webcast live at the Web address, *http://www.nrc.gov.*

Week of May 1, 2006—Tentative

Tuesday, May 2, 2006

9:30 a.m. Briefing on Status of Emergency Planning Activities—Morning Session (Public Meeting) (Contact: Eric Leeds, (301) 415–2334.)

1 p.m. Briefing on Status of Emergency Planning Activities—Afternoon Session (Public Meeting).

These meetings will be webcast live at the Web address, *http://www.nrc.gov.*

Wednesday, May 3, 2006

9 a.m. Briefing on Status of Risk-Informed, Performance-Based Regulation (Public Meeting). (Contact: Eileen McKenna, (301) 415–2189.)

This meeting will be webcast live at the Web address, *http://www.nrc.gov.*

Week of May 8, 2006—Tentative

There are no meetings scheduled for the Week of May 8, 2006.

Week of May 15, 2006—Tentative

Monday, May 15, 2006

1 p.m. Briefing on Status of Implementation of Energy Policy Act of 2005 (Public Meeting).

This meeting will be webcast live at the Web address, *http://www.nrc.gov.*

Tuesday, May 16, 2006

9:30 a.m. Briefing on Results of the Agency Action Review Meeting—Reactors/Materials (Public Meeting).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, TDD: (301) 415, or by e-mail at *DLC@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: April 6, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06–3486 Filed 4–7–06; 12:12 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 17, 2006 to March 30, 2006. The last biweekly notice was published on March 28, 2006 (71 FR 15479).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: 1) The name, address, and telephone number of the requestor or petitioner; 2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; 3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and 4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall

provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to pdr@nrc.gov.

Dominion Nuclear Connecticut, Inc., Docket Nos. 50–336 and 50–423, Millstone Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of amendment request: February 7, 2006.

Description of amendment request: The proposed amendments would increase the allowed outage time from 72 hours to 7 days for the inoperability of the steam supply to the turbine-driven auxiliary feedwater (AFW) pump or the inoperability of the turbine-driven AFW pump under certain operating mode restrictions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1: Does the Proposed Amendment Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

Response: No.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment to MPS 2 and 3 [Millstone Power Station, Unit Nos. 2 and 3] TS [Technical Specification] 3.7.1.2 permits a 7 day allowed outage time for the inoperability of the necessary steam supply to the turbine-driven AFW pump in Modes 1, 2, and 3, or for the inoperability of the turbine-driven AFW pump if the inoperability occurs in Mode 3 following a refueling outage, if Mode 2 had not been entered. Extending the allowed outage time does not involve a significant increase in the probability or consequences of an accident previously evaluated because: 1) The proposed amendment does not represent a change to the system design, 2) the proposed amendment does not prevent the safety function of the AFW [system] from being performed since the redundant trains are required to be operable, 3) the proposed amendment does not alter, degrade, or prevent action described or assumed in any accident described in the MPS 2 and 3 FSARs [final safety analysis reports] from being performed since the other trains of AFW are required to be operable, 4) the proposed amendment does not alter any assumptions previously made in evaluating radiological consequences, and 5) the proposed amendment does not affect the integrity of any fission product barrier. No other safety related equipment is affected by the proposed change. Therefore, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: Does the Proposed Amendment Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated?

Response: No.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment to MPS 2 and 3 TS 3.7.1.2 would allow a 7 day allowed outage time for the inoperability of the necessary steam supply to the turbine-driven AFW pump in Modes 1, 2, and 3, or for the inoperability of the turbine-driven AFW pump if the inoperability occurs in Mode 3 following a refueling outage, if Mode 2 had not been entered. Extending the allowed action time does not create the possibility of a new or different kind of accident from any accident previously evaluated because: 1) the proposed amendment does not represent a change to the system design, 2) the proposed amendment does not alter how equipment is operated or the ability of the system to deliver the required AFW flow, and 3) the

proposed amendment does not affect any other safety related equipment. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3: Does the Proposed Amendment Involve a Significant Reduction in a Margin of Safety?

Response: No.

The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed amendment to MPS 2 and 3 TS 3.7.1.2 would allow a 7 day allowed action time for the inoperability of the necessary steam supply to the turbine-driven AFW pump in Modes 1, 2, and 3. Extending the allowed action time does not involve a significant reduction in a margin of safety because: 1) There is a redundant steam supply to the turbine driven AFW pump, 2) the motor-driven AFW pumps are required to be operable when Mode 3 is entered, 3) the motor-driven AFW pumps can provide sufficient flow to remove decay heat and cool the unit to shutdown cooling system entry conditions from power operations, 4) the motor-driven AFW pumps are designed to supply sufficient water to remove decay heat with steam generator pressure at no load conditions to cool the unit to shutdown cooling entry conditions, 5) the proposed change does not change or introduce any new setpoints at which mitigating functions are initiated, 6) no changes to the design parameters of the AFW [system] are being proposed, and 7) no changes in system operation that would impact an established safety margin are being proposed by this change.

The proposed amendment to MPS 2 and 3 TS 3.7.1.2 would also allow a 7 day allowed action time for the inoperability of the turbine-driven AFW pump if the inoperability occurs in Mode 3 following a refueling outage, if Mode 2 had not been entered. Extending the allowed action time does not involve a significant reduction in a margin of safety because: (1) During a return to power operations following a refueling outage, decay heat is at its lowest levels, (2) the motor-driven AFW pumps are required to be operable when Mode 3 is entered, (3) the motor-driven AFW pumps can provide sufficient flow to remove decay heat and cool the unit to shutdown cooling system entry conditions from power operations, (4) the motor-driven AFW pumps are designed to supply sufficient water to remove decay heat with steam generator pressure at no load conditions to cool the unit to shutdown cooling entry conditions, (5) the proposed change does not change or introduce any new setpoints at which mitigating functions are initiated, (6) no changes to the design parameters of the AFW are being proposed, and (7) no changes in system operation that would impact an established safety margin are being proposed by this change

Therefore, based on the above, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Branch Chief: Darrell J. Roberts.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: March 1, 2006.

Description of amendment request: The proposed amendments would revise the Technical Specifications to reconcile the 10 CFR Part 50 and 10 CFR Part 72 criticality requirements for the loading and unloading of dry spent fuel storage canisters in the spent fuel pool (SFP).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The applicable accidents are the dropped fuel assembly and drop of the 100 ton spent fuel cask into the SFP. This amendment request does not change the fuel assemblies or any of the Part 50 structures, systems, or components involved in fuel assembly or cask handling or any of the operations involved. Therefore, this amendment request does not affect the probability of an accident previously evaluated.

The proposed change does not increase the consequences of an accident previously evaluated for the following reasons: there is no increase in radiological source terms for the fuel; there is no change to the SFP water level; subcriticality is maintained for normal and accident conditions for the spent fuel storage racks and for cask loading and unloading; and the same boron concentrations that were previously credited for the spent fuel storage racks are assumed in the criticality analysis for cask loading and unloading.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

Handling of fuel assemblies and the NUHOMS® spent fuel cask have been previously evaluated for Oconee. These activities lead to evaluation of the fuel handling accident (dropped fuel assembly) and drop of the 100 ton spent fuel cask onto spent fuel stored in the Oconee SFP. These elements of the license amendment request (LAR) are not new, and thus do not create the potential for new or different kinds of accidents.

The new element of this LAR is the application of additional criticality controls (*i.e.*, minimum burnup requirements for the fuel assemblies) beyond the 10 CFR 72 controls already in place for the NUHOMS® spent fuel cask. However, application of such criticality controls is not a new activity for Oconee, since similar criticality controls are currently applied to the spent fuel storage racks. Fuel assembly misloading is not a new accident; as discussed in Enclosure 3, Section 6.5, fuel assembly misloading has been considered previously for the NUHOMS® spent fuel cask and for the Oconee spent fuel pool racks. Furthermore, the criticality analysis for cask loading and unloading evaluates the same boron concentrations, moderator temperatures, and misloading scenario as previously evaluated for the spent fuel storage racks. The analysis demonstrates that a criticality accident does not occur under these conditions. It is concluded that the possibility of a criticality accident is not created since application of criticality controls is not new and the analysis demonstrates that criticality does not occur. More generally, this supports the conclusion that the potential for new or different kinds of accidents is not created.

(3) Involve a significant reduction in a margin of safety.

This LAR involves the application of additional criticality controls (minimum burnup requirements) to the 10 CFR 72 controls already in place for the NUHOMS® spent fuel cask. The criticality analysis demonstrates subcriticality margins are maintained for normal and accident conditions consistent with 10 CFR 50.68(b) and other NRC guidance. Margins previously established for Oconee's spent fuel storage racks are not altered. Therefore, this LAR does not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Branch Chief: Evangelos C. Marinos.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of amendment request: February 14, 2006.

Description of amendment request: The proposed change will modify the Arkansas Nuclear One, Unit 2 (ANO–2) Technical Specification (TS) Surveillance Requirement 4.6.1.1.a. Specifically, the proposed change will eliminate the requirement to verify containment isolation valves that are maintained locked, sealed, or otherwise secured closed from the monthly

position verification. The proposed change will result in reducing radiological exposure to Operations, Health Physics, and Security personnel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The accident mitigation features of the plant for previously evaluated accidents are not affected by the proposed change. No changes are proposed to the physical components or to the containment isolation function.

Repositioning of manual containment isolation valves is procedurally controlled and governed by the note that is contained in TS 3.6.3.1, Containment Isolation Valves, which allows opening locked or sealed closed valves on an intermittent basis. The valve position is tracked until it is restored to its original position (locked or deactivated position, as appropriate). While the valve remains open, an individual, in constant communication with the control room staff, is stationed at the valve. If an accident were to occur, the control room staff would direct the individual stationed at the valve to close the valve thereby precluding the release of radioactivity outside containment.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not change the design, method of operation, or configuration of the plant. The procedural controls that establish the ANO–2 containment valve program controls and include the administrative controls that are associated with the note in TS 3.6.3.1, ensure containment integrity is appropriately established such that no new or different types of accidents are created.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not change the design basis for any equipment in the plant. The proposed change will exclude verification of the normally locked, sealed, or otherwise secured closed valves, blind flanges, and the deactivated automatic valves; however, the administrative controls applied to these components ensure that containment integrity is maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: March 7, 2006.

Description of amendment requests: The proposed amendments would modify the Technical Specifications (TS) of the units by expanding Section 5.5.2, Leakage Monitoring Program, to include the Liquid Waste Disposal System, the Waste Gas System, and the Post-Accident Containment Hydrogen Monitoring System. These systems are currently in the licensee's own leakage monitoring program but are not listed in TS Section 5.5.2. The licensee also proposed to make an editorial change to the section.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff reviewed the licensee's analysis, and performed its own as follows:

(1) Does the proposed change involve a significant increase in the probability of occurrence or consequences of any accident previously evaluated?

No. The proposed change would only add the three subject systems to the listing in Section 5.5.2. The licensee is currently performing leakage monitoring of these systems under its own program. Leakage monitoring of these three systems, whether listed in the TS or not, does not have any impact on the initiation of any accident previously analyzed, or on the scenarios and radiological consequences of these accidents. Consequently, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change is purely administrative, and does not involve any change to the design or operation of a system, structure, or component. Consequently, the proposed change leads to no possibility to create a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed change would not change any assumption, analysis method, calculation model, or acceptance criterion. Accordingly, the proposed change does not involve a significant reduction in a margin of safety.

Based on the NRC staff's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: James M. Petro, Jr., Esquire, One Cook Place, Bridgman, MI 49106.

NRC Branch Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: February 16, 2006.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) requirements related to steam generator (SG) tube integrity. The change is consistent with NRC-approved Revision 4 to Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–449, "Steam Generator Tube Integrity." The availability of this TS improvement was announced in the **Federal Register** on May 6, 2005 (70 FR 24126) as part of the consolidated line item improvement process (CLIIP).

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on March 2, 2005 (70 FR 10298) as part of the CLIIP. The licensee affirmed the applicability of the model NSHC determination in its application dated February 16, 2006.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change requires a SG Program that includes performance criteria that will provide reasonable assurance that the SG tubing will retain integrity over the full range of operating conditions (including startup, operation in the power range, hot

standby, cooldown and all anticipated transients included in the design specification). The SG performance criteria are based on tube structural integrity, accident induced leakage, and operational leakage.

A SGTR [steam generator tube rupture] event is one of the design basis accidents that are analyzed as part of a plant's licensing basis. In the analysis of a SGTR event, a bounding primary to secondary leakage rate equal to the operational LEAKAGE rate limits in the licensing basis plus the leakage rate associated with a double-ended rupture of a single tube is assumed.

For other design basis accidents such as MSLB [main steam line break], rod ejection, and reactor coolant pump locked rotor the tubes are assumed to retain their structural integrity (*i.e.*, they are assumed not to rupture). These analyses typically assume that primary to secondary leakage for all SGs is 1 gallon per minute or increases to 1 gallon per minute as a result of accident induced stresses. The accident induced leakage criterion introduced by the proposed changes accounts for tubes that may leak during design basis accidents. The accident induced leakage criterion limits this leakage to no more than the value assumed in the accident analysis.

The SG performance criteria proposed change to the TS identify the standards against which tube integrity is to be measured. Meeting the performance criteria provides reasonable assurance that the SG tubing will remain capable of fulfilling its specific safety function of maintaining reactor coolant pressure boundary integrity throughout each operating cycle and in the unlikely event of a design basis accident. The performance criteria are only a part of the SG Program required by the proposed change to the TS. The program, defined by NEI [Nuclear Energy Institute] 97–06, Steam Generator Program Guidelines, includes a framework that incorporates a balance of prevention, inspection, evaluation, repair, and leakage monitoring. The proposed changes do not, therefore, significantly increase the probability of an accident previously evaluated.

The consequences of design basis accidents are, in part, functions of the dose equivalent I–131 in the primary coolant and the primary to secondary leakage rates resulting from an accident. Therefore, limits are included in the plant technical specifications for operational leakage and for dose equivalent I–131 in primary coolant to ensure the plant is operated within its analyzed condition. The typical analysis of the limiting design basis accident assumes that primary to secondary leak rate after the accident is 1 gallon per minute with no more than [500 gallons per day or 720 gallons per day] in any one SG, and that the reactor coolant activity levels of dose equivalent I–131 are at the TS values before the accident.

The proposed change does not affect the design of the SGs, their method of operation, or primary coolant chemistry controls. The proposed approach updates the current TSs and enhances the requirements for SG inspections. The proposed change does not adversely impact any other previously evaluated design basis accident and is an improvement over the current TSs.

Therefore, the proposed change does not affect the consequences of a SGTR accident and the probability of such an accident is reduced. In addition, the proposed changes do not affect the consequences of an MSLB, rod ejection, or a reactor coolant pump locked rotor event, or other previously evaluated accident.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed performance based requirements are an improvement over the requirements imposed by the current technical specifications. Implementation of the proposed SG Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The result of the implementation of the SG Program will be an enhancement of SG tube performance. Primary to secondary leakage that may be experienced during all plant conditions will be monitored to ensure it remains within current accident analysis assumptions.

The proposed change does not affect the design of the SGs, their method of operation, or primary or secondary coolant chemistry controls. In addition, the proposed change does not impact any other plant system or component. The change enhances SG inspection requirements.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The SG tubes in pressurized water reactors are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes isolate the radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of an SG is maintained by ensuring the integrity of its tubes.

Steam generator tube integrity is a function of the design, environment, and the physical condition of the tube. The proposed change does not affect tube design or operating environment. The proposed change is expected to result in an improvement in the tube integrity by implementing the SG Program to manage SG tube inspection, assessment, repair, and plugging. The requirements established by the SG Program are consistent with those in the applicable design codes and standards and are an improvement over the requirements in the current TSs.

For the above reasons, the margin of safety is not changed and overall plant safety will be enhanced by the proposed change to the TS.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Branch Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: February 13, 2006.

Description of amendment request: The proposed amendments would make miscellaneous administrative changes by revising Technical Specifications (TS) 3.0 "Surveillance Requirement (SR) Applicability"; and TS Chapter 5.0, "Administrative Controls". The proposed changes will improve TS usability, conformance with the industry standard, NUREG–1431, "Standard Technical Specifications, Westinghouse Plants", Revision 3.0 (NUREG–1431) and accuracy.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This license amendment request proposes administrative changes to the Prairie Island Nuclear Generating Plant Technical Specifications as follows: Technical Specification 3.0, "Surveillance Requirement (SR) Applicability", revise page headers and correct capitalization; and Technical Specification Chapter 5.0, "Administrative Controls", correct Topical Report numbers and make format corrections.

The proposed changes are administrative and do not affect plant operation maintenance or testing. These changes do not affect any plant systems which are accident initiators and thus these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This license amendment request proposes administrative changes to the Prairie Island Nuclear Generating Plant Technical Specifications as follows: Technical Specification 3.0, "Surveillance Requirement (SR) Applicability", revise page headers and

correct capitalization; and Technical Specification Chapter 5.0, "Administrative Controls", correct Topical Report numbers and make format corrections.

The proposed changes are administrative and thus do not create new failure modes or mechanisms and do not generate new accident precursors. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

This license amendment request proposes administrative changes to the Prairie Island Nuclear Generating Plant Technical Specifications as follows: Technical Specification 3.0, "Surveillance Requirement (SR) Applicability", revise page headers and correct capitalization; and Technical Specification Chapter 5.0, "Administrative Controls", correct Topical Report numbers and make format corrections.

The proposed Technical Specification changes are administrative and do not affect plant operation, maintenance or testing. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Branch Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: February 16, 2006.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) requirements related to steam generator tube integrity. The change is consistent with NRC-approved Revision 4 to Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–449, "Steam Generator Tube Integrity." The availability of this TS improvement was announced in the **Federal Register** on May 6, 2005 (70 FR 24126) as part of the consolidated line item improvement process (CLIIP).

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on March 2, 2005 (70 FR 10298) as part of the CLIIP. The licensee affirmed the applicability of the model NSHC determination in its application dated February 16, 2006.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change requires a SG Program that includes performance criteria that will provide reasonable assurance that the SG tubing will retain integrity over the full range of operating conditions (including startup, operation in the power range, hot standby, cooldown and all anticipated transients included in the design specification). The SG performance criteria are based on tube structural integrity, accident induced leakage, and operational leakage.

A SGTR event is one of the design basis accidents that are analyzed as part of a plant's licensing basis. In the analysis of a SGTR event, a bounding primary to secondary leakage rate equal to the operational leakage rate limits in the licensing basis plus the leakage rate associated with a double-ended rupture of a single tube is assumed.

For other design basis accidents such as MSLB, rod ejection, and reactor coolant pump locked rotor the tubes are assumed to retain their structural integrity (*i.e.*, they are assumed not to rupture). These analyses typically assume that primary to secondary leakage for all SGs is 1 gallon per minute or increases to 1 gallon per minute as a result of accident induced stresses. The accident induced leakage criterion introduced by the proposed changes accounts for tubes that may leak during design basis accidents. The accident induced leakage criterion limits this leakage to no more than the value assumed in the accident analysis.

The SG performance criteria proposed change to the TS identify the standards against which tube integrity is to be measured. Meeting the performance criteria provides reasonable assurance that the SG tubing will remain capable of fulfilling its specific safety function of maintaining reactor coolant pressure boundary integrity throughout each operating cycle and in the unlikely event of a design basis accident. The performance criteria are only a part of the SG Program required by the proposed change to the TS. The program, defined by NEI 97–06, Steam Generator Program Guidelines, includes a framework that incorporates a balance of prevention, inspection, evaluation, repair, and leakage monitoring. The proposed changes do not, therefore, significantly increase the probability of an accident previously evaluated.

The consequences of design basis accidents are, in part, functions of the dose equivalent 1–131 in the primary coolant and the primary to secondary leakage rates resulting from an accident. Therefore, limits are included in the plant technical specifications for operational leakage and for dose equivalent 1–131 in primary coolant to ensure the plant is operated within its analyzed condition. The typical analysis of the limiting design basis accident assumes that primary to secondary leak rate after the accident is 1 gallon per minute with no more than [500 gallons per day or 720 gallons per day] in any one SG, and that the reactor coolant activity levels of dose equivalent 1–131 are at the TS values before the accident.

The proposed change does not affect the design of the SGs, their method of operation, or primary coolant chemistry controls. The proposed approach updates the current TSs and enhances the requirements for SG inspections. The proposed change does not adversely impact any other previously evaluated design basis accident and is an improvement over the current TSs.

Therefore, the proposed change does not affect the consequences of a SGTR accident and the probability of such an accident is reduced. In addition, the proposed changes do not affect the consequences of an MSLB, rod ejection, or a reactor coolant pump locked rotor event, or other previously evaluated accident.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed performance based requirements are an improvement over the requirements imposed by the current technical specifications. Implementation of the proposed SG Program will not introduce any adverse changes to the plant design basis or postulated accidents resulting from potential tube degradation. The result of the implementation of the SG Program will be an enhancement of SG tube performance. Primary to secondary leakage that may be experienced during all plant conditions will be monitored to ensure it remains within current accident analysis assumptions.

The proposed change does not affect the design of the SGs, their method of operation, or primary or secondary coolant chemistry controls. In addition, the proposed change does not impact any other plant system or component. The change enhances SG inspection requirements.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The SG tubes in pressurized water reactors are an integral part of the reactor coolant pressure boundary and, as such, are relied upon to maintain the primary system's pressure and inventory. As part of the reactor coolant pressure boundary, the SG tubes are unique in that they are also relied upon as a heat transfer surface between the primary and secondary systems such that residual heat can be removed from the primary system. In addition, the SG tubes isolate the

radioactive fission products in the primary coolant from the secondary system. In summary, the safety function of an SG is maintained by ensuring the integrity of its tubes.

Steam generator tube integrity is a function of the design, environment, and the physical condition of the tube. The proposed change does not affect tube design or operating environment. The proposed change is expected to result in an improvement in the tube integrity by implementing the SG Program to manage SG tube inspection, assessment, repair, and plugging. The requirements established by the SG Program are consistent with those in the applicable design codes and standards and are an improvement over the requirements in the current TSs.

For the above reasons, the margin of safety is not changed and overall plant safety will be enhanced by the proposed change to the TS. Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Branch Chief: L. Raghavan.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: February 21, 2006.

Description of amendment request: The amendment would revise Technical Specification 5.5.9, "Steam Generator (SG) Tube Surveillance Program," to exclude portions of the SG tube below the top of the tubesheet in the SGs from periodic tube inspections based on the application of structural analysis and leak rate evaluation results to re-define the primary-to-secondary pressure boundary.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed change that alters the steam generator inspection criteria does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident.

Of the applicable accidents previously evaluated, the limiting transients[,] with respect to the proposed [change] to the steam generator tube inspection criteria, are the steam generator tube rupture (SGTR) event and the steam line break (SLB) accident.

During the SGTR event, the required structural integrity margins of the steam generator tubes will be maintained by the presence of the steam generator tubesheet. Steam generator tubes are hydraulically expanded in the tubesheet area. Tube rupture in tubes with cracks in the tubesheet is precluded by the constraint provided by the tubesheet. This constraint results from the hydraulic expansion process, thermal expansion mismatch between the tube and the tubesheet[,] and from the differential pressure between the primary and secondary side [of the steam generator]. Based on this design, the structural margins against burst, discussed in Regulatory Guide (RG) 1.121, "Bases for Plugging Degraded PWR [Pressurized-Water Reactor] Steam Generator Tubes," are maintained for both normal and postulated accident conditions.

The proposed change does not affect other systems, structures, components or operational features. Therefore, the proposed [change results] in no significant increase in the probability [or] the occurrence of a[n] SGTR accident.

At normal operating pressures, leakage from primary water stress corrosion cracking (PWSCC) [of a tube] below the proposed inspection depth is limited by both the tube-to-tubesheet crevice and the limited crack opening permitted by the tubesheet constraint. Consequently, negligible normal operating leakage is expected from cracks within the tubesheet region. The consequences of an SGTR event are affected by the primary-to-secondary leakage flow during the event. Primary-to-secondary leakage flow through a postulated ruptured tube is not affected by the proposed change since the tubesheet enhances the tube integrity in the region of the hydraulic expansion by precluding tube deformation beyond its initial hydraulically expanded outside diameter.

The probability of an SLB is unaffected by the potential failure of a steam generator tube as this failure is not an initiator for an SLB.

The consequences of an SLB are also not significantly affected by the proposed change. During an SLB accident, the reduction in pressure above the tubesheet on the secondary side of the steam generator creates a uniformly distributed axial (out of plane) load on the tubesheet due to the reactor coolant system pressure on the primary [side] of the tubesheet. The resulting bending action causes contraction of the tube holes below the tubesheet neutral axis, adding to the constraint of the tubes in the tubesheet, thereby further restricting primary-to-secondary leakage.

Primary-to-secondary leakage from tube degradation in the tubesheet area during the limiting accident (*i.e.*, an SLB) is limited by flow restrictions resulting from the crack and tube-to-tubesheet contact pressures that provide a restricted leakage path above the indications and also limit the degree of potential crack face opening as compared to free span indications. The primary-to-secondary leak rate from tube degradation in the tubesheet region during postulated SLB accident conditions will be no more than twice that allowed during normal operating conditions when the pressure boundary is relocated [by the amendment] to the lesser of the H* or B* [tubesheet inspection] depths. Since normal operating leakage would be limited to 300 gpd [gallons per day] (0.2 gpm [gallons per minute]) through any one steam generator per TS 3.4.13, "RCS [Reactor Coolant System] Operational leakage," the associated accident condition leak rate, assuming all leakage to be from lower tubesheet indications, would be limited to 150 gpd per steam generator. This value is well within the assumed accident leakage rate of 1.0 gpm discussed in WCGS [(Wolf Creek Generating Station)] Updated Safety Analysis Report, Table 15.1–3, "Parameters Used in Evaluating the Radiological Consequences of a Main Steam Line Break." Therefore, the consequences of an SLB accident remain unaffected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different accident from any accident previously evaluated?

Response: No.

The proposed change does not introduce any new equipment, create new failure modes for existing equipment, or create any new limiting single failures. Plant operation will not be altered, and all safety functions will continue to perform as previously assumed in accident analyses. [Excluding portions of the tube below the proposed tubesheet inspection depths does not introduce a new or different kind of accident to the steam generator tube because the required structural margins of the tubes for both normal and accident conditions are maintained.] Therefore, the proposed [change does] not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed [change maintains] the required structural margins of the steam generator tubes for both normal and accident conditions. Nuclear Energy Institute (NEI) 97–06, "Steam Generator Program Guidelines," and RG 1.121, "Bases for Plugging Degraded PWR Steam Generator Tubes," are used as the bases in the development of the tubesheet inspection depth methodology for determining that steam generator tube integrity considerations

are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC for meeting General Design Criteria (GDC) 14, "Reactor coolant pressure boundary," GDC 15, "Reactor coolant system design," GDC 31, "Fracture prevention of reactor coolant pressure boundary," and GDC 32, "Inspection of reactor coolant pressure boundary," by reducing the probability and consequences of a[n] SGTR. RG 1.121 concludes that by determining the limiting safe conditions for tube wall degradation[,] the probability and consequence of a[n] SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers (ASME) Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking, Westinghouse letter LTR-CDME–05–209-P, "Steam Generator Tube Alternate Repair Criteria for the Portion of the Tube Within the Tubesheet at the Wolf Creek Generating Station," [provided in the application,] defines a length of degradation-free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces, with applicable safety factors applied. Application of the limited tubesheet inspection depth criteria will preclude unacceptable primary-to-secondary leakage during all plant conditions. The methodology for determining leakage provides for large margins between calculated and actual leakage values in the proposed limited tubesheet inspection depth criteria.

Therefore, the proposed [change does not] involve a significant reduction in any margin [of] safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Branch Chief: David Terao.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: February 25, 2005.

Brief description of amendment: The amendment deleted the reporting requirement in the Facility Operating License (FOL) related to reporting violations of other requirements in the operating license.

Date of issuance: February 24, 2006.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 172.

Facility Operating License No. NPF–62: The amendment revised the FOL.

Date of initial notice in ***Federal Register***: April 26, 2005 (70 FR 21450).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 2006.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: March 25, 2005.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) to exclude the containment purge valve leakage rates from the summation of secondary containment bypass leakage rates.

Date of issuance: March 21, 2006.

Effective date: As of the date of issuance and shall be implemented within 60 days of the date of issuance.

Amendment No.: 173.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: April 26, 2005 (70 FR 21451).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 21, 2006.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: July 13, 2005, as supplemented on November 29, 2005, and January 20 and February 13, 2006.

Brief description of amendments: The amendments revised Technical Specification (TS) 1.1, "Definitions," TS 3.4.13, "RCS [reactor coolant system] Operational Leakage," TS 5.5.9, "Steam Generator Tube Surveillance Program," and TS 5.6.9, "Steam Generator [SG] Tube Inspection Report," and add a new specification (TS 3.4.18) for SG Tube Integrity. The changes are consistent with TS Task Force (TSTF) Change TSTF–449, Revision 4, "Steam Generator Tube Integrity."

Date of issuance: March 9, 2006.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment Nos.: 278 and 255.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: December 6, 2005 (70 FR 72669).

The November 29, 2005, and January 20 and February 13, 2006, supplements provided additional information that clarified the application, did not expand the scope of the application as originally

noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated March 9, 2006.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket Nos. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: May 25, 2005, as supplemented by letter dated January 23, 2006.

Brief description of amendment: The amendment revises the Technical Specification limit on pressurizer water level in Mode 3 (hot standby).

Date of issuance: March 22, 2006.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 246.

Facility Operating License Nos. DPR–26 and DPR–64: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: June 21, 2005 (70 FR 35736).

The January 23, 2006, supplement provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 22, 2006.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: October 3, 2005.

Brief description of amendment: The amendment revises Technical Specification Surveillance Requirements to reflect changes to the Emergency Core Cooling System throttle valves. The amendment adds the modified throttle valves to the surveillance, removes existing throttle valves that are now locked closed from the surveillance, and adds existing valves to the surveillance that are used in a throttle position when open.

Date of issuance: March 23, 2006.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 230.

Facility Operating License No. DPR–64: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 6, 2005 (70 FR 72670).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 23, 2006.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendment: February 25, 2005.

Brief description of amendment: The amendments delete the sections of the Facility Operating Licenses that require reporting of violations of the requirements in Section 2.C of the Facility Operating Licenses.

Date of issuance: March 13, 2006.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 146, 146, 139 and 139.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Facility Operating License.

Date of initial notice in ***Federal Register:*** April 26, 2005 (70 FR 21456).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 13, 2006.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station (DNPS), Units 2 and 3, Grundy County, Illinois

Date of application for amendment: April 4, 2005, as supplemented by letter dated January 13, 2006.

Brief description of amendment: The amendments revised Technical Specification 3.3.8.1, "Loss of Power (LOP) Instrumentation," and also revised the Updated Final Safety Analysis Report to implement use of automatic load tap changers on transformers that provide offsite power to DNPS, Units 2 and 3.

Date of issuance: March 17, 2006.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 219/210.

Facility Operating License Nos. DPR–19 and DPR–25: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 8, 2005 (70 FR 67747).

The January 13, 2006 supplement, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 17, 2006.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: January 10, 2005.

Brief description of amendment: The amendment removed the license conditions concerning the emergency core cooling system pump suction strainers from Appendix C of Facility Operating License No. NPF–39.

Date of issuance: March 6, 2006.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 184.

Facility Operating License No. NPF–39.

This amendment revised the License.

Date of initial notice in ***Federal Register:*** January 3, 2006 (71 FR 149).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 5, 2006.

No significant hazards consideration comments received: No.

FPL Energy Seabrook, LLC, Docket No. 50–443; Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: September 29, 2005.

Description of amendment request: The proposed amendment would revise the Seabrook Station, Unit No. 1 Technical Specifications (TSs) to permit a one-time, 6-month addition to the currently approved 5-year extension to the 10-year test interval for the containment integrated leak rate test.

Date of issuance: March 24, 2006.

Effective date: As of its date of issuance, and shall be implemented within 90 days.

Amendment No.: 108.

Facility Operating License No. NPF–86: The amendment revised the TSs.

Date of initial notice in **Federal Register**: November 8, 2005 (70 FR 67748).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 24, 2006.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: April 26, 2005.

Brief description of amendment: The amendment revises Technical Specification 5.6.5.b, "Core Operating Limits Report," to use a revised fuel assembly growth model for Palisades as described in Topical Report BAW–2489P, "Revised Fuel Assembly Growth Correlation for Palisades," Revision 0.

Date of issuance: March 27, 2006.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 222.

Facility Operating License No. DPR–20. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: (70 FR 29797).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 27, 2006.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket No. 50–387, Susquehanna Steam Electric Station, Unit 1 (SSES 1), Luzerne County, Pennsylvania

Date of application for amendment: December 1, 2005, as supplemented on February 17, 2006.

Brief description of amendment: The amendment changes the SSES 1 Technical Specifications (TSs) by revising the Unit 1 Cycle 15 Minimum Critical Power Ratio Safety Limit for single-loop operation in TS 2.1.1.2 and the references listed in TS 5.6.5.b.

Date of issuance: March 20, 2006.

Effective date: As of the date of issuance and to be implemented within 30 days.

Amendment No.: 231.

Facility Operating License No. NPF–14: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 17, 2006 (71 FR 2595).

The supplement dated February 17, 2006, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 20, 2006.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: October 6, 2004, as supplemented by letters dated September 16 and November 22, 2005.

Brief description of amendments: The amendments revised the Technical Specification 3.8.1, "AC Sources—Operating," to remove mode restrictions on surveillance requirements.

Date of issuance: March 15, 2006.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: 124 and 124.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 15, 2005 (70 FR 12751).

The supplements dated September 16 and November 22, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 15, 2006.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: October 26, 2005.

Brief description of amendment: The amendment revised Required Action D.1, in Technical Specification (TS) 3.6.6, "Containment Spray and Cooling Systems," to require plant shutdown if both containment cooling trains are out of service, which is more conservative than the previous requirement that allowed 72 hours to restore one of the inoperable trains. There are also changes to other required actions in TS 3.6.6 to reflect the revision to Required Action D.1.

Date of issuance: March 28, 2006.

Effective date: As of its date of issuance, and shall be implemented within 90 days of the date of issuance.

Amendment No.: 171.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**:January 17, 2006 (71 FR 2597).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 28, 2006.

No significant hazards consideration comments received: No.

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

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–5086 Filed 4–10–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Opportunity To Comment on Model Safety Evaluation on Technical Specification Improvement Regarding Revision to the Completion Time in STS 3.6.6A, "Containment Spray and Cooling Systems" for Combustion Engineering Pressurized Water Reactors Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: Notice is hereby given that the staff of the U.S. Nuclear Regulatory Commission (NRC) has prepared a model license amendment request (LAR), model safety evaluation (SE), and model proposed no significant hazards consideration (NSHC) determination related to changes to the completion times (CT) in Standard Technical Specification (STS) 3.6.6A, "Containment Spray and Cooling Systems." The proposed changes would revise STS 3.6.6A by extending the CT for one containment spray system (CSS) train inoperable from 72 hours to seven days, and add a Condition describing required Actions and CT when one CSS and one containment cooling system (CCS) are inoperable. These changes are based on analyses provided in a joint applications report submitted by the Combustion Engineering Owner's Group (CEOG). The CEOG participants in the Technical Specifications Task Force (TSTF) proposed this change to the STS in Change Traveler No. TSTF–409, Revision 2.

The purpose of these models is to permit the NRC to efficiently process amendments to incorporate these changes into plant-specific STS for Combustion Engineering pressurized water reactors (PWRs). Licensees of nuclear power reactors to which the models apply can request amendments conforming to the models. In such a

request, a licensee should confirm the applicability of the SE and NSHC determination to its plant, and provide the expected supplemental information requested in the model LAR. The NRC staff is requesting comments on the model LAR, model SE and NSHC determination before announcing their availability for referencing in license amendment applications.

DATES: The comment period expires 30 days from the date of this publication. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted either electronically or via U.S. mail.

Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Comments may be submitted by electronic mail to *CLIIP@nrc.gov*.

Copies of comments received may be examined at the NRC's Public Document Room, located at One White Flint North, Public File Area O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Eric Thomas, Mail Stop: O–12H2, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6772.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, "Consolidated Line Item Improvement Process [CLIIP] for Adopting Standard Technical Specifications Changes for Power Reactors," was issued on March 20, 2000. The CLIIP is intended to improve the efficiency and transparency of NRC licensing processes. This is accomplished by processing proposed changes to the STS in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. This notice is soliciting comment on a proposed change to the STS that changes the CSS CTs for the Combustion Engineering reactor STS, NUREG–1432, Revision 3. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to TSs are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Following the public comment period, the model SE will be finalized, and posted on the NRC webpage. The model SE is accompanied by a model LAR. The model LAR shows licensees the expected level of detail that needs to be included in order to adopt TSTF–409, Rev. 2, as well as guidelines for staff review. The NRC will establish an internal review plan that designates the appropriate staff and approximate timelines to review plant-specific LARs that reference TSTF–409. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable NRC rules and procedures.

This notice involves an increase in the allowed CTs to restore an inoperable CSS on Combustion Engineering PWRs. By letter dated November 10, 2003, the CEOG proposed this change for incorporation into the STS as TSTF–409, Revision 2. This change is based on the NRC staff-approved generic analyses contained in the CE NPSD–1045–A, "Joint Applications Report: Modification to the Containment Spray System, and Low Pressure Safety Injection System Technical Specifications," dated March 2000, as approved by NRC in a SE dated December 21, 1999, accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet (ADAMS Accession No. ML993620241) 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 Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Applicability

This proposed change to revise the Technical Specification (TS) CT for one inoperable CSS is applicable to Combustion Engineering PWRs.

To efficiently process the incoming license amendment applications, the NRC staff requests that each licensee applying for the changes addressed by TSTF–409, Revision 2, use the CLIIP to submit a LAR that adheres to the following model. Any deviations from the model LAR should be explained in the licensee's submittal. When applying, licensees should ensure they address the eight conditions and one regulatory commitment listed in the model LAR and model SE.

The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without providing the information described in the eight model LAR conditions, or making the requested commitment. Variations from the approach recommended in this notice may, however, require additional review by the NRC staff and may increase the time and resources needed for the review. Significant variations from the approach, or inclusion of additional changes to the license, will result in staff rejection of the submittal. Instead, licensees desiring significant variations and/or additional changes should submit a LAR that does not claim to adopt TSTF–409.

Public Notices

This notice requests comments from interested members of the public within 30 days of the date of this publication. Following the NRC staff's evaluation of comments received as a result of this notice, the NRC staff may reconsider the proposed change or may proceed with announcing the availability of the change in a subsequent notice (possibly with some changes to the model LAR, model SE or model NSHC determination as a result of public comments). If the NRC staff announces the availability of the change, licensees wishing to adopt the change will submit a LAR in accordance with applicable rules and other regulatory requirements. The NRC staff will, in turn, issue a notice of consideration of issuance of amendment to facility operating license(s) for each LAR, a proposed NSHC determination, and an opportunity for a hearing. A notice of issuance of an amendment to operating license(s) will also be issued to announce the revised requirements for each plant that applies for and receives the requested change.

Dated at Rockville, Maryland this 29th day of March 2006.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Branch Chief, Technical Specifications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

For inclusion on the technical specification Web page. The following example of a License Amendment Request (LAR) was prepared by the NRC staff to facilitate the adoption of Technical Specifications Task Force (TSTF) Traveler TSTF–409, Revision 2, "Containment Spray System Completion Time Extension (CE NPSD–1045–A)." The model provides the expected level of detail and content for a LAR to adopt TSTF–409, Revision 2. Licensees remain responsible for ensuring that their plant-specific LAR fulfills their administrative requirements as well as NRC regulations.

U.S. Nuclear Regulatory Commission,
Document Control Desk,
Washington, DC 20555.

SUBJECT: Plant Name Application for Technical Specification Improvement to Extend the Completion Time for Containment Spray System Inoperability in Accordance With TSTF–409, Revision 2.

Dear Sir or Madam:

In accordance with the provisions of Section 50.90 of Title 10 of the Code of Federal Regulations (10 CFR), [LICENSEE] is submitting a request for an amendment to the technical specifications (TS) for [PLANT NAME, UNIT NOS.].

The proposed changes would revise TS 3.6.6A, "Containment Spray and Cooling Systems," by extending from 72 hours to seven days the completion time (CT) to restore an inoperable containment spray system (CSS). In addition, a Condition would be added to the TS to allow one CSS and one containment cooling system (CCS) to be inoperable for a period of 72 hours.

The changes are consistent with NRC-approved Industry Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–409, Revision 2, "Containment Spray System Completion Time Extension (CE NPSD–1045–A)."

Enclosure 1 provides a description and assessment of the proposed changes and confirmation of applicability. Enclosure 2 provides the existing TS pages marked-up to show the proposed changes. Enclosure 3 provides the existing TS Bases pages marked-up to reflect the proposed changes (for information only). Final TS Bases will be provided in a future update to the Updated Final Safety Analysis Report (UFSAR) in accordance with the Bases Control Program. Attachments 1 through 8 provide the discussions of [LICENSEE'S] evaluations and supporting information with regard to the conditions stipulated in Section 4.2.1 of Enclosure 1.

[LICENSEE] requests approval of the proposed license amendment by [DATE], with the amendment being implemented [BY DATE OR WITHIN X DAYS]. In accordance with 10 CFR 50.91, a copy of this application, with enclosures, is being provided to the designated [STATE] Official.

I declare under penalty of perjury under the laws of the United States of America that I am authorized by [LICENSEE] to make this request and that the foregoing is true and correct. [Note that request may be notarized in lieu of using this oath or affirmation statement]. If you should have any questions regarding this submittal, please contact [ ].

Sincerely,

Name, Title

Enclosures:

1. Description and Assessment of Proposed Changes
2. Proposed Technical Specification Changes
3. Proposed Technical Specification Bases Changes (if applicable)

Attachments:

1. Licensee's supporting information for condition 1
2. Licensee's supporting information for condition 2
3. Licensee's supporting information for condition 3
4. Licensee's supporting information for condition 4
5. Licensee's supporting information for condition 5
6. Licensee's supporting information for condition 6
7. Licensee's supporting information for condition 7
8. Licensee's supporting information for condition 8

cc: NRR Project Manager
Regional Office
Resident Inspector
State Contact
ITSB Branch Chief

1.0 Description

This letter is a request to amend Operating License(s) [LICENSE NUMBER(S)] for [PLANT/UNIT NAME(S)].

The proposed changes would revise Technical Specification (TS) 3.6.6A, "Containment Spray and Cooling Systems," by extending from 72 hours to seven days the completion time (CT) to restore an inoperable containment spray system (CSS) train to operable status, and would add a Condition describing the required action and CT when one CSS and one containment cooling system (CCS) are inoperable.

The changes are consistent with NRC approved Industry Owner's Group Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler TSTF–409, Revision 2 (Rev. 2), "Containment Spray System Completion Time Extension (CE NPSD–1045–A)." TSTF–409, Rev. 2 was approved by the NRC on [DATE].

2.0 Proposed Change

Specifically, the proposed revision extends the CT (or allowed outage time) that one CSS train is permitted to remain inoperable from 72 hours to seven days based on Reference 1, as accepted by, and subject to the limitations specified in, Reference 2. TSTF–409, Rev. 2 states that the longer CT will enhance overall plant safety by avoiding potential unscheduled plant shutdowns and allowing greater availability of safety significant components during shutdown. In addition, the TSTF–409, Rev. 2 states that this extension provides for increased flexibility in scheduling and performing maintenance and surveillance activities in order to enhance plant safety and operational flexibility during lower modes of operation.

The revision also adds a condition statement to allow one CSS train and one CCS train to be inoperable for up to 72 hours. Since the Combustion Engineering Owners Group (CEOG) joint applications report did not evaluate the concurrent inoperabilities of one CSS train and one CCS train, the CT for this condition was limited to 72 hours.

[LICENSEE] also proposes to make changes to the supporting TS Bases. Changes to the Bases include supporting information justifying the addition of the Condition statement for one CSS train and one CCS train inoperable. The Bases changes also include a reviewer's note that requires [LICENSEE] to adopt Reference 1 and meet the requirements of References 1 and 2 prior to utilizing the 7-day CT for one inoperable CSS. Finally, a reference to Reference 1 is added to the Bases.

In summary, [LICENSEE] proposes to extend the CT for one inoperable CSS from 72 hours to 7 days based on Reference 1, and add a Condition statement to allow one CSS train and one CCS to be inoperable for up to 72 hours.

3.0 Background

The function of the containment heat removal systems under accident conditions is to remove heat from the containment atmosphere, thus maintaining the containment pressure and temperature at acceptably low levels. The systems also serve to limit offsite radiation levels by reducing the pressure differential between the containment atmosphere and the external environment, thereby decreasing the driving force for fission product leakage across the containment. The two containment heat removal systems are the CCS and the CSS. The CCS fan coolers are designed to operate during both normal plant operations and under loss-of-coolant accident (LOCA) or main steam line break (MSLB) conditions. The CSS is designed to operate during accident conditions only.

The heat removal capacity of the CCS and CSS is sufficient to keep the containment temperature and pressure below design conditions for any size break, up to and including a double-ended break of the largest reactor coolant pipe. The systems are also designed to mitigate the consequences of any size break, up to and including a double-ended break of a main steam line. The CCS and CSS continue to reduce containment pressure and temperature and maintain them at acceptable levels post-accident.

The CCS and CSS at [PLANT NAME] each consist of [Substitute plant-specific configuration if it differs from the following description] two redundant loops and are designed such that a single failure does not degrade their ability to provide the required heat removal capability. Two of four containment fan coolers and one CSS loop are powered from one safety-related bus. The other two containment fan coolers and CSS loop are powered from another independent safety-related bus. The loss of one bus does not affect the ability of the containment heat removal systems to maintain containment temperature and pressure below the design values in a post-accident mode.

The [PLANT NAME] CSS consists of [Substitute plant-specific configuration if it differs from the following description] two independent and redundant loops each containing a spray pump, shutdown heat exchanger, piping, valves, spray headers, and spray nozzles. It has two modes of operation, which are:

1. The injection mode, during which the system sprays borated water from the refueling water tank (RWT) into the containment, and

2. The recirculation mode, which is automatically initiated by the recirculation actuation signal (RAS) after low level is reached in the RWT. During this mode of operation, the safety injection system (SIS) sump provides suction for the spray pumps.

Containment spray is automatically initiated by the containment spray actuation signal coincident with the safety injection actuation signal and high containment pressure signal. If required, the operator can manually activate the system from the main control room.

Each CSS pump, together with a CCS loop, provides the flow necessary to remove the heat generated inside the containment following a LOCA or MSLB. Upon system activation, the pumps are started and the borated water flows into the containment spray headers. When low level is reached in the RWT, sufficient water has been transferred to the containment to allow for the recirculation mode of operation. Spray pump suction is automatically realigned to the SIS sump upon a RAS.

During the recirculation mode, the spray water is cooled by the shutdown heat exchangers prior to discharge into the containment. The shutdown heat exchangers are cooled by the component cooling water system. Post-LOCA pH control is provided by [Substitute plant-specific configuration if it differs from the following description] trisodium phosphate dodecahydrate, which is stored in stainless steel baskets located in the containment near the SIS sump intake.

The longer CT for an inoperable CSS train will enhance overall plant safety by avoiding potential unscheduled plant shutdowns and allowing greater availability of safety significant components during shutdown. In addition, this extension provides for increased flexibility in scheduling and performing maintenance and surveillance activities in order to enhance plant safety and operational flexibility during lower modes of operation.

4.0 Technical Analysis

[LICENSEE] has reviewed References 1 and 2, as well as TSTF–409, Rev. 2, and the model SE published on [DATE] ([ ] FR [ ]) as part of the CLIIP Notice for Comment. [LICENSEE] has applied the methodology in Reference 1 to develop the proposed TS changes. [LICENSEE] has also concluded that the justifications presented in TSTF–409, Rev. 2 and the model SE prepared by the NRC staff are applicable to [PLANT NAME], and justify this amendment for the incorporation of changes to the [PLANT NAME] TS.

In determining the suitability and safety impact of its adoption of TSTF–409, Rev. 2, [LICENSEE] analyzed the effect of increasing the CT for one CSS train to remain out of service using both traditional engineering considerations and probabilistic risk assessment (PRA) methods.

4.1 Traditional (Deterministic) Engineering Analysis

The functions and operation of the CSS and CCS were described in Section 3.0 of this application. Based on a review of the design-basis requirements for the CSS, [LICENSEE] concluded that the loss of one CSS train is well within the design-basis analyses. This conclusion is based on the fact that each CSS pump, together with a CCS loop, provides the flow necessary to remove the heat generated inside the containment following a LOCA or MSLB. Therefore, the combination of one CSS pump and one CCS loop can carry out the design functions of maintaining the containment pressure and temperature at acceptably low levels following a design-basis accident (DBA), and limiting offsite radiation levels by reducing the pressure differential between the containment atmosphere and the external environment, thereby decreasing the driving force for fission product leakage across the containment.

The plant status with both CSS trains inoperable is covered by TS 3.6.6A, ACTION G., which states:

> [With] two containment spray trains inoperable or any combination of three or more [CSS/CCS] trains inoperable, LCO [Limiting Condition for Operation] 3.0.3 shall be entered immediately.

ACTION G addresses the condition in which two CSS trains are inoperable and requires restoration of at least one CSS train to OPERABLE status within 1 hour or the plant be placed in HOT SHUTDOWN in 6 hours and COLD SHUTDOWN within the following 30 hours, with COLD SHUTDOWN being the acceptable end state. These requirements are consistent with similar requirements elsewhere in the TS and therefore are acceptable.

The plant status with one CSS train and one CCS train inoperable is covered by TS 3.6.6A, ACTION D, which states:

> [With] one containment spray and one containment cooling train inoperable, restore containment spray train to OPERABLE status within 72 hours, or restore containment cooling train to OPERABLE status within 72 hours.

ACTION D ensures that the iodine removal capabilities of the CSS are available, along with 100 percent of the heat removal needs after an accident. The supporting analyses performed in CE NPSD–1045–A did not evaluate the concurrent inoperabilities of one CSS train and one CCS train, therefore, the current CT of 72 hours is retained in Condition D. The 72 hour Completion Time was developed taking into account the redundant heat removal capabilities afforded by combinations of the CSS and CCS, the iodine removal function of the CSS, and the low probability of a DBA occurring during this period.

4.2 Probabilistic Risk Assessment Evaluation

[LICENSEE] evaluated the proposed CT extension for the CSS using Reference 4. This is the same methodology that the NRC staff used in Reference 2. The Principles of Risk-Informed Integrated Decisionmaking listed in Reference 4 are as follows:

Principle I: The proposed CT change meets the current regulation

Principle II: The proposed CT change is consistent with the defense-in-depth philosophy

Principle III: The proposed CT change maintains sufficient safety margin

Principle IV: The CT risk (Incremental Conditional Core Damage Probability [ICCDP], and Incremental Conditional Large Early Release Probability [ICLERP]) is small

Principle V: Commitment to monitor the impact of the proposed CT change

In Reference 2, the NRC staff found, and [LICENSEE] agrees, that in risk-informed TS CT applications, Principle I is met, since regulations do not require specific CTs, but, rather, require "remedial actions" when an LCO cannot be met. Additionally, in its analysis of Principle III, the NRC staff found, and [LICENSEE] agrees, that the proposed CT extension maintains sufficient safety margins. For [PLANT NAME], the loss of one CSS train is well within the plant's design basis.

In Reference 2, the NRC staff determined that the intent of Principles II, IV, and V would be met by a three-tiered approach to evaluate the plant-specific risk impact associated with the proposed TS changes, consistent with the requirements of Reference 4. The first tier evaluates the plant-specific PRA model and the impact of the proposed CT extension on plant operational risk. The second tier addresses the need to preclude potentially high risk configurations by identifying the need for any additional constraints or compensatory actions that, if implemented, would avoid or reduce the probability of a risk-significant configuration during the time when one CSS train is out of service. The third tier evaluates [LICENSEE'S] proposed Configuration Risk Management Program (CRMP) to ensure that the applicable plant configuration will be appropriately assessed from a risk perspective before entering into or during the proposed CT.

In addition, the NRC staff determined in Reference 2 that the risk analysis methodology and approach used by the CEOG to estimate the risk impact of increasing the CT were reasonable. For most plants that participated in the joint application report, the NRC staff found that the risk impact was shown to be consistent with the acceptance guidelines for change in core damage frequency (ΔCDF), change in large early release frequency (ΔLERF), incremental conditional core damage probability (ICCDP), and incremental conditional large early release probability (ICLERP) specified in References 3 and 4 and Chapters 19.0 and 16.1 of Reference 5. However, not all Combustion Engineering (CE) plants participated in the joint application report, and the estimated risk impacts for some plants exceeded the Reference 3 and/or Reference 4 acceptance guidelines, which would require additional justifications and/or compensatory measures to be provided for these plants to be determined to have acceptable risk impacts.

In addition, the NRC staff found that the Tier 2 and Tier 3 evaluations, as described in Reference 4, could not be approved generically since they were not complete, which would require that each individual plant-specific license amendment seeking adoption of TSTF–409, Rev. 2 would need to include an assessment with respect to the Tier 2 and Tier 3 principles of Reference 4.

4.2.1 Conditions and Supporting Information

The following conditions are provided to support adoption of TSTF–409, Rev. 2 by [PLANT NAME]. Responses to the conditions are contained in Attachments 1 through 8 to this application: [NOTE: Licensees who cannot meet the Expectations and Acceptance Criteria listed in these conditions should not submit an application to adopt TSTF–409, Rev. 2 under the CLIIP.]

1. As shown in Attachment 1, the plant-specific Tier 1 information associated with extending the CSS CT meets the acceptance guidelines of References 3 and 4 associated with ΔCDF, ΔLERF, ICCDP, and ICLERP.

[EXPECTATIONS/ACCEPTANCE CRITERIA: The licensee's submittal must provide the ΔCDF, ΔLERF, ICCDP, and ICLERP values related to the CSS extended CT and confirm that they meet the associated acceptance guidelines of References 3 and 4 as no more than a small risk increase (*i.e.*, are in Region II or III of the acceptance guidelines figures). If a zero maintenance PRA model is used (as opposed to an average/nominal maintenance PRA model) in performing these calculations, then the licensee must make a commitment that no other maintenance will be performed during the extended CSS CT and describe how this commitment will be implemented.]

2. As shown in Attachment 2, the technical adequacy (quality) of [PLANT NAME'S] plant-specific PRA is acceptable for this application in accordance with the guidance provided in Reference 3. Specifically, the supporting information addresses the following areas:

a. Justification that the plant-specific PRA reflects the as-built, as-operated plant.

b. Discussion of plant-specific PRA updates and upgrades since the individual plant examination (IPE) and individual plant examination of external events (IPEEE).

c. Discussion of plant-specific PRA peer reviews and/or self-assessments performed, their overall conclusions, any facts and observations (F&Os) applicable to this application, and the licensee evaluation and resolution (*e.g.*, by implementing model changes and/or sensitivity studies) of these F&Os to demonstrate the conclusions of the plant-specific analyses for this application are not adversely impacted (*i.e.*, continued acceptability of the proposed extension of the CSS CT).

d. Description of the licensee's plant-specific PRA configuration control (quality assurance) program and associated procedures.

e. Overall determination of the adequacy of the plant-specific PRA with respect to this application.

[EXPECTATION: The licensee's submittal must describe the scope of the plant-specific PRA and must justify its technical adequacy (quality) for this application in accordance with the guidance provided in Reference 3. Specifically, the supporting information must address each area in sufficient detail as shown in the following ACCEPTANCE CRITERIA:

a. The licensee must provide a justification that confirms that the plant-specific PRA reflects the as-built, as-operated plant. This should include a description of the licensee's data and

model update process, and the frequency of these activities. The licensee should also describe how the plant/corporate PRA staff are involved in (and/or made aware of) plant and operational/procedural modifications.

b. The licensee must provide a summary description of the plant-specific PRA updates and upgrades since the IPE and IPEEE.

c. The licensee must discuss their plant-specific PRA peer reviews and/or any self-assessments performed (especially noting those conducted per the Nuclear Energy Institute (NEI) industry peer review guidelines, American Society of Mechanical Engineers (ASME) (PRA Standard, and Regulatory Guide (RG) 1.201), their overall conclusions, any F&Os applicable to this application, and the licensee's evaluation and resolution (*e.g.*, by implementing model changes and/or sensitivity studies) of these F&Os to demonstrate the conclusions of the plant-specific analyses for this application are not adversely impacted (*i.e.*, continued acceptability of the proposed extension of the CSS CT).

d. The licensee must describe their plant-specific PRA configuration control (quality assurance) program and associated procedures.

e. The licensee must make an overall determination of the adequacy of their plant-specific PRA, confirming it is adequate with respect to this application.]

3. Attachment 3 provides supporting information verifying that the plant risk impact associated with external events (*e.g.*, fires, seismic, tornados, high winds, etc.) does not adversely impact the conclusions of the plant-specific analyses for this application.

[EXPECTATIONS: The licensee's submittal must discuss the plant risks associated with external events and specifically identify (quantitatively and qualitatively, as appropriate) the impact of CSS CT extension on the risks associated with external events.

If the licensee has performed updated analyses of an external event since the staff review and acceptance of their IPEEE, the licensee must describe the significant changes involved in their updated analyses and the impact of these changes on plant risk associated with this external event.

For external events in which the licensee used a screening approach in their IPEEE to screen the external event from further consideration, the licensee must specifically identify these external events and provide confirmation that the screening took no credit for CSS availability/reliability (*e.g.*, fire conditional core damage probability (CCDP) models/calculations did not include CSS failure rates or unavailabilities) and confirm that the screening is still appropriate, especially considering plant/procedural modifications since the screening analyses were performed.

If, however, an external event was screened from consideration and part of the screening took credit for the availability/reliability of the CSS, or if plant/procedural modifications have occurred such that the external event would no longer be screened out, then the licensee must provide an analysis of the existing condition which also considers the change in impact due to the requested CT extension.

ACCEPTANCE CRITERIA: For external events for which the licensee has a PRA, the licensee must provide the risk values (*i.e.*, CDF and LERF) associated with the specifically analyzed external events and the change in risk (*i.e.*, ΔCDF, ΔLERF, ICCDP, and ICLERP) associated with the CSS CT extension. The licensee must also provide the total risk and total change in risk due to all PRA-analyzed contributors (combining internal events, internal flooding, external events, and shutdown PRA results) and this total contribution must meet References 3 and 4 acceptance guidelines for the NRC staff to conclude the quantified risk associated with the extension request is acceptable.

For external events for which the licensee does not have a PRA (and it is not screened out as above), but rather relies on a non-PRA method (*e.g.*, seismic margins analysis (SMA) or fire-induced vulnerability evaluation (FIVE)), to determine if the plant risk is acceptable, the licensee must confirm that there were and still are no vulnerabilities or outliers associated with these external events, or identify any vulnerabilities or outliers that were identified in their documented analyses (most likely in their IPEEE) and confirm that all of these vulnerabilities or outliers have been resolved and, as needed, the appropriate plant/procedural modifications have been implemented as described in their documented analyses.]

4. Supporting information is provided in Attachment 4, consistent with the evaluation summary and conclusions (Sections 7 and 8) provided in Reference 2, that discusses implementation of procedures that prohibit entry into an extended CSS CT for scheduled maintenance purposes if external event conditions or warnings (*e.g.*, severe weather warnings for ice, tornados, high winds, etc.) are in effect. [LICENSEE'S] discussion confirms that [PLANT NAME'S] procedures include compensatory measures and normal plant practices that help avoid potentially high risk configurations during the proposed extension of the CSS CT. This supporting information must also address the Tier 2 aspects of Reference 4.

[EXPECTATIONS: The licensee's submittal must discuss (including licensee commitments related to) implementation of procedures that prohibit entry into an extended CSS CT for scheduled maintenance purposes if external event conditions or warnings are in effect. If the licensee does not want to implement this prohibition for specific severe weather conditions or warnings, the licensee must explicitly identify these event conditions/warnings and provide a justification for not including them.

The licensee must also confirm that their procedures include compensatory measures and normal plant practices that help avoid potentially high risk configurations during the proposed extension of the CSS CT. This supporting information must also address the Tier 2 aspects of Reference 4. The Tier 2 evaluation is meant to be an early evaluation (at the license submittal stage) to identify and preclude potentially high-risk plant configurations that could result if equipment, in addition to that associated with the proposed license amendment, is taken out of service simultaneously, or if other risk-significant operational factors, such as concurrent system or equipment testing, are also involved.

ACCEPTANCE CRITERIA: The Tier 2 evaluation needs to identify, as part of the licensee's submittal, potentially high-risk plant configurations that need to be precluded and identify how this is implemented (*i.e.*, typically these aspects result in licensees establishing compensatory measures/commitments to ensure these configurations are precluded). If, in conducting the evaluation, the licensee identifies no high-risk plant configurations, then the licensee needs to explicitly state this fact.]

5. Attachment 5 provides supporting information, consistent with the evaluation summary and conclusions (Sections 7 and 8) provided in Reference 2, that describes the plant-specific risk-informed CRMP to assess the risk associated with the removal of equipment from service during the extended CSS CT. In this description, [LICENSEE] confirms that the program provides the necessary assurances that appropriate assessments of plant risk configurations are sufficient to support

the proposed CSS CT extension request. This supporting information also addresses the Tier 3 aspects of Reference 4.

[EXPECTATIONS/ACCEPTANCE CRITERIA: The licensee's submittal must describe their CRMP, including how it reflects the current plant PRA model (specifically identifying any deviations and simplifications in the CRMP model from the plant-specific PRA model) and how the CRMP is updated to remain consistent with the plant-specific PRA.

The licensee's submittal must also describe how the CRMP provides the necessary assurances that appropriate assessments of plant risk configurations are sufficient to support the proposed CT extension request for the CSS.

Finally, the licensee's submittal must address the Tier 3 aspects of Reference 4, including the description of the CRMP, and must confirm that their CRMP meets all aspects of Section 2.3.7 of Reference 4, specifically describing how their CRMP meets each of the four Key Components identified in this Section. The Tier 3 evaluation ensures that the CRMP is adequate when maintenance is about to commence, as opposed to the early (submittal stage) evaluation performed for Tier 2.]

6. Attachment 6 provides supporting information, consistent with the evaluation summary (Section 7) provided in Reference 2, confirming that the licensee's CRMP will not allow "at power" maintenance of the CSS and shutdown cooling system (SDCS) at the same time since the SDCS may be credited as a backup to CSS in supporting the containment spray function. Similarly, supporting information is provided confirming that the licensee's CRMP will ensure there is at least one CSS pump operable when maintenance of the CSS is performed in the lower modes of operation since CSS pumps are a backup to the SDCS pumps.

[EXPECTATION: The licensee's submittal must describe the relationship/interfaces between the CSS and SDCS.

ACCEPTANCE CRITERIA: If the SDCS can be used as a backup to the CSS, then the licensee must confirm that "at power" maintenance of the CSS and SDCS will not be allowed at the same time and describe how this is controlled (*e.g.*, specifically identified in the CRMP as a configuration that is not allowed). If the SDCS cannot be used (and is not credited) as a backup to CSS, then the licensee needs to explicitly state this fact.

If CSS pumps can be used as a backup to the SDCS pumps, then the licensee must confirm that at least one CSS pump is required to be operable when maintenance of the CSS is performed in lower modes of operation and must describe how this is controlled. If CSS pumps cannot be used (and are not credited) as a backup to SDCS pumps in lower modes of operation, then the licensee needs to explicitly state this fact.]

7. Attachment 7 provides supporting information confirming that the licensee's CRMP assessing Reference 3 and 4 risk acceptance guideline metrics, including ΔCDF, ΔLERF, ICCDP, and ICLERP, continues to be met for the CSS extended CT.

[EXPECTATIONS/ACCEPTANCE CRITERIA: The licensee must confirm that their CRMP quantitative model calculates ΔCDF, ΔLERF, ICCDP, and ICLERP and that their CRMP quantitative model explicitly models the CSS or has been modified to include the CSS, which will be used whenever CSS components are made unavailable.

The licensee also must describe how their CRMP ensures Reference 3 and 4 acceptance guidelines continue to be met during implementation and must describe the actions that are taken if the above calculated metrics exceed the associated Reference 3 and 4 acceptance guidelines during CRMP implementation (*i.e.*, plant-specific Tier 3/Maintenance Rule results exceed acceptance guidelines).]

8. Attachment 8 provides information addressing how plant-specific systems, structures and components (SSC) reliability and availability are monitored and assessed at the plant under the Maintenance Rule (*i.e.* 10 CFR 50.65) to confirm that performance continues to be consistent with the analyses used to justify the extended CT and that the risk-informed decision remains valid through implementation.

[EXPECTATIONS/ACCEPTANCE CRITERIA: The licensee must describe how plant-specific SSC reliability and availability are monitored and assessed at the plant under the Maintenance Rule (*i.e.*, 10 CFR 50.65) to confirm that performance continues to be consistent with the analyses used to justify the extended CT. In providing this description, the licensee should also indicate how they periodically assess previous risk-informed licensing action decisions to ensure that these decisions remain valid (*i.e.*, continue to meet the Reference 3 and Reference 4 acceptance guidelines) for the current plant operations and plant-specific PRA and what actions they take if a previously-approved risk-informed licensing action decision is determined to no longer meet these acceptance guidelines.]

4.2.2 Regulatory Commitment

The Reference 4 Tier 3 program ensures that, while the plant is following the TS ACTIONS associated with an extended CT for restoring an inoperable CSS to operable status, additional activities will not be performed that could further degrade the capabilities of the plant to respond to a condition that the inoperable CSS is designed to mitigate and, as a result, increase plant risk beyond that determined by the Reference 1 analyses. [LICENSEE's] implementation of Reference 4 Tier 3 guidelines generally implies the assessment of risk with respect to CDF. However, the proposed CSS extended CT impacts accident sequences that can be mitigated following core damage and, consequently, impacts LERF as well as CDF. Therefore, [LICENSEE] has enhanced its CRMP, [OPTIONAL: as implemented under 10 CFR 50.65(a)(4), the Maintenance Rule,] to include a LERF methodology and assessment.

5.0 Regulatory Analysis

5.1 No Significant Hazards Consideration

[LICENSEE] has reviewed the proposed no significant hazards consideration determination published in the **Federal Register** on [DATE] ([ ] FR [ ]) as part of the CLIIP. [LICENSEE] has concluded that the proposed determination presented in the notice is applicable to [PLANT NAME] and the determination is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91(a).

5.2 Applicable Regulatory Requirements/Criteria

Based on its answers to the Section 4.2.1 questions provided in Attachments 1 through 8 to this application [LICENSEE] determines that the information provided in this application is consistent with Reference 2. This determination is based on the following:

1. The traditional engineering evaluation reveals that the loss of one CSS train is well within [PLANT NAME's] design basis analyses.

2. By meeting the conditions identified in Section 4.2.1, [LICENSEE] believes that its PRA model is acceptable for this application and also concludes that there is minimal impact of the CT extensions for the CSS system on plant operational risk (Tier 1 evaluation).

3. By meeting the conditions identified in Section 4.2.1, [LICENSEE] will ensure that its implementation will identify potentially high risk configurations and the need for any

additional constraints or compensatory actions that, if implemented, would avoid or reduce the probability of a risk-significant configuration (Tier 2 evaluation).

4. By meeting the conditions identified in Section 4.2.1, [PLANT NAME] will ensure that its risk-informed CRMP will satisfactorily assess the risk associated with the removal of equipment from service during the proposed CSS CT (Tier 3 evaluation) and the CRMP and plant risk will be managed by plant procedures.

In conclusion, based on the considerations discussed above, (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

6.0 Environmental Consideration

[LICENSEE] has reviewed the environmental evaluation included in the model safety evaluation as part of the CLIIP. [LICENSEE] concluded that the staff's findings presented in the evaluation are applicable to [PLANT NAME] and the evaluation is hereby incorporated by reference for this application.

7.0 References

[Licensee should include an applicable list of references, including but not limited to]

1. Joint Applications Report: Modification to the Containment Spray System, and Low Pressure Safety Injection System Technical, CE Owners Group, CE NPSD–1045, March 2000.

2. Safety Evaluation by the Office of Nuclear Reactor Regulation Related to CE Owners Group CE NPSD–1045, "Joint Application Report, Modification to the Containment Spray System, and the Low Pressure Safety Injection System Technical Specifications, December 21, 1999.

3. USNRC Regulatory Guide 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," Revision 1, November 2002.

4. USNRC Regulatory Guide 1.177, "An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications," August 1998.

5. NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," June 1996.

Proposed Technical Specification Changes (Mark-Up)—Enclosure 2
Changes To TS Bases—Enclosure 3
Condition (1) [Licensee's] Evaluation and Supporting Information—Attachment 1
Condition (2) [Licensee's] Evaluation and Supporting Information—Attachment 2
Condition (3) [Licensee's] Evaluation and Supporting Information—Attachment 3
Condition (4) [Licensee's] Evaluation and Supporting Information—Attachment 4
Condition (5) [Licensee's] Evaluation and Supporting Information—Attachment 5
Condition (6) [Licensee's] Evaluation and Supporting Information—Attachment 6
Condition (7) [Licensee's] Evaluation and Supporting Information—Attachment 7
Condition (8) [Licensee's] Evaluation and Supporting Information—Attachment 8

Model Safety Evaluation

U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation

Consolidated Line Item Improvement; Technical Specification Task Force TSTF–409, Revision 2; "Containment Spray System Completion Time Extension"

1.0 Introduction

By letter to the Nuclear Regulatory Commission (NRC, Commission) dated [DATE] (Agencywide Documents Access and Management System (ADAMS) Accession Number MLXXXXXXXXX), [LICENSEE] (the licensee) requested changes to the Technical Specifications (TSs) for [PLANT NAME]. The proposed changes would revise TS 3.6.6A, "Containment Spray and Cooling Systems," by extending from 72 hours to seven days the completion time (CT) to restore an inoperable containment spray system (CSS) train to operable status, and would add a Condition describing the required action and CT when one CSS and one containment cooling system (CCS) are inoperable.

The changes are based on Technical Specification Task Force (TSTF) Change Traveler, TSTF–409, Revision 2 (Rev. 2), "Containment Spray System Completion Time Extension (CE NPSD–1045–A)" and associated TS Bases. TSTF–409, Rev. 2, submitted to the NRC by the TSTF in a letter dated November 10, 2003 (ADAMS Accession Number ML033280006), was approved by the NRC on [DATE] and published in the **Federal Register** on [DATE] ([] FR [ ]).

TSTF–409, Rev. 2 is based on Combustion Engineering Owner's Group (CEOG) Joint Application Report CE NPSD–1045–A, "Joint Applications Report for Modifications to the Containment Spray System Technical Specifications," dated March 2000 (Reference 1), as accepted by, and subject to the limitations specified in, the associated NRC safety evaluation (SE), dated December 21, 1999 (ADAMS Accession Number ML993620241) (Reference 2).

In TSTF–409, Rev. 2, the CEOG states that the longer CT for restoring an inoperable CSS train to operable status will enhance overall plant safety by avoiding potential unscheduled plant shutdowns and allowing greater availability of safety significant components during shutdown. In addition the CEOG states that this extension provides for increased flexibility in scheduling and performing maintenance and surveillance activities in order to enhance plant safety and operational flexibility during lower modes of operation.

2.0 Regulatory Evaluation

Since the mid-1980's, the NRC has been reviewing and granting improvements to TS that are based, at least in part, on probabilistic risk assessment (PRA) insights. In its final policy statement on TS improvements dated July 22, 1993 (58 FR 39132), the NRC stated that it:

> * * * expects that licensees, in preparing their Technical Specification related submittals, will utilize any plant-specific PSA [probabilistic safety assessment] [1] or risk survey and any available literature on risk insights and PSAs * * *. Similarly, the NRC staff will also employ risk insights and PSAs in evaluating Technical Specifications related submittals. Further, as a part of the Commission's ongoing program of improving Technical Specifications, it will continue to consider methods to make better use of risk and reliability information for defining future generic Technical Specification requirements.

The NRC reiterated this point when it issued the revision to 10 CFR 50.36, "Technical Specifications," in July 1995. In August 1995, the NRC adopted a final policy statement on the use of PRA methods in nuclear regulatory activities that encouraged greater use of PRA to improve safety decision-making and regulatory efficiency. The PRA policy statement included the following points:

1. The use of PRA technology should be increased in all regulatory matters to the extent supported by the state-of-the-art in PRA methods and data, and in a manner that complements the NRC's deterministic approach and supports the

[1] PSA and PRA are used interchangeably herein.

NRC's traditional defense-in-depth philosophy.

2. PRA and associated analyses (*e.g.*, sensitivity studies, uncertainty analyses, and importance measures) should be used in regulatory matters, where practical within the bounds of the state-of-the-art, to reduce unnecessary conservatism associated with current regulatory requirements.

3. PRA evaluations in support of regulatory decisions should be as realistic as practicable and appropriate supporting data should be publicly available for review.

In March 1998, the CEOG submitted a joint applications report for the NRC staff's review entitled, "Joint Applications Report for Modifications to the Containment Spray System and Low Pressure Safety System Technical Specifications." The NRC review accepting this joint applications report for referencing in license applications for Combustion Engineering (CE) plants, including appropriate exclusions, conditions, and limitations, is documented in Reference 2. The final, NRC-approved joint applications report, (Reference 1) is dated March 2000.

3.0 Technical Evaluation

The NRC staff evaluated the licensee's proposed amendment to extend the TS CT for one CSS train out of service from 72 hours to seven days using insights derived from traditional engineering considerations and the use of PRA methods to determine the safety impact of extending the CT.

3.1 Traditional Engineering Evaluation

The function of the containment heat removal systems under accident conditions is to remove heat from the containment atmosphere, thus maintaining the containment pressure and temperature at acceptably low levels. The systems also serve to limit offsite radiation levels by reducing the pressure differential between the containment atmosphere and the external environment, thereby decreasing the driving force for fission product leakage across the containment. The two containment heat removal systems are the CCS and CSS. The CCS fan coolers are designed to operate during both normal plant operations and under loss-of-coolant accident (LOCA) or main steam line break (MSLB) conditions. The CSS is designed to operate during accident conditions only.

The heat removal capacity of the CCS and CSS is sufficient to keep the containment temperature and pressure below design conditions for any size break, up to and including a double-ended break of the largest reactor coolant pipe. The systems are also designed to mitigate the consequences of any size break, up to and including a double-ended break of a main steam line. The CCS and CSS continue to reduce containment pressure and temperature and maintain them at acceptable levels post-accident.

The CCS and CSS at [PLANT NAME] each consist of [Substitute plant-specific configuration if it differs from the following description] two redundant loops and are designed such that a single failure does not degrade their ability to provide the required heat removal capability. Two of four containment fan coolers and one CSS loop are powered from one safety-related bus. The other two containment fan coolers and CSS loop are powered from another independent safety related bus. The loss of one bus does not affect the ability of the containment heat removal systems to maintain containment temperature and pressure below the design values in a post-accident mode.

The [PLANT NAME] CSS consists of [Substitute plant-specific configuration if it differs from the following description] two independent and redundant loops each containing a spray pump, shutdown heat exchanger, piping, valves, spray headers, and spray nozzles. It has two modes of operation, which are:

1. The injection mode, during which the system sprays borated water from the refueling water tank (RWT) into the containment, and

2. The recirculation mode, which is automatically initiated by the recirculation actuation signal (RAS) after low level is reached in the RWT. During this mode of operation, the safety injection system (SIS) sump provides suction for the spray pumps.

Containment spray is automatically initiated by the containment spray actuation signal coincident with the safety injection actuation signal and high containment pressure signal. If required, the operator can manually activate the system from the main control room.

Each CSS pump, together with a CCS loop, provides the flow necessary to remove the heat generated inside the containment following a LOCA or MSLB. Upon system activation, the pumps are started, and borated water flows into the containment spray headers. When low level is reached in the RWT, sufficient water has been transferred to the containment to allow for the recirculation mode of operation. Spray pump suction is automatically realigned to the SIS sump upon a RAS.

During the recirculation mode, the spray water is cooled by the shutdown heat exchangers prior to discharge into the containment. The shutdown heat exchangers are cooled by the component cooling water system. Post-LOCA pH control is provided by [Substitute plant-specific configuration if it differs from the following description] trisodium phosphate dodecahydrate, which is stored in stainless steel baskets located in the containment near the SIS sump intake.

Based on a review of the design-basis requirements for the CSS, the NRC staff concluded that the loss of one CSS train is well within the design-basis analyses. The plant status with both CSS trains inoperable is covered by TS 3.6.6A, ACTION G., which states:

> [With] two containment spray trains inoperable or any combination of three or more [CSS/CCS] trains inoperable, LCO [Limiting Condition for Operation] 3.0.3 shall be entered immediately.

ACTION G addresses the condition in which two CSS trains are inoperable and requires restoration of at least one CSS train to operable status within 1 hour or the plant be placed in hot shutdown in 6 hours and cold shutdown within the following 30 hours, with cold shutdown being the acceptable end state. These requirements are consistent with similar requirements elsewhere in the TS and, therefore, are acceptable.

The plant status with one CSS train and one CCS train inoperable is covered by TS 3.6.6A, action D, which states:

> [With] one containment spray and one containment cooling train inoperable, restore containment spray train to operable status within 72 hours, or restore containment cooling train to operable status within 72 hours.

ACTION D ensures that the iodine removal capabilities of the CSS are available, along with 100 percent of the heat removal needs after an accident. The supporting analyses performed in Reference 1 did not evaluate the concurrent inoperabilities of one CSS train and one CCS train. Therefore, the current CT of 72 hours is retained in Condition D. The 72-hour CT was developed taking into account the redundant heat removal capabilities afforded by combinations of the CSS and CCS, the iodine removal function of the CSS, and the low probability of a DBA occurring during this period.

3.2 Probabilistic Risk Assessment Evaluation

The proposed extension of the CSS CT from 72 hours to seven days affects plant risk by impacting:

1. Accident sequences that can be prevented from leading to core damage.

2. Accident sequences that can be mitigated following core damage.

The CSS therefore affects both core damage frequency (CDF) and large early release frequency (LERF). This is because the CSS performs the critical function of controlling containment temperature and pressure to cool the reactor coolant system (RCS) inventory that is spilled in the sump as a result of a LOCA (core damage prevention role) and preventing the release of radionuclides subsequent to a core damage event (core damage and radionuclide release mitigation role).

[The following paragraph will contain plant-specific information based on the plant's ability to use the shutdown cooling system (SDCS) as a backup to the CSS. The licensee should provide a plant-specific system configuration description based on whether its SDCS can be used as a backup to the CSS pump.]

The proposed CT extension also impacts the long-term cooling function that can be provided by the SDCS following a small-break LOCA, steam generator tube rupture (SGTR), or MSLB. If entry into the extended CT is caused by a CSS pump outage, the plants with the ability to use the SDCS as a backup to the CSS pump can still preserve the spray function of the affected train. If, however, a SDCS heat exchanger is removed from service, then both the CSS and SDCS capability of the affected train would be lost unless cross-connect capability with another unaffected system (*e.g.*, service water) is possible. However, this cross-connect capability should not be credited unless it is proceduralized.

The NRC staff used a three-tiered approach to evaluate the plant-specific risk impact associated with the proposed TS changes. The first tier evaluates the plant-specific PRA model and the impact of the proposed CT extension on plant operational risk. The second tier addresses the need to preclude potentially high risk configurations by identifying the need for any additional constraints or compensatory actions that, if implemented, would avoid or reduce the probability of a risk-significant configuration during the time when one CSS train is out of service. The third tier evaluates the licensee's proposed Configuration Risk Management Program (CRMP) to ensure that the applicable plant configuration will be appropriately assessed from a risk perspective before entering into, or during, the proposed CT.

In Reference 2, the NRC staff found that the risk analysis methodology and approach used by the CEOG to estimate the risk impact were reasonable. In its SE, the NRC staff also stated that, for most plants that participated in the joint application report, the risk impact can be shown to be consistent with the acceptance guidelines for change in CDF (ΔCDF), change in LERF (ΔLERF), incremental conditional core damage probability (ICCDP), and incremental large early release frequency (ICLERP) specified in Regulatory Guide (RG) 1.174 (Reference 3) and RG 1.177 (Reference 4) and the associated Standard Review Plan (SRP) Chapters 19.0 and 16.1 of NUREG–0800 (Reference 5). However, not all CE plants participated in the joint application report, and the estimated risk impacts for some plants exceeded the Reference 3 and/or Reference 4 acceptance guidelines, which would require additional justifications and/or compensatory measures to be provided for these plants to be determined to have acceptable risk impacts.

In Reference 2, the NRC staff also found that the Tier 2 and Tier 3 evaluations, as described in Reference 4, could not be approved generically since they were not complete, which would require that each individual plant-specific license amendment seeking approval through TSTF–409, Rev. 2 would need to include an assessment with respect to the Tier 2 and Tier 3 principles of Reference 4.

Based on the above discussion, the NRC staff identified conditions that must be addressed in the licensee's plant-specific application requesting adoption of TSTF–409, Revision 2. In its application dated [DATE], [LICENSEE] provided supporting information for each of the conditions which met the NRC staff's expectations and acceptance criteria [with the following exceptions: *list any exceptions to the conditions stated in the model LAR*].

3.2.1 Commitment

The Reference 4 Tier 3 program ensures that, while the plant is following the TS ACTIONS associated with an extended CT for restoring an inoperable CSS to operable status, additional activities will not be performed that could further degrade the capabilities of the plant to respond to a condition that the inoperable CSS is designed to mitigate and, as a result, increase plant risk beyond that determined by the Reference 1 analyses. A licensee's implementation of Reference 4 Tier 3 guidelines generally implies the assessment of risk with respect to CDF. However, the proposed CSS extended CT impacts accident sequences that can be mitigated following core damage and, consequently, LERF as well as CDF. Therefore, [LICENSEE] enhanced its CRMP [optional: as implemented under 10 CFR 50.65(a)(4), the Maintenance Rule,] to include a LERF methodology and assessment.

3.3 Summary

Having met the conditions identified in the model license amendment request (LAR), the NRC staff finds that the licensee's plant-specific LAR is consistent with the previous NRC staff approval of Reference 1, as documented in the Reference 2 and TSTF–409, Rev. 2, and thus is acceptable. This determination is based on the following:

1. The traditional engineering evaluation reveals that the loss of one CSS train is well within the design-basis analyses.

2. Based on the licensee meeting the conditions identified in the model LAR, the NRC staff finds that there is minimal impact of the CT extensions for the CSS system on plant operational risk (Tier 1 evaluation).

3. Meeting the conditions identified in the model LAR will ensure that the licensee's implementation will identify potentially high risk configurations and the need for any additional constraints or compensatory actions that, if implemented, would avoid or reduce the probability of a risk-significant configuration (Tier 2 evaluation).

4. Meeting the conditions identified in the model LAR will ensure that the risk-informed CRMP proposed by the licensee will satisfactorily assess the risk associated with the removal of equipment from service during the proposed CSS CT (Tier 3 evaluation) and the CRMP and plant risk will be managed by plant procedures.

4.0 Regulatory Commitment

The licensee's letter dated [DATE], contained the following regulatory commitment: [state the licensee's commitment and ensure that it satisfies the commitment in section 3.2.1 of this SE].

The NRC staff finds that reasonable controls for the implementation and for subsequent evaluation of proposed changes pertaining to the above regulatory commitment are best provided by the licensee's administrative controls process, including its commitment management program. The above regulatory commitment does not warrant the creation of a license condition (item requiring prior NRC approval of subsequent changes).

5.0 State Consultation

In accordance with the Commission's regulations, the [STATE] State official was notified of the proposed issuance of the amendment[s]. The State official had [CHOOSE ONE: (1) No comments, OR (2) the following comments—with subsequent disposition by the staff].

6.0 Environmental Consideration

The amendment changes a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20. The NRC staff has determined that the amendment involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendment involves no significant hazards consideration, and there has been no public comment on such finding [(XX FR XXXXX, dated Month DD, YYYY)]. Accordingly, the amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment

7.0 Conclusion

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

8.0 References

1. Joint Applications Report: Modification to the Containment Spray System, and Low Pressure Safety Injection System Technical, CE Owners Group, CE NPSD–1045, March 2000.
2. SE by the Office of Nuclear Reactor Regulation Related to CE Owners Group CE–NPSD–1045, "Joint Application Report, Modification to the Containment Spray System, and the Low Pressure Safety Injection System Technical Specifications," December 21, 1999.
3. U.S. NRC RG 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," Revision 1, November 2002.
4. U.S. NRC RG 1.177, "An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications," August 1998.
5. NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," June 1996.

Model No Significant Hazards Consideration

Description of Amendment Request: The proposed amendment would revise the technical specifications to extend the completion time (CT) from 72 hours to seven days to restore an inoperable containment spray system (CSS) train to operable status, and add a Condition describing the required Actions and CT when one CSS and one containment cooling system (CCS) are inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change extends from 72 hours to 7 days the CT for restoring an inoperable CSS train to operable status. Being in an ACTION is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on ACTIONS during the extended CT are no different than the consequences of an accident while relying on the ACTION during the existing 72-hour CT. Therefore, the consequences of an accident previously evaluated are not significantly increased by this change. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change extends from 72 hours to 7 days the CT for restoring an inoperable CSS train to operable status. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change extends from 72 hours to 7 days the CT for restoring an inoperable CSS train to operable status. [LICENSEE] performed risk-based evaluations using its plant-specific probabilistic risk assessment (PRA) model in order to determine the effect of this change on plant risk. The PRA evaluations were based on the conditions stipulated in NRC staff safety evaluations approving both Joint Applications Report CE NPSD–1045–A, "Joint Applications Report, Modifications to the Containment Spray System and The Low Pressure Safety Injection System Technical Specifications," and Technical Specification Task Force Change Traveler, TSTF–409, Revision 2, "Containment Spray System Completion Time Extension (CE NPSD–1045–A)." The results of these plant-specific evaluations determined that the effect of the proposed change on plant risk is very small. Therefore, this change does not involve a significant reduction in a margin of safety.

Based on the above, the proposed change involves no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of no significant hazards consideration is justified.

For the Nuclear Regulatory Commission.

Project Manager,
Plant Licensing Branch, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–5216 Filed 4–10–06; 8:45 am]
BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27281; 812–13174]

John Hancock Trust et al.; Notice of Application

April 5, 2006.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from section 12(d)(1)(G)(i)(II) of the Act.

Summary of Application: Applicants request an order to permit funds of funds relying on section 12(d)(1)(G) of the Act to invest in other securities and financial instruments.

Applicants: John Hancock Trust ("JHT"), John Hancock Funds II ("JHF II," and together with JHT, the "Trusts"), and John Hancock Investment Management Services, LLC. (the "Adviser").

Filing Dates: The application was filed on March 11, 2005, and amended on March 29, 2006. Applicants have agreed to file a final amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 1, 2006, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, c/o John W. Blouch, Dykema Gossett PLLC, 1300 I Street, NW., Suite 300 West, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, at (202) 551–6990, or Stacy L. Fuller, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0104 (telephone (202) 551–8090).

Applicants' Representations

1. The Trusts, organized as Massachusetts business trusts, are registered under the Act as open-end management investment companies and offer multiple series advised by the Adviser ("Portfolios"). JHT currently offers 94 Portfolios, and JHF II currently offers 80 Portfolios. Six Portfolios of JHT (the "JHT Lifestyle Portfolios") and six Portfolios of JHF II (the "JHF II Lifestyle Portfolios," and together with the JHT Lifestyle Portfolios, the "Lifestyle Portfolios") propose to invest, respectively, in other Portfolios of JHT ("JHT Underlying Portfolios") and JHF II ("JHF II Underlying Portfolios," and together with the JHT Underlying Portfolios, the "Underlying Portfolios") as well as in debt and equity securities and other financial instruments ("Other Securities").[1]

2. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940, and is a wholly-owned subsidiary of The John Hancock Life Insurance Company (USA). The Adviser serves as investment adviser for each Portfolio of the Trusts, including the Lifestyle Portfolios.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company ("acquiring company") may acquire securities of another investment company ("acquired company") if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) the acquiring company and the acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Securities Exchange Act of 1934 or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G). Applicants state that the proposed arrangement would comply with the provisions of section 12(d)(1)(G), but for the fact that each Lifestyle Portfolio may invest a portion of its assets in Other Securities not specified in section 12(d)(1)(G)(i)(II).

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants request an order under section 12(d)(1)(J) exempting them from section 12(d)(1)(G)(i)(II). Applicants assert that permitting the Lifestyle Portfolios to invest in Other Securities as described in the application would not raise any of the concerns that the requirements of section 12(d)(1)(G) were designed to address.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Prior to approving any investment advisory agreement under section 15 of the Act, the Board of a Lifestyle Portfolio, including a majority of the trustees who are not "interested persons" as defined in section 2(a)(19) of the Act, will find that the advisory or management fees charged under the agreement are based on services provided that are in addition to, rather than duplicative of, the services provided under any Underlying Portfolio's investment advisory agreement. The finding, and the basis upon which the finding is made, will be recorded fully in the minute books of the Lifestyle Portfolio.

2. Applicants will comply with all provisions of section 12(d)(1)(G) of the Act, except for section 12(d)(1)(G)(i)(II) to the extent that it restricts any Lifestyle Portfolio from investing in Other Securities as described in the application.

3. The Board of each Lifestyle Portfolio will satisfy the fund governance standards as defined in rule

[1] Other Securities do not include shares of any registered investment companies that are not part of the same "group of investment companies," as defined in section 12(d)(1)(G)(ii) of the Act, as the Trusts. Applicants request that the relief also extend to each other existing and future Portfolio of the Trusts and to each other existing and future registered open-end management investment company, or series thereof, that is part of the same group of investment companies as the Trusts and is advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser (included in the defined term "Portfolios"). The Trusts are the only registered investment companies currently intending to rely on the requested order. Any other Portfolio that relies on the order in the future will comply with the terms and conditions of the application.

0–1(a)(7) under the Act by the compliance date for the rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–5245 Filed 4–10–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of KSW Industries, Inc.; Order of Suspension of Trading

April 7, 2006.

It appears to the Securities and Exchange Commission ("Commission") that there is a lack of current and accurate information concerning the securities of KSW Industries, Inc. ("KSW Industries") because of questions regarding the accuracy of assertions by KSW Industries in statements made to investors concerning, among other things: (1) The identity of KSW Industries' current chief executive officer and president; and (2) its business activities, including a joint venture it purportedly entered into in or about November 2005, a letter of intent it issued in or about February 2006, and negotiations it entered into in or about March 2006 to license the company's purported EM–100 process.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDT, April 7, 2006 through 11:59 p.m. EDT, on April 21, 2006.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 06–3484 Filed 4–7–06; 11:34 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Golden Apple Oil and Gas, Inc.; Order of Suspension of Trading

April 7, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Golden Apple Oil and Gas, Inc. ("Golden Apple"), a Nevada corporation headquartered in Phoenix, Arizona. Questions have arisen regarding the accuracy of assertions by Golden Apple, and by others, in press releases and internet postings to investors concerning, among other things: (1) The company's assets, (2) the company's business operations, (3) the company's current financial condition, and (4) financing arrangements involving the issuance of Golden Apple shares.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDT, April 7, 2006, through 11:59 p.m. EDT, on April 21, 2006.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 06–3485 Filed 4–7–06; 11:34 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53596; File No. SR–NASD–2004–044]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Short Sale Delivery Requirements

April 4, 2006.

I. Introduction

On March 10, 2004, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to apply a delivery framework to certain non-reporting equity securities similar to that imposed on reporting equity securities by Regulation SHO.[3] The NASD submitted Amendment No. 1 to its proposed rule change on October 6, 2005 and submitted Amendment No. 2 to its proposed rule change on October 28, 2005.[4] The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on November 16, 2005.[5] The Commission received nine comment letters on the proposal.[6] The NASD filed a response to the comment letters on March 15, 2006.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (Aug. 6, 2004) ("Regulation SHO Adopting Release"). The Commission adopted Regulation SHO to, among other things, impose a requirement on a participant of a registered clearing agency to take action to close out fail to deliver positions in "threshold securities." Regulation SHO defines a "threshold security" as any equity security that is registered under Section 12 of the Act, or where the issuer of such security is required to file reports under Section 15(d) of the Act, and which security has, for five consecutive settlement days, had aggregate fails to deliver at a registered clearing agency of at least 10,000 shares that are also equal to at least 0.5% of the issuer's total shares outstanding ("TSO"). *See* 17 CFR 242.203(c)(6). In the Regulation SHO Adopting Release, the Commission noted that because the calculation of the threshold that would trigger the delivery requirements under the rule depends on identifying the aggregate fails to deliver as a percentage of the TSO, the Commission believed it was necessary to limit the close out requirement to companies that are subject to the reporting requirements of the Act. *See* Regulation SHO Adopting Release, 69 FR at 48016, fn. 82.

[4] On account of the adoption of Regulation SHO, Amendment No. 1, among other things, narrowed the scope of the proposal to those equity securities not otherwise covered by the delivery requirements of Rule 203(b) of Regulation SHO. Amendment No. 2 replaced and superseded Amendment No. 1 in its entirety and made technical changes to the proposed rule change.

[5] *See* Securities Exchange Act Release No. 52752 (Nov. 8, 2005), 70 FR 69614 (Nov. 16, 2005) ("Proposing Release").

[6] *See* Letter from Paul Vuksich, II, dated December 22, 2005; letter from Amal Aly, Vice President and Associate General Counsel, Securities Industry Association, on behalf of the Securities Industry Association Regulation SHO Working Group, dated December 14, 2005 ("SIA Letter"); letter from Jim L. Hoch, dated December 14, 2005; letter from Paul Vuksich, II, dated December 12, 2005 ("Vuksich Letter"); letter from Donald J. Stoecklein, President, Stoecklein Law Group, dated December 13, 2005 ("Stoecklein Law Group Letter"); letter from Peter J. Chepucavage, General Counsel, Plexus Consulting, dated December 1, 2005; letter from Bob O'Brien, dated November 17, 2005; letter from David Patch, dated November 14, 2005; and letter from Richard M. Rosenthal, Esq, dated November 10, 2005.

[7] *See* letter from Andrea D. Orr, Assistant General Counsel, NASD, to Nancy M. Morris, Secretary, SEC, dated March 15, 2006 ("Response to Comments").

This order approves the proposed rule change, as amended.

II. Description of the Proposal

The proposed rule change would require participants[8] of registered clearing agencies[9] to take action to immediately close out fail to deliver positions that exist for thirteen consecutive settlement days in non-reporting threshold securities by purchasing securities of like kind and quantity. A "non-reporting threshold security" is "any equity security of an issuer that is not registered pursuant to Section 12 of the Act[10] and for which the issuer is not required to file reports pursuant to Section 15(d) of the Act:[11] (A) For which there is an aggregate fail to deliver position for five consecutive settlement dates at a registered clearing agency of 10,000 shares or more and for which on each settlement day during the five consecutive day period, the reported last sale during the normal market hours for the security on that settlement day would value the aggregate fail to deliver position at $50,000 or more, provided that, if there is no reported last sale on a particular settlement day, then the price used to value the position on such settlement day would be the previously reported last sale; and (B) is included on a list published by the NASD."

In addition, if the fail to deliver position is not closed out in the requisite time period, a participant or any broker-dealer for which it clears transactions, including market-makers, would be prohibited from accepting any short sale order in the non-reporting threshold security from another person, or effecting a short sale in the non-reporting threshold security for its own account, without borrowing the security or entering into a bona-fide arrangement to borrow the security, until the participant has closed out the fail to deliver position by purchasing securities of like kind and quantity.

Under the proposed rule change, NASD would publish a list daily of the non-reporting threshold securities.[12] In order to be removed from the non-reporting threshold securities list, a security must not meet or exceed the threshold requirements in the proposed rule change for five consecutive settlement days.[13]

III. Summary of Comments

The Commission received nine comment letters on the proposal.[14] Several commenters supported the proposal.

A. Delivery Requirements for Non-Reporting Threshold Securities

Several commenters supported applying a delivery framework to non-reporting threshold securities. Some commenters, however, objected to certain provisions of the proposed rule change.

i. Uniform Short Sale Delivery Requirements

One commenter asserted that a uniform short sale delivery requirement for reporting and non-reporting equity securities would be preferable.[15] This commenter argued that the adoption of the proposed rule change would upset the regulatory uniformity that Regulation SHO[16] was intended to create because it would result in additional rules that apply only to NASD member firms.[17] In addition, this commenter expressed concern that separate rules for reporting and non-reporting equity securities could be subject to disparate revisions and/or interpretations, thereby subjecting member firms to different delivery requirements, depending on which securities are at issue.[18]

This commenter urged the Commission to amend the Regulation SHO delivery requirements to also address non-reporting equity securities.[19]

In its Response to Comments, NASD agreed that uniformity with respect to rulemaking across self-regulatory organizations ("SROs") is preferable to the extent possible and practicable.[20] In addition, NASD noted that if, in the future, the SEC determines to amend the Regulation SHO delivery requirements to apply to non-reporting equity securities, NASD would consider repealing its rule.[21] NASD also stated in its Response to Comments that, although NASD believes that the vast majority of trading in non-reporting securities occurs through NASD members, uniformity in this area can be achieved if other SROs propose similar requirements. NASD also noted that it did not believe it was appropriate to forestall an SRO proposal solely because other SROs have not put forth comparable requirements.[22]

ii. $50,000 Threshold Requirement

Some commenters opposed the $50,000 value threshold requirement contained in the definition of a "non-reporting threshold security." For example, one commenter argued that the dollar threshold value is inappropriate, stating that it is not an accurate indicator of non-reporting securities with excessive fails to deliver.[23] Another commenter believed that the dollar threshold value was too high, noting that such a value would harm small companies,[24] while another commenter argued that the dollar threshold value was too low and would capture a vastly expanded universe of threshold securities.[25]

In its Response to Comments, NASD noted that it proposed the dollar threshold value to ensure that the non-reporting threshold security list would not be overly broad or impracticable.[26] NASD noted that it was concerned that having a security on the non-reporting threshold security list solely based on whether the failure to deliver position is equal to, or greater than, 10,000 shares may not represent a significant failure to deliver position relative to the price of the security, particularly given that many non-reporting securities trade at less than $1.00.[27] Thus, NASD believes that the $50,000 value threshold strikes an appropriate balance to ensure that the threshold list is not overly broad or narrow.[28]

iii. Impact on Liquidity in the Marketplace

One commenter believed that the proposed rule change may result in negative consequences for this class of securities, such as further reducing liquidity in already illiquid securities and having a greater impact on price

---

[8] A "participant" means a participant as defined in Section 3(a)(24) of the Act, that is an NASD member. *See* Proposing Release, *supra* note 5, 70 FR at 69615.

[9] A "registered clearing agency" is a clearing agency, as defined in Section 3(a)(23)(A) of the Act, that is registered with the SEC pursuant to Section 17A of the Act.

[10] 15 U.S.C. 78*l*.

[11] 15 U.S.C. 78o(d).

[12] Proposing Release, *supra* note 5, 70 FR at 69616.

[13] *Id.*, 70 FR at 69615.

[14] *See supra* note 6.

[15] *See* Letter, *supra* note 6, at 3.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] Response to Comments, *supra* note 7, at 4.

[21] *Id.*

[22] *Id.*

[23] *See* Stoecklein Law Group Letter, *supra* note 6, at 1.

[24] *See* Vuksich Letter, *supra* note 6, at 1.

[25] *See* SIA Letter, *supra* note 6, at 5.

[26] Response to Comments, *supra* note 7, at 3.

[27] *Id.*

[28] *Id.* In addition, in its Response to Comments, NASD noted that NASD staff analyzed data relating to non-reporting securities over a five-day settlement period in February 2006 to get an indication of the number of non-reporting securities that would meet the proposed threshold requirements. During this time period, the analysis indicated that 44 securities would be deemed non-reporting threshold securities under the proposed threshold requirements. *See* Response to Comments, *supra* note 7, at fn. 20.

than would be the case with reporting equity securities.[29]

In its Response to Comments, NASD noted that similar concerns were raised in the context of Regulation SHO, to which the SEC responded that the requirements would only apply to a limited number of securities and would not apply to any fail to deliver positions existing prior to the security meeting the threshold requirements.[30] NASD noted in its Response to Comments that it believes these same assertions apply in the context of the proposed rule change as well, given the Commission's Office of Economic Analysis' ("OEA") estimates on non-reporting securities with fails to deliver of 10,000 shares or greater,[31] and that NASD's proposal would further reduce this estimate due to the proposed additional $50,000 value threshold requirement.[32]

iv. Exemptive Authority

One commenter raised concerns with the provision that permits NASD to grant exemptive relief under certain specified conditions, arguing that NASD may abuse such discretion or the provision may provide a blanket exemption to firms.[33]

In its Response to Comments, NASD commented that it believes this comment is without merit.[34] NASD believes that it is important to have the ability to address, through the exemptive process, situations that may warrant relief.[35] In addition, NASD noted that the proposed exemptive authority, by its terms, is specifically limited to those situations where granting such relief is consistent with the protection of investors and the public interest, and NASD will execute such authority consistent with this requirement.[36]

[29] *See* SIA Letter, *supra* note 6, at 4.

[30] Response to Comments, *supra* note 7, at 5.

[31] In its Response to Comments, NASD noted that general estimates relating to the number of non-reporting securities with fails to deliver in excess of 10,000 shares were made publicly available as part of the Regulation SHO Adopting Release. NASD noted that the Regulation SHO Adopting Release provided that the Commission's OEA analyzed NSCC data on fails to deliver in excess of 10,000 shares for non-reporting issuers and estimated that only an additional 1% of all securities would be added to its estimate of the number of securities that would be subject to the close out requirements of Regulation SHO. *See* Response to Comments *supra* note 7, at 4 (referencing the Regulation SHO Adopting Release at fn. 86).

[32] *See id.* at 5.

[33] *See* Stoecklein Law Group Letter, *supra* note 6, at 1.

[34] Response to Comments, *supra* note 7, at 4.

[35] *Id.*

[36] *Id.*

B. Defined Terms

NASD proposed that the term "non-reporting threshold security" means "any equity security of an issuer that is not registered pursuant to Section 12 of the Act[37] and for which the issuer is not required to file reports pursuant to Section 15(d) of the Act;[38] (A) for which there is an aggregate fail to deliver position for five consecutive settlement dates at a registered clearing agency of 10,000 shares or more and for which on each settlement day during the five consecutive day period, the reported last sale during the normal market hours for the security on that settlement day that would value the aggregate fail to deliver position at $50,000 or more, provided that, if there is no reported last sale on a particular settlement day, then the price used to value the position on such settlement day would be the previously reported last sale; and (B) is included on a list published by the NASD."[39]

The Commission agrees with NASD that imposing a lower dollar value threshold requirement, or eliminating it altogether, as some commenters suggested, might be impracticable or an overly-broad method of addressing any potential abuses in this sector of the marketplace. Similarly, the Commission agrees with NASD that increasing the dollar value threshold requirement could be too limiting. As noted above, a five-day settlement period analysis by NASD staff found that under the proposed threshold requirements, only approximately 44 securities would qualify as non-reporting threshold securities.[40]

C. Implementation

NASD suggests that the effective date of the proposed rule change will be 30 days following publication of NASD's *Notice to Members* announcing Commission approval[41] and the Commission believes that this is reasonable.

IV. Discussion and Commission Findings

After careful review, the Commission finds, as discussed more fully below, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. The Commission finds specifically that the proposed rule change, as amended, is consistent with Sections 15A(b)(6) and 15A(b)(9) of the Act.[42]

Section 15A(b)(6) of the Act requires that NASD's rules are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[43] Section 15A(b)(9) of the Act requires that NASD's rules do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[44]

Section 3(f) of the Act directs the Commission to consider, in addition to the protection of investors, whether approval of a rule change will promote efficiency, competition, and capital formation.[45] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. In particular, the Commission determined that requiring a delivery framework for non-reporting threshold securities similar to that required under Regulation SHO would increase investor confidence in this sector of the marketplace by helping to reduce fails to deliver which, in turn, would promote capital formation.

When the Commission adopted Regulation SHO, it did not apply the Regulation SHO delivery requirements to non-reporting threshold securities because the calculation of the threshold that would trigger the delivery requirements under Regulation SHO depends on identifying the aggregate fails to deliver as a percentage of the TSO that is generally obtained from periodic reports filed with the Commission. Thus, the Commission believed it was necessary to limit the delivery requirement to companies that are subject to the reporting requirements of the Act.

The Commission believes that applying a delivery framework similar to that contained in Regulation SHO to non-reporting threshold securities will protect investors and the public interest by helping to reduce fails to deliver in

[37] 15 U.S.C. 78*l*.

[38] 15 U.S.C. 78*o*(d).

[39] Proposing Release, *supra* note 5, 70 FR at 69615.

[40] *See supra* note 28.

[41] NASD will announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval.

[42] 15 U.S.C. 78*o*–3(b)(6) and (b)(9).

[43] *See* 15 U.S.C. 78*o*–3(b)(6).

[44] *See* 15 U.S.C. 78*o*–3(b)(9).

[45] 15 U.S.C. 78c(f).

this sector of the marketplace. Thus, the Commission finds that the proposed rule change is consistent with Sections 15A(b)(6) and 15A(b)(9) of the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[46] that the proposed rule change (SR–NASD–2004–044), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[47]

Nancy M. Morris,

Secretary.

[FR Doc. E6–5236 Filed 4–10–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53598; File No. SR–NASD–2005–080]

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 thereto to Establish New NASD Rule 2290 Regarding Fairness Opinions

April 4, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 24, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On November 30, 2005, NASD filed Amendment No. 1 to the proposed rule change.[3] On January 25, 2006, NASD filed Amendment No. 2 to the proposed rule change.[4] On March 1, 2006, NASD filed Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to establish new NASD Rule 2290 to address disclosures and procedures concerning the issuance of fairness opinions. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC

* * * * *

2290. Fairness Opinions

(a) Disclosures

Any member issuing a fairness opinion that may be provided, or described, or otherwise referenced to public shareholders must disclose, to the extent not otherwise required, in such fairness opinion:

(1) whether such member has acted as a financial advisor to any transaction that is the subject of the fairness opinion, and, if applicable, that it will receive compensation for:

(A) rendering the fairness opinion that is contingent upon the successful completion of the transaction;

(B) serving as an advisor that is contingent upon the successful completion of the transaction;

(2) whether such member will receive any other payment or compensation contingent upon the successful completion of the transaction;

(3) whether there is any material relationship that existed during the past two years or is mutually understood to be contemplated in which any compensation was received or is intended to be received as a result of the relationship between the member and the companies that are involved in the transaction that is the subject of the fairness opinion;

(4) the categories of information that formed a substantial basis for the fairness opinion that was supplied to the member by the company requesting the opinion concerning the companies involved in the transaction and whether any such information in each such category has been independently verified by the member; and

(5) whether the fairness opinion was approved or issued by a fairness committee.

(b) Procedures

Any member issuing a fairness opinion must have procedures that address the process by which a fairness opinion is approved by a firm, including:

(1) the types of transactions and the circumstances in which the member will use a fairness committee to approve or issue a fairness opinion, and in such transactions where it uses a fairness committee:

(A) the process for selecting personnel to be on the fairness committee;

(B) the necessary qualifications of persons serving on the fairness committee; and

(C) the process to promote a balanced review by the fairness committee, including review and approval by persons who do not serve on or advise the "deal team" to the transaction;

(2) the process to determine whether the valuation analyses used in the fairness opinion are appropriate, and the procedures should state the extent to which the appropriateness of the use of such valuation analyses is determined by the type of company or transaction that is the subject of the fairness opinion; and

(3) the process to evaluate whether the amount and nature of the compensation from the transaction underlying the fairness opinion benefiting any individual officers, directors or employees, or class of such persons, relative to the benefits to shareholders of the company, is a factor in reaching a fairness determination.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD notes that a fairness opinion addresses, from a financial point of view, the fairness of the consideration in a transaction. Fairness opinions are routinely used by directors of a company in corporate control transactions to satisfy their fiduciary duties to act with due care and in an

[46] 15 U.S.C. 78s(b)(2).

[47] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, which supplemented the original filing, NASD modified the scope of the proposed rule change and made certain clarifications to the rule text following discussions with Commission staff.

[4] In Amendment No. 2, NASD added clarifying language to the rule text following discussions with Commission staff.

[5] Amendment No. 3 was a technical amendment and replaced and superseded the original filing, as amended, in its entirety.

informed manner. Although not required by statute or regulation, fairness opinions have become commonplace in corporate control transactions following the 1985 Delaware Supreme Court case of *Smith* v. *Van Gorkom*,[6] in which a corporate board was held to have breached its fiduciary duty of care by approving a merger without adequate information on the transaction, including information on the value of the company and the fairness of the offering price.

NASD notes that, while a fairness opinion addresses the fairness, from a financial point of view, of the consideration involved in a transaction, it does not indicate whether the price of a particular transaction is the best price that could be attained. Rather, it opines on whether the price is "fair" or within an acceptable range of values. A fairness opinion is prepared for a company's board of directors; however, it is often provided to shareholders as part of proxy materials. Inasmuch as a fairness opinion is not required by regulation or statute, the board of directors determines whether to obtain a fairness opinion, the scope of such opinion, and the party preparing such opinion.

NASD has been concerned that the disclosures provided in fairness opinions may not sufficiently inform public shareholders about the potential conflicts of interest that exist between the firm rendering the fairness opinion and the issuer. Among these conflicts are fees that the firm rendering the fairness opinion will receive upon the successful completion of the transaction (either from advisory fees or fees for the fairness opinion itself), as well as other material relationships between the firm and the issuer (including, but not limited to, serving as an underwriter, lender, market maker, asset manager, or providing research coverage).

NASD notes that, under the SEC's proxy rules, which apply to issuers, certain disclosures about potential conflicts of interest are provided to public shareholders. NASD believes that complementary rules for disclosure aimed at broker-dealers rendering fairness opinions would be beneficial. In addition, NASD believes that broker-dealers should develop greater specificity in their written supervisory procedures to guard against conflicts of interest in rendering fairness opinions. To that end, NASD is proposing to identify specific procedures that must be addressed by each firm that renders a fairness opinion.

Paragraph (a)(1) of the proposed rule change sets forth the requirement for a member to disclose in any fairness opinion that may be provided, or described, or otherwise referenced to public shareholders, whether it has acted as a financial advisor to any transaction that is the subject of the fairness opinion, and, if applicable, that it will receive compensation for: (A) Rendering the fairness opinion that is contingent upon the successful completion of the transaction, or (B) serving as an advisor that is contingent upon the successful completion of the transaction. Paragraph (a)(2) would require disclosure of whether such member will receive any other payment or compensation contingent upon the successful completion of the transaction. Paragraph (a)(3) would require disclosure of whether there is any material relationship that existed during the past two years or is mutually understood to be contemplated, in which any compensation was received or is intended to be received as a result of the relationship between the member and the companies that are involved in the transaction that is the subject of the fairness opinion.

NASD intends that the disclosures contemplated by paragraphs (a)(1)–(3) of the proposal be descriptive rather than quantitative. In particular, paragraphs (a)(1) and (2) do not require firms to specify the amount of compensation for rendering the fairness opinion, serving as an advisor or otherwise, that is contingent upon the successful completion of the transaction. For purposes of the proposed rule change, NASD believes that it would be sufficient for investors to be informed that such contingent compensation relationships exist. Similarly, NASD intends that the disclosures in paragraph (a)(3) pertaining to "material relationships" also be descriptive rather than quantitative.

Paragraph (a)(4) would require disclosure of the categories of information that formed a substantial basis for the fairness opinion that was supplied to the member by the company requesting the opinion concerning the companies involved in the transaction and whether any such information has been independently verified by the member. According to NASD, such disclosure must inform investors about the categories of information (such as projected earnings and revenues, expected cost-savings and synergies, industry trends and growth rate) that formed a substantial basis for the fairness opinion, and with respect to each category, whether the member has independently verified the information supplied by the company.

Finally, paragraph (a)(5) would require disclosure of whether the fairness opinion was approved or issued by a fairness committee and informs investors of whether the fairness opinion was the product of a fairness committee.

Paragraph (b)(1) of the proposed rule change contains the procedures members must follow in issuing a fairness opinion, including the types of transactions and the circumstances in which the member will use a fairness committee to approve or issue a fairness opinion, and, in such transactions where it uses a fairness committee: (A) The process for selecting personnel to be on the fairness committee; (B) the necessary qualifications of persons serving on the fairness committee; and (C) the process to promote a balanced review by the fairness committee, including review and approval by persons who do not serve on or advise the "deal team" to the transaction.

The procedures in paragraph (b)(2) would require members to have a process to determine whether the valuation analyses used in the fairness opinion are appropriate. In addition, the member's procedures should state the extent to which the appropriateness of the use of such valuation analyses is determined by the type of company or transaction that is the subject of the fairness opinion. Finally, paragraph (b)(3) would require members to have a process to evaluate whether the amount and nature of the compensation from the transaction underlying the fairness opinion benefits any individual officers, directors or employees, or class of such persons, relative to the benefits to shareholders of the company, is a factor in reaching a fairness determination.

NASD intends to announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the *Notice to Members* announcing Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that investors and the public interest will benefit from additional disclosure of potential conflicts of interest in connection with fairness opinions rendered by broker-

[6] *Smith* v. *Van Gorkom*, 488 A.2d 858 (Del. 1985).

dealers. NASD also believes that members should develop and adhere to more detailed procedures to mitigate potential conflicts in rendering fairness opinions.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in NASD *Notice to Members* 04–83 (November 2004). Twenty comment letters were received in response to the *Notice*.[7] Of the twenty comment letters received, twelve were in favor of the proposed rule change, seven were opposed, and one expressed no opinion.

In *Notice to Members* 04–83, NASD solicited comment on whether to propose a new rule that would require disclosures and procedures in connection with conflicts of interest when members provide fairness opinions in corporate control transactions. Although *Notice to Members* 04–83 did not contain specific rule text, it proposed the following:

1. Any fairness opinion rendered by a member and contained in a proxy statement shall describe a clear and complete description of the material conflicts of interests in issuing the opinion, including the nature of any contingent compensation that the member would receive upon successful completion of the transaction.

2. The member would be required to disclose in the fairness opinion the extent upon which it either relied on the information supplied by the company or independently verified such information.

3. The member would need to maintain written policies and procedures that, with respect to the issuance of fairness opinions, address:

- the approval process by the member; if the member uses a fairness committee, then the level of experience for committee members, how balanced approval is undertaken and whether steps have been taken to require review by persons whose compensation is not directly related to the transaction;
- the manner by which it will be determined that the appropriate valuation process will be used in light of the nature of the transaction and the types of companies that are involved; and
- whether, in a particular transaction, the relative compensation to company insiders versus shareholders is a factor in reaching a fairness determination.

One of the central elements of *Notice to Members* 04–83 was that any fairness opinion rendered by a member and contained in a proxy statement describe a clear and complete description of the significant potential conflicts of interests in issuing the opinion, including the nature of any contingent compensation that the member would receive upon successful completion of the transaction.

A. What Constitutes a Conflict of Interest?

Many commenters recognized the need for disclosure of potential conflicts of interest, although several commenters took issue with the term "conflict of interest" and instead preferred the term "material relationships" as used in SEC's Regulation M–A. *Notice to Members* 04–83 focused on potential conflicts arising from serving as advisor to the transaction, such as receiving a contingency fee for a completed transaction. Many commenters believed that a success fee, either for the fairness opinion or the transaction in question, should be disclosed. One commenter noted that potential conflicts of interest may arise under many other circumstances, including serving as an underwriter, lender, market maker, asset manager, or providing research coverage.

Several commenters noted that existing rules of the SEC and common law currently require extensive disclosure in connection with fairness opinions and urged NASD to make sure its rules were consistent with these existing requirements. There was some support for a rule that "complements" existing disclosure requirements. NASD believes that the proposed rule change is consistent with existing SEC requirements. In the proposed rule change, NASD would require disclosure of "whether there is any material relationship that existed during the past two years or is mutually understood to be contemplated in which any compensation was received or is intended to be received as a result of the relationship between the member and the companies that are involved in the transaction that is the subject of the fairness opinion." This disclosure is based on the requirements in Item 1015(b)(4) of SEC's Regulation M–A.[8] NASD has not sought to require firms to identify "any significant conflicts of interest" as originally proposed in *Notice to Members* 04–83.

While the rule text of paragraph (a)(3) of the proposed rule change was modeled after Item 1015(b)(4), NASD does not intend to construe this section to require quantitative disclosures of the compensation from each material relationship. For purposes of the proposed rule change, NASD believes it will be sufficient for investors to be informed about the material relationships that exist.

NASD also notes that the proposed rule change differs slightly from Item 1015(b)(4) in that the proposed rule change applies to a material relationship between "the member and the companies" involved in the transaction, whereas Item 1015(b)(4) applies only to the member (and its affiliates) and the company (and its affiliates) for which the member is rendering the fairness opinion. NASD believes that investors should be informed of material relationships between the firm authoring the fairness opinion and the companies involved on both sides of the transaction. Moreover, given the narrative (i.e., non-quantitative) focus of this paragraph, NASD believes the additional disclosures are not likely to be burdensome on firms or confusing to investors. NASD notes, however, that unlike Item 1015, Rule 2290 does not reach to affiliates of such companies. NASD intends to review the comment letters received by the SEC before determining whether to amend paragraph (a)(3) to include affiliates.

[7] Letter from Lerner College of Business and Economics, University of Delaware dated Nov. 24, 2004; Letter from Ohio Public Employees Retirement System dated Nov. 30, 2004; Letter from Ohio Retirement Systems dated Dec. 9, 2004; Letter from Charles M. Elson, Arthur H. Rosenbloom, and Drew G.L. Chapman dated Dec. 21, 2004; Letter from The Canadian Institute of Chartered Business Valuators dated Jan. 6, 2005; Letter from American Federation of Labor and Congress of Industrial Organizations ("AFL–CIO") dated Jan. 10, 2005; Letter from Kane & Company, Inc. ("Kane") dated Jan. 10, 2005; Letter from Standard & Poor's Corporate Value Consulting ("S&P") dated Jan. 10, 2005; Letter from Council of Institutional Investors dated Jan. 12, 2005; Letter from The Committee on Securities Regulation of the Business Law Section of the New York State Bar Association dated Jan. 26, 2005; Letter from Cravath, Swaine & Moore LLP dated Jan. 31, 2005; Letter from HFBE Capital, L.P. dated Jan. 31, 2005; Letter from Signal Hill Capital Group LLC dated Jan. 31, 2005; Letter from Sutter Securities Incorporated dated Jan. 31, 2005; Letter from California Public Employees' Retirement System ("CalPERS") dated Feb. 1, 2005; Letter from Davis Polk & Wardwell ("David Polk") dated Feb. 1, 2005; Letter from Dewey Ballantine LLP dated Feb. 1, 2005; Letter from Houlihan Lokey Howard & Zukin ("Houlihan Lokey") dated Feb. 1, 2005; Letter from Securities Industry Association dated Feb. 1, 2005; and Letter from The Special Committee on Mergers, Acquisitions and Corporate Control Contests of the Association of the Bar of the City of New York dated Feb. 1, 2005.

[8] 17 CFR 229.1015(b)(4).

Several commenters asked NASD to "take stronger measures" to address conflicts in connection with fairness opinions, including requiring "independent" fairness opinions rendered by outside experts that are not connected to the transaction. One commenter recommended prohibiting investment banks from receiving success fees for transactions in which they issue fairness opinions. And another commenter urged an outright ban on arrangements in which part of an investment bank's fee for rendering a fairness opinion is contingent on the transaction closing.

NASD has considered carefully those comments urging stronger measures such as an independent fairness opinion or a prohibition on success fees. As a starting point to its analysis, NASD notes that fairness opinions are not required by regulation or statute; a board of directors determines whether to obtain a fairness opinion, and if so, what the scope of a fairness opinion shall be and who shall prepare such opinion. In addition, NASD believes that, to the extent that a board of directors wants a fairness opinion from a firm not serving as an advisor to the transaction, or to structure payments without a contingency fee, it can do so.

NASD notes that arguments that independent fairness opinions or those without a success fee component offer advantages may be well-founded. However, it is NASD's view that such matters are more appropriately situated within the purview of the board of directors and state corporation law. NASD believes that disclosure and procedures constitute the appropriate course in mitigating potential conflicts of interest in the rendering of fairness opinions, not otherwise limited under applicable law, by NASD members.

Moreover, NASD believes that the lack of consensus among those commenters urging NASD to take stronger measures supports the more uniform course of disclosure and procedures. Whereas CalPERS asked NASD to prohibit "investment banks from receiving 'success' fees for transactions in which they issue fairness opinions,"[9] the AFL-CIO sought only to prohibit "arrangements in which part of an investment bank's fee for rendering *its opinion* is contingent on the transaction closing."[10] Some commenters, such as Kane, want to forbid firms with a certain threshold amount of securities business with a company from rendering a fairness opinion, whereas AFL-CIO "do[es] not believe the mere existence of a business relationship with a company should disqualify an investment bank from providing a fairness opinion."[11]

As NASD noted above, fairness opinions are obtained by boards of directors to satisfy their fiduciary duties to act with due care and in an informed manner. NASD further notes that a fairness opinion is not an automatic defense to a claim that a board breached its fiduciary duties. Courts regularly examine the circumstances surrounding a fairness opinion to determine whether it can be relied upon by the board in satisfaction of its fiduciary duties. Thus, NASD notes that boards of directors must today take into account whether an issuer's relationship with an investment bank compromises the purposes for which the fairness opinion is sought. NASD believes that the disclosure standards in these proposed rules would be an important aid to an issuer's board in making that determination.

B. To Whom Should Disclosure be Made?

Some commenters believe that the proposed rule change should only require disclosure of potential conflicts by the member to the board of directors, citing concerns about breach of confidentiality if relationships between the member firm authoring the fairness opinion and its issuer client were publicly disclosed. Others believe that disclosure should be made more broadly, including in the fairness opinion itself, so that any reader of the fairness opinion can assess the conflicts associated with such opinion. NASD believes that, in general, a board of directors already is in a position to become informed about the potential conflicts with an investment bank that it chooses to render a fairness opinion. NASD notes, however, that investor-shareholders typically do not occupy the same such position. As stated in *Notice to Members* 04–83, NASD's concern is that investors may not be sufficiently informed "about the subjective nature of some opinions and their potential biases." Accordingly, the proposed rule change requires disclosures by any member issuing a fairness opinion that may be provided, or described, or otherwise referenced to public shareholders. The requirements attach to any such fairness opinion issued by a member, regardless of whether it is included in proxy materials.

C. Verification

As NASD noted above, the proposal in *Notice to Members* 04–83 would require a firm to disclose in a fairness opinion the extent upon which it either relied on the information supplied by the company or independently verified such information. Nearly every party commenting on this provision stated that firms as a matter of course already disclose in the fairness opinion that they do *not* independently verify information provided by the issuer. While most commenters did not believe that there was any need for an NASD rule given current practices, the commenters did not oppose NASD rulemaking so long as it did not create a requirement for firms to verify information before rendering a fairness opinion. Many commenters stated that the terms of engagement for rendering a fairness opinion do not call for independent verification of information provided by management, and that other entities, such as forensic accountants, would be better skilled to verify data. S&P suggested that fairness opinions include disclosure of the information provided by management upon which the opinion is based, and could take the form of a "List of Documents Relied Upon," similar to that which accompanies an expert's report in commercial litigation.[12]

The proposed rule change would not require a member to independently verify data provided by the issuer. NASD agrees with commenters that the scope of a firm's obligations in rendering a fairness opinion is set forth in the terms of engagement with the client, and it is not required that such terms call for independent verification. NASD believes, however, that, to the extent categories of information (such as projected earnings and revenues, expected cost-savings and synergies, industry trends and growth rate) that were supplied by the company requesting the opinion formed a substantial basis for the fairness opinion, and information in each such category was not independently verified, readers of the fairness opinion should be apprised of this fact. Accordingly, the proposed rule change requires members to identify categories of information that formed a substantial basis for the fairness opinion and with respect to such information, whether any such information in each such category has been independently verified by the member. NASD notes that the proposed rule change goes beyond current practices in which firms

[9] CalPERS, at 2.

[10] AFL–CIO, at 3.

[11] *Id.*, at 1.

[12] S&P, at 2–3.

state, for example, "[w]e have not independently verified the accuracy and completeness of the information supplied to us with respect to the [client] and do not assume any responsibility with respect to it." [13] According to NASD, blanket statements that members have not verified information will not by themselves comply with the proposed rule change; members must identify information that formed a substantial basis for the fairness opinions and disclose whether such information was independently verified.

D. Written Policies and Procedures

1. Fairness Opinion Committee

NASD solicited comment on whether to require written procedures governing the approval process by the member, including whether it uses a fairness committee, the level of experience for fairness committee members, how balanced approval is undertaken and whether steps have been taken to require review by persons whose compensation is not directly related to the transaction. Most commenters believed that firms already had procedures in place governing fairness opinions. Notwithstanding this fact, several commenters supported a well-tailored rule in this area. Commenters believed that NASD rulemaking should, however, provide the flexibility to allow each firm to determine the best manner of implementing effective and efficient procedures for reviewing and approving fairness opinions. Several commenters opposed any rule in which NASD would mandate specific procedures that must be followed. These commenters believed that the firms themselves—and not NASD—should determine what policies and procedures should be followed in rendering a fairness opinion.

NASD believes that the proposed rule change is both well-tailored and flexible enough to allow firms to determine how to best implement effective and efficient procedures for reviewing and approving fairness opinions. The specific requirements were discussed in Item II.A.1 above.

2. Valuation

NASD also solicited comment on whether to require written policies and procedures on the manner by which it will be determined that the appropriate valuation process will be used in light of the nature of the transaction and the types of companies that are involved. The commenters generally were concerned about any NASD rule that would interfere with the selection of the best methodology for a transaction.

NASD does not believe the requirement in the proposed rule change to have written polices and procedures concerning the process to determine whether the valuation analyses used in the fairness opinion are appropriate, nor the requirement that procedures should state the extent to which the appropriateness of the use of such valuation analyses is determined by the type of company or transaction that is the subject of the fairness opinion, will interfere with a firm's ability to select the most appropriate methodology for a transaction. NASD believes that the procedures developed by the firm should be designed to allow the firm to identify and use the correct valuation methodology. In addition, NASD believes that the procedures should prevent the use of a particular valuation methodology at the behest of an interested party when such methodology is inappropriate.

3. Relative Compensation

Finally, NASD solicited comment on a requirement for broker-dealers to have a process to evaluate whether the relative compensation to corporate insiders versus other shareholders in a contemplated transaction is a factor in reaching a fairness opinion.

On the one hand, certain commenters felt the proposal did not go far enough. There was a view that change of control provisions that are a part of any transaction should be disclosed to shareholders as a material factor to be considered as part of the proxy process because often times such payments may be ambiguous or may not be expressly set out in the deal terms of a transaction.

With respect to these commenters, NASD believes the purpose of the proposed requirement in this area is misunderstood. According to NASD, the proposed rulemaking, as it pertains to dealing with the factor of relative compensation in the fairness opinion process, is driven by the regulatory goal of ameliorating this potential conflict through procedures reasonably designed to consider whether in fact such conflict exists and to what extent it may bear on the determination that a transaction is fair. NASD states that it is not intended to fashion additional substantive legal requirements more appropriately addressed, in NASD's view, by state corporation law and the federal law and rules concerning proxies. It is NASD's view that subjecting this potential conflict to the rigor of appropriately and reasonably designed procedures is an appropriate prophylactic with respect to a factor that may or may not weigh on the determination that a transaction is fair.

On the other hand, other commenters felt that management's interests in change of control transactions were not an applicable part of the fairness opinion process because the appropriateness of management compensation was beyond the scope of the fairness opinions, was difficult or impossible to quantify, in many cases rested upon arrangements that preceded the transaction, and required an expertise in executive compensation that is beyond the competency of those issuing fairness opinions.

Again, NASD believes that these comments evidence a misunderstanding of the proposed requirement. NASD does not believe that broker-dealers issuing fairness opinions should review the propriety of preexisting compensation arrangements as such matters would be like any other preexisting fixed or contingent liability of the corporation that cannot be altered by the terms of any change of control transaction. According to the NASD, the intent of the proposed requirement is that firms consider the extent to which the differential in remuneration between management and other shareholders accruing from the deal proceeds, for which there was no prior contractual commitment, is a factor in determining the fairness of the transaction to shareholders. NASD notes that the proposed requirement does not reach the implicit conclusion that such differential payments are a factor as to whether a transaction is fair but, in NASD's view, it would be equally wrong to conclude that such differential payments are inappropriately placed among the factors and indicia that one should consider in rendering a fairness opinion. NASD believes it is true that a fairness opinion merely states that the transaction is fair and does not necessarily represent the best price. However, NASD also believes it is true that the considerations surrounding the issuance of a fairness opinion are artificially truncated when the total amount that a buyer is willing to pay and how such payment is allocated is never an appropriate factor in a change of control transaction.

E. Other

S&P suggested greater transparency in fairness opinion pricing. Insofar as the price of many fairness opinions is bundled with other advisory services, S&P believed that corporate boards of directors are often less willing to procure an independent fairness opinion. S&P believed that full

[13] Houlihan Lokey, at 4.

disclosure of the fairness opinion fee, and in some instances, an actual indication of the financial advisor's effort, could be meaningful disclosure.[14] NASD does not believe it should mandate disclosure of the price or effort expended in preparing the fairness opinion. With respect to price, it is NASD's view that if a board of directors believes it would benefit from more detailed information about prices, it is in a position to obtain that information from the firm as a condition of engaging the firm to perform advisory and fairness opinion services. With respect to effort, this seems to NASD a potentially misleading metric upon which any reliance would be placed. NASD believes that efforts, great or small, expended upon poorly conceived procedures are of dubious value. Consequently, NASD believes that the appropriate regulatory response is to require members to employ processes framed by appropriately and reasonably designed procedures.

Davis Polk was concerned that NASD rules concerning fairness opinions would discriminate against member firms, since fairness opinions can be provided by non-broker-dealers.[15] NASD recognizes that firms not subject to NASD's jurisdiction are able to render fairness opinions; however, NASD believes that this is not a justification for failing to address actual or perceived conflicts of interest in the brokerage industry or inadequacies in disclosure by such firms.

Finally, several commenters suggested that existing judicial precedent and oversight are more effective controls over the fairness opinion process than would be a new NASD rule, and one commenter suggested that NASD rulemaking may interfere with standards for fairness opinions under corporate law. NASD recognizes and appreciates the role of corporate law on the fairness opinion process. As NASD has noted above, a fairness opinion must comply with corporate law to serve its intended purpose—to satisfy their fiduciary duties to act with due care and in an informed manner. While NASD understands its rules operate in conjunction with judicial precedent, it does not believe that judicial review should exclude NASD rulemaking. NASD notes that many aspects of the securities laws are subject to extensive judicial review, but that would be an illogical and novel barrier to SEC and SRO rulemaking.

[14] S&P, at 2.

[15] Davis Polk, at 3–4.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

The Commission notes that the NASD's proposal would not require firms to quantify in the fairness opinion the amount of compensation received that is contingent upon the successful completion of the transaction or to be received as a result of any material relationship between the member firm and any party to the transaction. The Commission requests comment regarding whether the disclosures that would be required by proposed Rule 2290(a)(1), (2), and (3) should be quantified. Further, we request comment as to whether it would be more informative to investors for firms to specifically state that a conflict may exist and describe the impact of such conflict rather than to merely state that compensation is contingent.

The Commission further notes that the proposed disclosure of material relationships does not extend to relationships with affiliates of the member firm. The Commission requests comment regarding whether the proposed disclosure obligation should cover material relationships between the parties to the transaction and affiliates of the member firm providing the fairness opinion.

In addition, the Commission requests comment as to whether member firms should be required to describe what type of verification they undertook with respect to information that was supplied by the company requesting the opinion that formed a substantial basis for the opinion. Further, the Commission requests comment on whether members should be required to obtain independent verification of such information.

We also note that the proposed rule does not require disclosure of the procedures utilized by the member firm. We request comment as to whether member firms should disclose these procedures in the fairness opinion or elsewhere.

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–080 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2005–080. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–NASD–2005–080 and should be submitted on or before May 2, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E6–5237 Filed 4–10–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53599; File No. SR–NYSE–2005–18]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto To Amend NYSE Rule 619 To Clarify That Failure To Appear or Produce Documents in Arbitration May Be Deemed Conduct Inconsistent With Just and Equitable Principles of Trade

April 4, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 17, 2005, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On July 27, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On February 15, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would add a new paragraph (h) to NYSE Rule 619 to clarify that the failure of a member, member organization, allied member, approved person, registered or non-registered employee of a member or member organization or person otherwise subject to the jurisdiction of the Exchange (each, a "responsible party") to appear or to produce any document in their possession or control, as directed pursuant to provisions of the NYSE Arbitration Rules, may be deemed conduct or proceeding inconsistent with just and equitable principles of trade for purposes of NYSE Rule 476(a)(6).

Below is the text of the proposed rule change. Proposed new language is in *italics*.

* * * * *

General Provision Governing Subpoenas, Production of Documents, etc.

Rule 619. (a) through (g) No Change.

(h) It may be deemed conduct or proceeding inconsistent with just and equitable principles of trade for purposes of Rule 476(a)(6) for a member, member organization, allied member, approved person, registered or non-registered employee of a member or member organization or person otherwise subject to the jurisdiction of the Exchange to fail to appear or to produce any document in their possession or control as directed pursuant to provisions of the NYSE Arbitration Rules.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would add a new paragraph (h) to NYSE Rule 619 ("General Provision Governing Subpoenas, Production of Documents, etc.") to clarify that the failure of a responsible party to appear or to produce any document in its possession or control, as directed pursuant to provisions of the NYSE Arbitration Rules, may be deemed conduct or proceeding inconsistent with just and equitable principles of trade for purposes of NYSE Rule 476(a)(6).

Background

NYSE Rule 619 provides that the parties to an arbitration proceeding shall cooperate to the fullest extent practicable in the voluntary exchange of documents and information in order to expedite the arbitration process. Rule 619 also sets forth specific procedures and timetables with respect to the exchange of documents and information.[5]

Arbitrators may, in the decision rendered by the panel, refer to the NYSE Enforcement Division a failure to cooperate in the voluntary exchange of documents and information by a responsible party.

Proposal

The Exchange is aware of allegations that member organizations have not fulfilled their discovery obligations as prescribed by NYSE Arbitration Rules. In order to address such situations more effectively, and to reinforce adequately the quasi-judicial functions of the arbitration process, the NYSE is proposing to amend Rule 619 to make clear that it may be deemed conduct or proceeding inconsistent with just and equitable principles of trade for purposes of NYSE Rule 476(a)(6) for a responsible party to fail to appear or fail to produce any document in their possession or control as directed pursuant to provisions of the NYSE Arbitration Rules.

NYSE Rule 476 allows disciplinary sanctions to be imposed upon a responsible party who is adjudged guilty of certain enumerated offenses, including "conduct or proceeding inconsistent with just and equitable principles of trade." By explicitly providing that the failure to appear or to produce documents in one's possession or control may be deemed conduct or proceeding inconsistent with just and equitable principles of trade, the proposed amendment would provide the Exchange with a clear mechanism to pursue disciplinary action pursuant to NYSE Rule 476 in response to such conduct.

---

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, which replaced the original filing, the Exchange clarified that Rule 619 also applies to a "person otherwise subject to the jurisdiction of the Exchange."

[4] Amendment No. 2, which replaced the first amended rule filing, conformed the proposed rule to reflect the list of persons subject to disciplinary action under NYSE Rule 476.

[5] For example, Rule 619(b) requires, in part, that:

"(1) Any party may serve a written request for information or documents ("information request") upon another party twenty (20) business days or more after service of the Statement of Claim by the Director of Arbitration or upon filing of the Answer, whichever is earlier. The requesting party shall serve the information request on all parties. The parties shall endeavor to resolve disputes regarding an information request prior to serving any objection to the request. Such efforts shall be set forth in the objection.

(2) Unless a greater time is allowed by the requesting party, information requests shall be satisfied or objected to within thirty (30) calendar days from the date of service. Any objection to an information request shall be served by the objecting party on all parties.

(3) Any reponse to objections to an information request shall be served on all parties within ten (10) calendar days of receipt to the objection."

The specific authority to bring a disciplinary action under NYSE Rule 476(a)(6) should improve the efficacy of the arbitration process by facilitating the Exchange's ability to ensure more fully and forcefully the cooperation of a responsible party who is a party to an arbitration proceeding.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. NYSE believes that the proposed amendments to Rule 619 are consistent with Section 6(b)(5) in that they should help to ensure that the public has a fair and expeditious forum for the resolution of disputes. The NYSE believes that a further statutory basis for this proposed rule change is also found in Section 6(b)(6) of the Act,[7] which requires that the rules of an exchange provide that members and persons associated with its members shall be appropriately disciplined for violation of the provisions of the Act, the rules or regulations thereunder, or the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. The Exchange believes that the proposed amendments to Rule 619 are consistent with Section 6(b)(6) in that they would facilitate appropriate disciplinary action for violation of a rule of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2005–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2005–18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR–NYSE–2005–18 and should be submitted on or before May 2, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Nancy M. Morris,

Secretary.

[FR Doc. E6–5244 Filed 4–10–06; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before June 12, 2006.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Carol Fendler, Director, Office of Licensing and Program Standards, Small Business Administration, 409 3rd Street SW., Suite 8300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Carol Fendler, Director, Office of Licensing and Program Standards 202–205–7559 *carol.fendler@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION:

Title: "Request for Information Concerning Portfolio Financing".

Description of Respondents: SBIC Investment Companies.

Form No: 857.

Annual Responses: 2,160.

Annual Burden: 2,160.

SUPPLEMENTARY INFORMATION:

Title: "Financing Institution Confirmation Form".

Description of Respondents: SBIC Investment Companies.

Form No: 860.

Annual Responses: 1,500.

Annual Burden: 750.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Radwan Saade, Economist, Office of Advocacy, Small Business Administration, 409 3rd Street SW., Suite 7800, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Radwan Saade, Economist, Office of Advocacy 202–205–6878 *radwan.saade@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov* .

SUPPLEMENTARY INFORMATION:

Title: "Costs of Litigation to Small Business; Executive Interview Questionnaire".

Description of Respondents: Small Businesses.

Form No: N/A.

Annual Responses: 100.

Annual Burden: 50.

SUPPLEMENTARY INFORMATION: *Title:* Small Business Questionnaire (Use of Telecommunication)".

Description of Respondents: Small Businesses.

Form No: N/A.

Annual Responses: 750.

Annual Burden: 63.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Cynthia Pitts, Administrative Officer, Office of Disaster, Small Business Administration, 409 3rd Street SW., Suite 6050, Wash., DC 20416.

FOR FURTHER INFORMATION CONTACT: Cynthia Pitts, Administrative Officer, Office of Disaster 202–205–7570 *cynthia.pitts@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov* .

SUPPLEMENTARY INFORMATION:

Title: "Disaster Home Loan Application".

Description of Respondents: Applicants Requesting SBA Disaster Home Loan.

Form No's: 5C, 739.

Annual Responses: 47,962.

Annual Burden: 71,943.

SUPPLEMENTARY INFORMATION:

Title: "Disaster Home/Business Loan Inquiry Record."

Description of Respondents: Disaster Victims.

Form No: 700.

Annual Responses: 42,196.

Annual Burden: 10,549.

SUPPLEMENTARY INFORMATION:

Title: "Pre-Disaster Mitigation Small Business Loan Application".

Description of Respondents: Business Application for the Pre-Disaster mitigation loan program.

Form No: 5M.

Annual Responses: 2,500.

Annual Burden: 5,000.

SUPPLEMENTARY INFORMATION:

Title: "Borrowers Progress Certification".

Description of Respondents: Disaster Loan Borrowers.

Form No: 1366.

Annual Responses: 24,156.

Annual Burden: 12,078.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Sandra Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW., Suite 8300, Wash., DC 20416.

FOR FURTHER INFORMATION CONTACT: Sandra Johnston, Office of Financial Assistance, 202–205–7528 *sandra.johnston@sba.gov;* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION:

Title: "Report to SBA; Provisions of 13 CFR 120.472".

Description of Respondents: Small Business Lending Companies.

Form No: N/A.

Annual Responses: 14.

Annual Burden: 1,120.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Linda Roberts, Director, Office of Security Operations, Small Business Administration, 409 3rd Street, SW., Suite 5000, Wash., DC 20416.

FOR FURTHER INFORMATION CONTACT: Linda Roberts, Office of Security Operations, 202–205–6623 *linda.roberts@sba.gov;* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION:

Title: "Statement of Personal History".

Description of Respondents: Applicants for Assistance or Temporary Employment in Disaster.

Form No: 912.

Annual Responses: 55,000.

Annual Burden: 13,750.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Rachel Newman Karton, Program Analyst, Office of Small Business Development Centers, Small Business Administration, 409 3rd Street, SW., Suite 6400, Wash., DC 20416.

FOR FURTHER INFORMATION CONTACT: Rachel Newman Karton, Office of Small Business Development Centers, 202–619–1816 *rachel.newman@sba.gov;* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov* .

SUPPLEMENTARY INFORMATION:

Title: "SBA Counseling Evaluation."

Description of Respondents: Small Business Clients.

Form No: 1419.

Annual Responses: 15,000.

Annual Burden: 3,000.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Ann Bradbury, Financial Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW., Suite 8300, Wash., DC 20416.

FOR FURTHER INFORMATION CONTACT: Ann Bradbury, Office of Financial Assistance, 202–7507 *ann.bradbury@sba.gov;* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION:

Title: "Entrepreneurial Development Management Information System (EDMIS) Counseling Information Form & Management Training Report".

Description of Respondents: New established and prospective Small Business Owners using the services and programs by the Business Information Center Program.

Form No's: 641, 888.

Annual Responses: 1.

Annual Burden: 67,500.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E6–5248 Filed 4–10–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10316 and #10317]

Oklahoma Disaster Number OK–00002

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1623–DR), dated 01/10/2006.

Incident: Severe Wildfire Threat.

Incident Period: 11/27/2005 and continuing through 03/31/2006.

Effective Date: 03/31/2006.

Physical Loan Application Deadline Date: 04/10/2006.

EIDL Loan Application Deadline Date: 10/10/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing And Disbursement Center, 14925 Kingsport Road Fort, Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Oklahoma, dated 01/10/2006, is hereby amended to establish the incident period for this disaster as beginning 11/27/2005 and continuing through 03/31/2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E6–5235 Filed 4–10–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10322 and # 10323]

Texas Disaster NO. TX–00097

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–1624–DR), dated 01/11/2006.

Incident: Extreme Wildfire Threat.

Incident Period: 12/01/2005 and continuing.

Effective Date: 04/03/2006.

Physical Loan Application Deadline Date: 04/12/2006.

EIDL Loan Application Deadline Date: 10/11/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Texas, dated 01/11/2006 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: Caldwell, Gray, Guadalupe, Hutchinson, Roberts, Wheeler.

Contiguous Counties:

Texas: Armstrong, Bexar, Carson, Collingsworth, Comal, Donley, Gonzales, Hansford, Hays, Hemphill, Lipscomb, Moore, Ochiltree, Sherman, Wilson.

Oklahoma: Beckham, Roger Mills.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E6–5231 Filed 4–10–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

The U.S. Small Business Administration, National Small Business Development Center Advisory Board will be hosting a public meeting via conference call on Tuesday, April 18, 2006 at 1 p.m. eastern standard time. The purpose of the meeting is to address ongoing issues of interest in the Small Business Development Center program; to plan for future projects; and to discuss the location for the summer meeting.

Anyone wishing to make an oral presentation to the Board must contact Erika Fischer, Senior Program Analyst, U.S. Small Business Administration, Office of Small Business Development Centers, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 205–7045 or fax (202) 481–0681.

Matt Pohl,

Special Assistant, Intergovernmental Affairs.

[FR Doc. E6–5238 Filed 4–10–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region VIII Regulatory Fairness Board

The U.S. Small Business Administration (SBA) Region VIII Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Thursday, April 13, 2006, at 9 a.m. The meeting will take place at the Ramkota River Centre, Gallery B, 920 W. Sioux Avenue, Pierre, SD. 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 Jon Haverly, in writing or by fax, in order to be put on the agenda. Jon Haverly, District Counsel, SBA, South Dakota District Office, 2329 N. Career Avenue #105, Sioux Falls, SD 57107, phone (605) 330–4243, Ext. 42, fax (202) 481–2684, e-mail: *jon.haverly@sba.gov*.

For more information, see our Web site at *http://www.sba.gov/ombudsman*.

Matt Pohl,

Special Assistant, Intergovernmental Affairs.

[FR Doc. E6–5239 Filed 4–10–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5371]

30-Day Notice of Proposed Information Collection: DS–4096 and SV–2005–0011, Reconstruction and Stabilization Volunteer Application and Evaluation, OMB Control Number 1405–XXXX

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

Title of Information Collection: Reconstruction and Stabilization Volunteer Application and Evaluation.

OMB Control Number: 1405–XXXX.

Type of Request: New Collection.

Originating Office: Office of the Coordinator for Reconstruction & Stabilization S/CRS.

Form Number: DS–4096 and SV–2005–0011.

Respondents: Civilians & USG Employees who have past experience in

Reconstruction & Stabilization Activities and/or wish to volunteer for additional R & S deployments.

Estimated Number of Respondents: 2400 per year.

Estimated Number of Responses: 2400 per year.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 1200 Hours.

Frequency: On Occasion.

Obligation to Respond: Voluntary.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from April 11, 2006.

ADDRESSES: Direct comments and questions to Alex Hunt, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at (202) 395–7860. You may submit comments by any of the following methods:

- *E-mail: ahunt@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- Fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to James Stansell, U.S. Department of State, Suite 7100, 2121 Virginia Ave., NW., Washington, DC 20520 who may be reached on (202) 663–0850 Or StansellJW@state.gov.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

The information collected is in keeping with the Department's responsibility to coordinate U.S. Government planning, and institutionalize U.S. capacity, to help stabilize and reconstruct societies in transition from conflict or civil strife so they can reach a sustainable path toward peace, democracy and a market economy. The evaluation will be conducted in order to learn from the experiences of those who have been involved in reconstruction and stabilization activities. The application will be used to solicit volunteers who are willing to participate in future operations.

Methodology

Respondents can access both information collection instruments via the S/CRS Web site (*http://www.crs.state.gov*), and will fill them out and submit them electronically.

Dated: March 21, 2006.

Marcia K. Wong,

Principal Deputy Coordinator, Office of the Coordinator for Reconstruction & Stabilization, Department of State.

Dated: March 20, 2006.

Christopher Hoh,

Director of Response Strategy & Resource Management, Office of the Coordinator for Reconstruction & Stabilization, Department of State.

[FR Doc. E6–5285 Filed 4–10–06; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 5373]

Culturally Significant Objects Imported for Exhibition Determinations: "Americans in Paris, 1860–1900"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Americans in Paris, 1860–1900", imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Art, Boston, MA, from on or about June 25, 2006, until on or about September 24, 2006, the Metropolitan Museum of Art, New York, NY, from on or about October 17, 2006, until on or about January 28, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW. Room 700, Washington, DC 20547–0001.

Dated: April 3, 2006.

C. Miller Crouch,

Principal Deputy Assistant, Secretary for Educational and Cultural Affairs Department of State.

[FR Doc. E6–5283 Filed 4–10–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5272]

Culturally Significant Objects Imported for Exhibition Determinations: "Bellini, Giorgione, Titian, and the Renaissance of Venetian Painting"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Bellini, Giorgione, Titian, and the Renaissance of Venetian Painting," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, from on or about June 18, 2006, until on or about September 17, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul

Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8052). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: April 3, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs Department of State.

[FR Doc. E6–5284 Filed 4–10–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Jeffco Airport, Broomfield, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Jeffco Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

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

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Craig Sparks, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Kenneth E. Maenpa, Airport Manager, Jeffco Airport, 11755 Airport Way, Terminal Building, Broomfield, Colorado 81021.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia Nelson, Project Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Jeffco Airport under the provisions of the AIR 21.

On March 27, 2006, the FAA determined that the request to release property submitted by the Jeffco Airport met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than June 30, 2006.

The following is a brief overview of the request: The Jeffco Airport requests the release of 1.552 acres of non-aeronautical airport property to the Colorado Department of Transportation. The purpose of this release is to allow the Jeffco Airport to sell the subject land that is needed for a right-of-way for highway intersection improvements. The sale of this parcel will provide funds for airport improvements.

Any person may inspect the request by appointment at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, inspect the application, notice and other documents germane to the application in person at Jeffco Airport, 11755 Airport Way, Terminal Building, Broomfield, Colorado 81021.

Issued in Denver, Colorado, on March 27, 2006.

Craig Sparks,

Manager, Denver Airports District Office.

[FR Doc. 06–3421 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review, Request for Comments; Renewal of an Approved Information Collection Activity, Changes In Permissible Stage 2 Airplane Operations

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's (OMB) renewal of a current information collection. The Federal Register Notices with a 60-day comment period soliciting comments on the following collection of information was published on January 18, 2006, vol. 71, #11, page 2983. This information will be used to issue special flight authorizations for non-revenue operations of Stage 2 airplanes at U.S. airports. Only a minimal amount of data is requested to identify the affected parties and determine whether the purpose for the flight is one of those enumerated by law.

DATES: Please submit comments by May 11, 2006.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Changes in Permissible Stage 2 Airplane Operations.

Type of Request: Renewal of an approved collection.

OMB Control Number: 2120–0652.

Form(s): NA.

Affected Public: A total of 50 Respondents.

Frequency: The information is conducted on an as-needed basis.

Estimated Average Burden Per Response: Approximately 15 minutes per response.

Estimated Annual Burden Hours: An estimated 12.5 hours annually.

Abstract: This information will be used to issue special flight authorizations for non-revenue operations of Stage 2 airplanes at U.S. airports. Only a minimal amount of data is requested to identify the affected parties and determine whether the purpose for the flight is one of those enumerated by law.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

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 March 24, 2006.

Judith D. Street,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 06–3424 Filed 4–10–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 32720 (Sub–No. 1)]

Union Pacific Railroad Company—Trackage Rights Exemption—BNSF Railway Company

BNSF Railway Company (BNSF) has agreed to modify an existing overhead trackage rights agreement, under which Union Pacific Railroad Company (UP) operates over BNSF trackage between milepost 5.1 at Ft. Worth, TX, and milepost 417.5 at Dalhart, TX.

UP indicates that the transaction was to be consummated on March 29, 2006, the effective date of the exemption (7 days after the exemption was filed).

The purpose of the amended trackage rights agreement, under which UP will retain its existing rights, is to grant UP the right to set out and pick up traffic at milepost 114.1 at Wichita Falls, TX.

As a condition to this exemption, any employees affected by the amended trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32720 (Sub–No. 1), must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Gabriel S. Meyer, 1400 Douglas Street, STOP 1580, Omaha, NE 65179.

Board decisions and notices are available on our Web site at *www.stb.dot/gov.*

Decided: April 4, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A Williams,

Secretary.

[FR Doc. E6–5335 Filed 4–10–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–43 (Sub-No. 177X)]

Illinois Central Railroad Company-Abandonment Exemption—In Lawrence County, MS

Illinois Central Railroad Company (IC) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 4.1-mile line of railroad between milepost 53.0 near Silver Creek and milepost 57.1 near Ferguson, in Lawrence County, MS. The line traverses United States Postal Service Zip Code 39663.

IC has certified that: (1) No traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 11, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 21, 2006. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 1, 2006, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to IC's representative: Michael J. Barron, Jr., Fletcher & Sippel LLC, 29 North Wacker Dr., Suite 920, Chicago, IL 60606–2832.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

IC has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 14, 2006. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), IC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by IC's filing of a notice of consummation by April 11, 2007, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 3, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–5092 Filed 4–10–06; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,200, but is scheduled to increase to $1,300, effective April 19, 2006. *See Regulations Governing Fees for Services Rendered in Connection With Licensing and Related Services—2006 Update*, STB Ex Parte No. 542 (Sub-No. 13) (STB served Mar. 20, 2006). *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–43 (Sub-No. 178X)]

Illinois Central Railroad Company—Abandonment Exemption—in Madison County, MS

Illinois Central Railroad Company (IC)[1] has filed a notice of exemption under 49 CFR part 1152 subpart F-*Exempt Abandonments* to abandon its line of railroad that comes off IC's Grenada Sub at milepost 705.2 and traverses eastward approximately 12,300 feet to the end of the track in Canton, Madison County, MS. The line traverses United States Postal Service Zip Code 39046.

IC has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line to be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 11, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 21, 2006. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 1, 2006, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to IC's representative: Michael J. Barron, Jr., Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

IC has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 14, 2006. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), IC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by IC's filing of a notice of consummation by April 11, 2007, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: April 4, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–5333 Filed 4–10–06; 8:45 am]

BILLING CODE 4915–01–P

[1] IC is a wholly owned subsidiary of Canadian National Railway Company.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,200, but is scheduled to increase to $1,300, effective April 19, 2006. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services-2006 Update*, STB Ex Parte No. 542 (Sub-No. 13) (STB served Mar. 20, 2006). *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 5, 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 May 11, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1227.

Type of Review: Extension.

Title: FI–104–90 Final Tax Treatment of Salvage and Reinsurance.

Description: The regulation provides a disclosure requirement for an insurance company that increases losses shown on its annual statement by the amount of estimated salvage recoverable taken into account.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 5,000 hours.

OMB Number: 1545–1412.

Type of Review: Extension.

Title: FI–54–93 (Final) Clear Reflection of Income in the Case of Hedging Transactions.

Description: This information is required by the Internal Revenue Service to verify compliance with section 446 of the Internal Revenue Code. This information will be used to determine that the amount of tax has been computed correctly.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 22,000 hours.

OMB Number: 1545–1503.

Type of Review: Extension.

Title: Revenue Procedure 96–53, Section 482—Allocations Between Related Parties.

Description: The information requested in sections 4.02, 8.02, 9, 11.01, 11.02(1), 11.04, 11.07 and 11.08 is required to enable the Internal Revenue Service to give advice on filling Advance Pricing Agreement applications, to process such

applications and negotiate agreements, and to verify compliance with agreements and whether agreements require modification.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 8,200 hours.

OMB Number: 1545–1531.

Type of Review: Extension.

Title: Notice 97–19 and Notice 98–34 Guidance for Expatriates Under Sections 877, 2501, 2107, and 6039F.

Description: Notice 97–19 and Notice 98–34 provide guidance for individuals affected by amendments to Code sections 877, 2107, and 2501, as amended by the Health Insurance Portability and Accountability Act. These notices also provide guidance on Code section 6039F.

Respondents: Individuals or households.

Estimated Total Burden Hours: 6,525 hours.

OMB Number: 1545–1676.

Type of Review: Extension.

Title: REG–113572–99 (Final) Qualified Transportation Fringe Benefits.

Description: These regulations provide guidance to employers that provide qualified transportation fringe benefits under section 132(f), including guidance to employers that provide cash reimbursement for qualified transportation fringes and employers that offer qualified transportation fringes in lieu of compensation. Employers that provide cash reimbursement are required to keep records of documentation received from employees who receive reimbursement. Employers that offer qualified transportation fringes in lieu of compensation are required to keep records of employee compensation reduction elections.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, local or tribal government.

Estimated Total Burden Hours: 12,968,728 hours.

OMB Number: 1545–1804.

Type of Review: Extension.

Title: New Markets Credit.

Form: IRS-Form 8874.

Description: Investors use Form 8874 to request a credit for equity investments in Community development entities.

Respondents: Individuals or households, Business or other for-profit.

Estimated Total Burden Hours: 58,395 hours.

OMB Number: 1545–1822.

Type of Review: Extension.

Title: Revenue Procedure 2003–11, Offshore Voluntary Compliance Initiative.

Description: Revenue Procedure 2003–11 describes the Offshore Voluntary Compliance Initiative, which is directed at taxpayers that have under-reported their tax liability through financial arrangements outside the United States that rely on the use of credit, debit, or charge cards (offshore credit cards) or foreign banks, financial institutions, corporations, partnerships, trusts, or other entities (offshore financial arrangements). Taxpayers that participate in the initiative and provide the information and material that their participation requires can avoid certain penalties.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Estimated Total Burden Hours: 100,000 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–5228 Filed 4–10–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 5, 2006

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW Washington, DC 20220.

Dates:

Written comments should be received on or before May 11, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0064.

Type of Review: Extension.

Title: Application for Exemption from Social Security and Medicare Taxes and Waiver of Benefits.

Form: IRS Form 4029.

Description: Form 4029 is used by members of recognized religious groups to apply for exemption from social security and Medicare taxes under IRC sections 1402(g) and 3127. The information is used to approve or deny exemption from social security and Medicare taxes.

Respondents: Individuals or households.

Estimated Total Burden Hours: 3,154 hours.

OMB Number: 1545–0817.

Type of Review: Extension.

Title: EE–28–78 (Final) Inspection of Applications for Tax Exemption and Applications for Determination Letters for Pension and Other Plans

Description: Internal Revenue Code section 6104 requires applications for tax exempt status, annual reports of private foundations, and certain portions of returns to be open for public inspection. Some information may be withheld from disclosure. IRS needs the information to comply with requests for public inspection of the above-named documents.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Estimated Total Burden Hours: 8,538 hours.

OMB Number: 1545–1254.

Type of Review: Extension.

Title: Conclusive Presumption of Worthlessness of Debts Held by Banks (FI–34–91) (Final).

Description: Paragraph (d)(3) of section 1.166–2 of the regulations allows banks and thrifts to elect to conform their tax accounting for bad debts with their regulatory accounting. An election, or revocation thereof, is a change in method of accounting. The collection of information required in section I.166–2(d)(3) is necessary to monitor the elections.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 50 hours.

OMB Number: 1545–1809.

Type of Review: Extension.

Title: Credit for Employer—Provided Child Care Facilities and Services.

Form: IRS Form 8882.

Description: Qualified employers use Form 8882 to request a credit for employer-provided child care facilities and services. Section 45F provides credit based on costs incurred by an employer in providing childcare

facilities and resource and referral services. The credit is 25% of the qualified childcare expenditures plus 10% of the qualified childcare resource and referral expenditures for the tax year, up to a maximum credit of $150,000 per tax year.

Respondents: Individuals or households; Business or other for-profit.

Estimated Total Burden Hours: 5,486,662 hours.

OMB Number: 1545–1985.

Type of Review: Extension.

Title: Interview and Intake Sheet.

Form: IRS Form 13614 SP.

Description: This Spanish version of Form 13614 is used by screeners, preparers, or others involved in the return preparation process to more accurately complete tax returns of Spanish speaking taxpayers having low to moderate incomes. These persons need assistance having their returns prepared so they can fully comply with the law.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government.

Estimated Total Burden Hours: 17,108 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.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–5230 Filed 4–10–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Renewal of Charter for the Electronic Tax Administration Advisory Committee (ETAAC)

AGENCY: Internal Revenue Service (IRS), DOT.

ACTION: Notice.

SUMMARY: The charter for the Electronic Tax Administration Advisory Committee (ETAAC) was renewed on March 22, 2006, for an additional two-year period in accordance with the Federal Advisory Committee Act, as amended, (5 U.S.C., App.). The renewal charter was filed on March 22, 2006, with the Committee on Finance of the United States Senate, the Committee on Ways and Means of the U.S. House of Representatives, and the Library of Congress.

ADDRESESS: You may request a copy of the charter by contacting Kim Logan at *etaac@irs.gov*, by telephone at (202) 283–1947; or by FAX at (202) 283–4829.

FOR FURTHER INFORMATION CONTACT: Kim Logan, (202) 283–1947 (not a toll-free number) or send an e-mail to *etaac@irs.gov*.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with the provisions of the Federal Advisory Committee Act, as amended, (5 U.S.C., App.) advices of the renewal of the Electronic Tax Administration Advisory Committee (ETAAC). The primary purpose of ETAAC is to provide an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. The ETAAC members convey the public's observations about current or proposed policies, programs, and procedures, and suggest improvements. The ETAAC also provides an annual report to Congress on IRS progress in meeting the Restructuring and Reform Act of 1998 goals for electronic filing of tax returns. This activity is based on the authority to administer the Internal Revenue laws conferred upon the Secretary of the Treasury by section 7802 of the Internal Revenue Code and delegated to the Commissioner of the Internal Revenue.

ETAAC membership is balanced and includes representatives from various groups such as: (1) Tax practitioners and preparers, (2) transmitters of electronic returns, (3) tax software developers, (4) large and small businesses, (5) employers and payroll service providers, (6) individual taxpayers, (7) financial industry (payers, payment options and best practices), (8) system integrators (technology providers), (9) academic (marketing, sales or technical perspectives), (10) trusts and estates, (11) tax exempt organizations, and (12) state and local governments.

Dated: April 3, 2006.

Kim McDonald,

Acting Director, Strategic Services Division.

[FR Doc. E6–5234 Filed 4–10–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Publication of Inflation Adjustment Factor, Nonconventional Source Fuel Credit, and Reference Price for Calendar Year 2005

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: Publication of the inflation adjustment factor, nonconventional source fuel credit, and reference price for calendar year 2005 as required by section 29 of the Internal Revenue Code (26 U.S.C. 29). The inflation adjustment factor, nonconventional source fuel credit, and reference price are used in determining the tax credit allowable on the sale of fuel from nonconventional sources under section 29 during calendar year 2005.

DATES: The 2005 inflation adjustment factor, nonconventional source fuel credit, and reference price apply to qualified fuels sold during calendar year 2005.

Inflation Adjustment Factor: The inflation adjustment factor for calendar year 2005 is 2.2640.

Credit: The nonconventional source fuel credit for calendar year 2005 is $6.79 per barrel-of-oil equivalent of qualified fuels.

Reference Price: The reference price for calendar year 2005 is $50.26. Because this reference price does not exceed $23.50 multiplied by the inflation adjustment factor, the phaseout of the credit provided for in section 29(b)(1) does not occur for any qualified fuels sold during calendar year 2005.

FOR FURTHER INFORMATION CONTACT: For questions about how the inflation adjustment factor is calculated—Wu-Lang Lee, RAS:R:TSBR, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; Telephone Number (202) 874–0531 (not a toll-free number).

For all other questions about the credit or the reference price—Jaime C. Park, CC:PSI:7, Internal Revenue Service 1111 Constitution Avenue, NW., Washington, DC 20224; Telephone Number (202) 622–3120 (not a toll-free number).

Dated: April 4, 2006.

Heather C. Maloy,

Associate Chief Counsel (Passthroughs and Special Industries).

[FR Doc. E6–5232 Filed 4–10–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Renewal of the Taxpayer Advocacy Panel Charter

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of Charter Reestablishment.

SUMMARY: Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463) and in accordance with title 41 of the Code of Federal Regulations, section 102–3.65, notice is herby given that the Taxpayer Advocacy Panels (TAP) charter has been renewed by the Department of the Treasury, for a two-year period. The charter of this advisory committee was filed with the appropriate committees of Congress, the General Services Administration and the Library of Congress on March 17, 2006, and shall expire two years from the original filing date.

SUPPLEMENTARY INFORMATION: This charter is prepared and filed in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92–463 (5 U.S.C. App.). The establishment and the operation of the advisory committee are authorized pursuant to the authority of the Secretary of the Treasury to administer the internal revenue laws under section 7801 of the Internal Revenue Code. That authority is delegated to the Commissioner of the Internal Revenue. The TAP provides a taxpayer perspective on critical tax administration programs and helps to identify grass roots tax issues. The TAP will operate in accordance with the Federal Advisory Committee Act and its implementing regulations.

FOR FURTHER INFORMATION CONTACT: Bernard E. Coston, Director, Taxpayer Advocacy Panel at 202–622–5007, or (404) 338–8408.

Dated: April 5, 2006.

Bernard E. Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. E6–5233 Filed 4–10–06; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 71, No. 69
Tuesday, April 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 ENERGY

Federal Energy Regulatory Commission

18 CFR Part 342

[Docket No. RM05–22–000]

Five-Year Review of Oil Pipeline Pricing Index

Correction.

In rule document 06–2964 beginning on page 15329 in the issue of Tuesday, March 28, 2006, make the following correction:

On page 15334, in the first column, in footnote 17, in the last line ''where denotes'' should read

''where $\bar{X}_i$ denotes".

[FR Doc. C6–2964 Filed 4–10–06; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Tuesday,
April 11, 2006

Part II

Securities and Exchange Commission

The Travelers Insurance Company, et al. and Metlife Investors Insurance Company, et al.; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27278; File No. 812–13250]

The Travelers Insurance Company, et al. and MetLife Investors Insurance Company, et al.

March 31, 2006.

AGENCY: The Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to Section 26(c) of the Investment Company Act of 1940 (the "Act") approving certain substitutions of securities and an order of exemption pursuant to Section 17(b) of the Act from Section 17(a) of the Act.

Summary of Application: Applicants request an order to permit certain unit investment trusts to substitute (a) shares of MFS Total Return Portfolio for shares of AIM V.I. Basic Balanced Fund, Alger American Balanced Portfolio, Balanced Portfolio, Equity and Income Portfolio, MFS Total Return Series and VIP Asset Manager Portfolio; (b) shares of Lord Abbett Growth and Income Portfolio for shares of AllianceBernstein Growth and Income Portfolio, (Lord Abbett Series Fund) Growth and Income Portfolio, Mutual Shares Securities Fund, Oppenheimer Main Street Fund/VA and VIP Growth and Income Portfolio; (c) shares of T. Rowe Price Large Cap Growth Portfolio for shares of AllianceBernstein Large Cap Growth Portfolio, Appreciation Portfolio, (Janus Aspen Series) Growth and Income Portfolio and VIP Growth Portfolio; (d) shares of Oppenheimer Global Equity Portfolio for shares of Mercury Global Allocation V.I. Fund, Global Franchise Portfolio, Oppenheimer Global Securities Fund/VA and Templeton Growth Securities Fund; (e) shares of Third Avenue Small Cap Value Portfolio for shares of Mercury Value Opportunities V.I. Fund and Lazard Retirement Small Cap Portfolio; (f) shares of Lord Abbett Mid-Cap Value Portfolio for shares of Mid-Cap Value Portfolio; (g) shares of BlackRock Money Market Portfolio for shares of MFS Money Market Series and Van Kampen Life Investment Trust Money Market Portfolio; (h) shares of Salomon Strategic Bond Portfolio for shares of MFS Strategic Income Series; (i) shares of Janus Aggressive Growth Portfolio for shares of MFS Emerging Growth Series and Van Kampen LIT Emerging Growth Portfolio; (j) shares of Neuberger Berman Real Estate Portfolio for shares of U.S. Real Estate Portfolio and Delaware VIP REIT Series; and (k) shares of Oppenheimer Capital Appreciation Portfolio for shares of Oppenheimer Capital Appreciation Fund. The shares are currently held by certain unit investment trusts to fund certain group and individual variable annuity contracts and variable life insurance policies (collectively, the "Contracts") issued by the Insurance Companies (defined below).

Applicants: The Travelers Insurance Company ("TIC"), The Travelers Separate Account Five for Variable Annuities ("Separate Account Five"), The Travelers Separate Account Seven for Variable Annuities ("Separate Account Seven"), The Travelers Separate Account Nine for Variable Annuities ("Separate Account Nine"), TIC Separate Account Eleven for Variable Annuities ("Separate Account Eleven"), TIC Separate Account Thirteen for Variable Annuities ("Separate Account Thirteen"), The Travelers Fund U for Variable Annuities ("Fund U"), The Travelers Separate Account PF for Variable Annuities ("Separate Account PF"), The Travelers Separate Account TM for Variable Annuities ("Separate Account TM"), The Travelers Fund ABD for Variable Annuities ("Fund ABD"), The Travelers Fund BD for Variable Annuities ("Fund BD"), The Travelers Separate Account QP for Variable Annuities ("Separate Account QP"), The Travelers Separate Account QPN for Variable Annuities ("Separate Account QPN"), The Travelers Fund BD III for Variable Annuities ("Fund BD III"), TIC Variable Annuity Separate Account 2002 ("Separate Account 2002"), The Travelers Separate Account PP for Variable Life Insurance ("Separate Account PP"), TIC Separate Account CPPVUL I ("Separate Account CPPVUL I"), The Travelers Fund UL III for Variable Life Insurance ("Fund UL III"), The Travelers Fund UL for Variable Life Insurance ("Fund UL"), The Travelers Life and Annuity Company ("TLAC"), The Travelers Separate Account Six for Variable Annuities ("Separate Account Six"), The Travelers Separate Account Eight for Variable Annuities ("Separate Account Eight"), The Travelers Separate Account Ten for Variable Annuities ("Separate Account Ten"), TLAC Separate Account Twelve for Variable Annuities ("Separate Account Twelve"), TLAC Separate Account Fourteen for Variable Annuities ("Separate Account Fourteen"), The Travelers Separate Account PF II for Variable Annuities ("Separate Account PF II"), The Travelers Separate Account TM II for Variable Annuities ("Separate Account TM II"), The Travelers Fund ABD II for Variable Annuities ("Fund ABD II"), The Travelers Fund BD II for Variable Annuities ("Fund BD II"), The Travelers Fund BD IV for Variable Annuities ("Fund BD IV"), TLAC Variable Annuity Separate Account 2002 ("TLAC Separate Account 2002"), The Travelers Fund UL II for Variable Life Insurance ("Fund UL II"), Citicorp Life Insurance Company ("Citicorp Life"), Citicorp Life Variable Annuity Separate Account ("Citicorp Separate Account"), First Citicorp Life Insurance Company ("First Citicorp Life"), First Citicorp Life Variable Annuity Separate Account ("First Citicorp Separate Account"), MetLife Investors Insurance Company ("MetLife Investors"), MetLife Investors Variable Annuity Account One ("VA Account One"), First MetLife Investors Insurance Company ("First MetLife Investors"), First MetLife Investors Variable Annuity Account One ("First VA Account One"), MetLife Investors Insurance Company of California ("MetLife Investors of California"), MetLife Investors Variable Annuity Account Five ("VA Account Five"), MetLife Investors USA Insurance Company ("MetLife Investors USA"), MetLife Investors USA Separate Account A ("Separate Account A"), Metropolitan Life Insurance Company ("MetLife"), Metropolitan Life Separate Account UL ("Separate Account UL"), Metropolitan Life Separate Account DCVL ("Separate Account DCVL"), Security Equity Separate Account Seven ("SE Separate Account Seven"), Security Equity Separate Account Thirteen ("SE Separate Account Thirteen"), New England Life Insurance Company ("New England"), New England Variable Life Separate Account Four ("NEVL Separate Account Four"), New England Variable Life Separate Account Five ("NEVL Separate Account Five"), General American Life Insurance Company ("General American") (together with TIC, TLAC, Citicorp Life, First Citicorp Life, MetLife Investors, First MetLife Investors, MetLife Investors of California, MetLife Investors USA, MetLife, New England and General American, the "Insurance Companies"), General American Separate Account Seven ("GA Separate Account Seven"), General American Separate Account Eleven ("GA Separate Account Eleven"), General American Separate Account Thirty Three ("Separate Account Thirty Three") (together with Separate Account Five, Separate Account Six, Separate Account Seven, Separate Account Eight, Separate Account Nine, Separate Account Ten, Separate Account Eleven, Separate Account Twelve, Separate Account Thirteen, Separate Account Fourteen, Fund U, Separate Account PF, Separate

Account TM, Fund ABD, Fund BD, Separate Account QP, Separate Account QPN, Fund BD III, Separate Account 2002, Separate Account PP, Separate Account CPPVUL I, Fund UL III, Fund UL, Separate Account PF II, Separate Account TM II, Fund ABD II, Fund BD II, Fund BD IV, TLAC Separate Account 2002, Fund UL II, Citicorp Separate Account, First Citicorp Separate Account, VA Account One, First VA Account One, VA Account Five, Separate Account A, Separate Account UL, Separate Account DCVL, SE Separate Account Seven, SE Separate Account Thirteen, NEVL Separate Account Four, NEVL Separate Account Five, GA Separate Account Seven and GA Separate Account Eleven, the "Separate Accounts"), Met Investors Series Trust ("MIST") and Metropolitan Series Fund, Inc. ("Met Series Fund") hereby apply for an Order of the Securities and Exchange Commission (the "Commission") pursuant to Section 26(c) of the Investment Company Act of 1940, as amended (the "Act"), approving the substitution of shares of certain series of MIST and Met Series Fund (together, MIST and Met Series Fund are referred to as the "Investment Companies") for shares of comparable series of unaffiliated registered investment companies, in each case held by certain of the Separate Accounts to fund certain group and individual variable annuity contracts and variable life insurance policies (collectively, the "Contracts") issued by the Insurance Companies. The Insurance Companies and the Separate Accounts are referred to herein collectively as the "Substitution Applicants." The Insurance Companies, the Separate Accounts and the Investment Companies (the "Section 17 Applicants") also hereby apply for an order of exemption pursuant to Section 17(b) of the Act from Section 17(a) of the Act to permit the Insurance Companies to carry out certain of the substitutions.

Filing Date: The application was filed on December 20, 2005 and amended on March 28, 2006.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 26, 2006 and should be accompanied by proof of service on Applicants, in the form of an affidavit or for lawyers a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issued contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants; 5 Park Avenue, Suite 1900, Irvine, California 92614.

FOR FURTHER INFORMATION CONTACT: Michael Kosoff, Staff Attorney, at (202) 551–6754 or Harry Eisenstein, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 100 F Street, NE., Washington, DC 20549 (202–551–8090).

Applicants' Representations

General Description of Applicants

The Insurance Companies

1. TIC is a stock life insurance company organized in 1863 under the laws of Connecticut. TIC is an indirect wholly-owned subsidiary of MetLife, Inc. TIC's principal place of business is located at One Cityplace, Hartford, Connecticut 06103. MetLife, Inc., headquartered in New York City, is publicly owned and through its subsidiaries and affiliates is a leading provider of insurance and financial products and services to individual and group customers. For purposes of the Act, TIC is the depositor and sponsor of Separate Account Five, Separate Account Seven, Separate Account Nine, Separate Account Eleven, Separate Account Thirteen, Fund U, Separate Account PF, Separate Account TM, Fund ABD, Fund BD, Separate Account QP, Separate Account QPN, Fund BD III, TIC Separate Account 2002, Separate Account PP, Separate Account CPPVUL I, Fund UL III and Fund UL as those terms have been interpreted by the Commission with respect to variable annuity separate accounts.

2. TLAC is a stock life insurance company organized in 1973 under the laws of Connecticut. TLAC is a wholly-owned subsidiary of MetLife, Inc. TLAC's principal place of business is located at One Cityplace, Hartford, Connecticut 06103. For purposes of the Act, TLAC is the depositor and sponsor of Separate Account Six, Separate Account Eight, Separate Account Ten, Separate Account Twelve, Separate Account Fourteen, Separate Account PF II, Separate Account TM II, Fund ABD II, Fund BD II, Fund BD IV, TLAC Separate Account 2002 and Fund UL II as those terms have been interpreted by the Commission with respect to variable annuity separate accounts.

3. Citicorp Life (formerly Family Guardian Life Insurance Company) is a stock life insurance company organized in 1971 under the laws of Arizona. Citicorp Life is a wholly-owned subsidiary of MetLife, Inc. Citicorp Life's address is 3225 North Central Avenue, Phoenix, Arizona 85012. For purposes of the Act, Citicorp Life is the depositor and sponsor of Citicorp Separate Account as those terms have been interpreted by the Commission with respect to variable annuity and variable life separate accounts.

4. First Citicorp Life is a stock life insurance company organized in 1978 under the laws of New York. First Citigroup Life is an indirect wholly-owned subsidiary of MetLife, Inc. First Citigroup Life's address is 333 West 34th Street, 10th Floor, New York, New York 10001. For purposes of the Act, First Citicorp Life is the depositor and sponsor of First Citicorp Separate Account as those terms have been interpreted by the Commission with respect to variable annuity separate accounts.

5. MetLife Investors is a stock life insurance company organized on August 17, 1981 under the laws of Missouri. MetLife Investors is a wholly-owned subsidiary of MetLife, Inc. MetLife Investors' executive offices are at 5 Park Plaza, Suite 1900, Irvine, California 92614. For purposes of the Act, MetLife Investors is the depositor and sponsor of VA Account One as those terms have been interpreted by the Commission with respect to variable annuity separate accounts.

6. First MetLife Investors is a stock life insurance company organized on December 31, 1992 under the laws of New York. First MetLife Investors is a wholly-owned subsidiary of MetLife, Inc. First MetLife Investors' executive offices are at 200 Park Avenue, New York, New York 10166. For purposes of the Act, First MetLife Investors is the depositor and sponsor of First VA Account One as those terms have been interpreted by the Commission with respect to variable annuity separate accounts.

7. MetLife Investors of California is a stock life insurance company organized on September 6, 1972 under the laws of California. MetLife Investors of California is an indirect wholly-owned subsidiary of MetLife, Inc. MetLife Investors of California's executive offices are at 5 Park Plaza, Suite 1900, Irvine, California 92614. For purposes of

the Act, MetLife Investors of California is the depositor and sponsor of VA Account Five as those terms have been interpreted by the Commission with respect to variable annuity separate accounts.

8. MetLife Investors USA is a stock life insurance company organized on September 13, 1960 under the laws of Delaware. MetLife Investors USA is an indirect wholly-owned subsidiary of MetLife. MetLife Investors USA's executive offices are at 5 Park Plaza, Suite 1900, Irvine, California 92614. For purposes of the Act, MetLife Investors USA is the depositor and sponsor of Separate Account A as those terms have been interpreted by the Commission with respect to variable annuity separate accounts.

9. MetLife is a stock life insurance company organized in 1868 under the laws of New York. MetLife is a wholly-owned subsidiary of MetLife, Inc. MetLife's executive offices are at 200 Park Avenue, New York, New York 10166. For purposes of the Act, MetLife is the depositor and sponsor of Separate Account UL, Separate Account DCVL, SE Separate Account Seven and SE Separate Account Thirteen as those terms have been interpreted by the Commission with respect to variable annuity and variable life separate accounts.

10. New England is a stock life insurance company organized in 1980 under the laws of Delaware. In 1996, New England was re-domesticated under the laws of Massachusetts. New England is an indirect wholly-owned subsidiary of MetLife, Inc. New England's executive offices are at 501 Boylston Street, Boston, Massachusetts 02116. For purposes of the Act, New England is the depositor and sponsor of NEVL Separate Account Four and NEVL Separate Account Five as those terms have been interpreted by the Commission with respect to variable life separate accounts.

11. General American is a stock life insurance company organized in 1933 under the laws of Missouri. General American is an indirect wholly-owned subsidy of MetLife, Inc. General American's executive offices are at 13045 Tesson Ferry, St. Louis, Missouri 63128. For purposes of the Act, General American is the depositor and sponsor of GA Separate Account Seven, GA Separate Account Eleven and Separate Account Thirty Three, as those terms have been interpreted by the Commission with respect to variable annuity separate accounts.

The Accounts

12. Separate Account Five is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[1]

13. Separate Account Five is currently divided into 77 sub-accounts, 28 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 49 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Separate Account Five (however, in some instances, Separate Account Five may own more than five percent of such investment company).

14. Separate Account Seven is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[2]

15. Separate Account Seven is currently divided into 51 sub-accounts, 11 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 40 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Separate Account Seven (however, in some instances, Separate Account Seven may own more than five percent of such investment company).

16. Separate Account Nine is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[3]

17. Separate Account Nine is currently divided into 130 sub-accounts, 32 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 98 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Separate Account Nine (however, in some instances, Separate Account Nine may own more than five percent of such investment company).

18. Separate Account Eleven is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[4]

19. Separate Account Eleven is currently divided into 146 sub-accounts, 29 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 117 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Separate Account Eleven (however, in some instances, Separate Account Eleven may own more than five percent of such investment company).

20. Separate Account Thirteen is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[5]

21. Separate Account Thirteen is currently divided into 102 sub-accounts, 29 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 73 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Separate Account Thirteen (however, in some instances, Separate Account Thirteen may own more than five percent of such investment company).

22. Fund U is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[6]

23. Fund U Account is currently divided into 65 sub-accounts, 29 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 36 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Fund U (however, in some instances, Fund U may own more than five percent of such investment company).

24. Separate Account PF is a "separate account" as defined by Rule

[1] File Nos. 333–58783/811–08867.

[2] File Nos. 333–60227/811–08909.

[3] File Nos. 333–82009, 333–65926/811–09411.

[4] File Nos. 333–101778/811–21262

[5] File Nos. 333–101777/811–12163.

[6] File Nos. 002–79529, 333–116783, 333–117028/811–03575.

0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[7]

25. Separate Account PF is currently divided into 54 sub-accounts, 7 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 47 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Separate Account PF (however, in some instances, Separate Account PF may own more than five percent of such investment company).

26. Separate Account TM is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[8]

27. Separate Account TM is currently divided into 75 sub-accounts, 29 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 46 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Separate Account TM (however, in some instances, Separate Account TM may own more than five percent of such investment company).

28. Fund ABD is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[9]

29. Fund ABD is currently divided into 105 sub-accounts, 27 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 78 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Fund ABD (however, in some instances, Fund ABD may own more than five percent of such investment company).

30. Fund BD is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[10]

31. Fund BD is currently divided into 32 sub-accounts, 11 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 21 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Fund BD (however, in some instances, Fund BD may own more than five percent of such investment company).

32. Separate Account QP is a "separate account" as defined by Rule 0–1(e) under the Act and is registered as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[11]

33. Separate Account QP is currently divided into 87 sub-accounts, 29 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 58 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Separate Account QP (however, in some instances, Separate Account QP may own more than five percent of such investment company).

34. Separate Account QPN was established as a segregated asset account under Connecticut law in 1995. Separate Account QPN is a "separate account" as defined by Rule 0–1(e) under the Act and is exempt from registration under the Act. Security interests under the Contracts have been registered under the Securities Act of 1933.[12]

35. Separate Account QPN is currently divided into 89 sub-accounts, 33 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 56 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Separate Account QPN (however, in some instances, Separate Account QPN may own more than five percent of such investment company).

36. Fund BD III is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[13]

37. Fund BD III is currently divided into 98 sub-accounts, 31 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 67 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Fund BD III (however, in some instances, Fund BD III may own more than five percent of such investment company).

38. Separate Account 2002 is a "separate account" as defined by Rule 0–1(e) under the Act and is registered as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[14]

39. Separate Account 2002 is currently divided into 136 sub-accounts, 31 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 105 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with TIC Separate Account 2002 (however, in some instances, TIC Separate Account 2002 may own more than five percent of such investment company).

40. Separate Account PP serves as a separate account funding vehicle for certain Contracts that are exempt from registration under Section 4(2) of the Securities Act of 1933 and Regulation D thereunder.

41. Separate Account PP is currently divided into 104 sub-accounts, 23 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 81 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Separate Account PP (however, in some instances, Separate Account PP may own more than five percent of such investment company).

42. Fund UL III is a "separate account" as defined by Rule 0–1(e) under the Act and is registered as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[15]

43. Fund UL III is currently divided into 88 sub-accounts, 25 of which reflect the investment performance of a

[7] File Nos. 333–32589, 333–72334/811–08313.

[8] File Nos. 333–40193/811–08477.

[9] File Nos. 033–65343, 333–65506, 333–23311/811–07465.

[10] File Nos. 033–73466/811–08242.

[11] File Nos. 333–00165/811–07487.

[12] File Nos. 333–118412, 333–118415.

[13] File Nos. 333–70657/811–08225.

[14] File Nos. 333–100435/811–21220.

[15] File Nos. 333–71349, 333–94779, 333–105335 and 333–113533/811–09215.

corresponding series of funds affiliated with MIST and Met Series Fund, and 63 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Fund UL III (however, in some instances, Fund UL III may own more than five percent of such investment company).

44. Separate Account CPPVUL I serves as a separate account funding vehicle for certain Contracts that are exempt from registration under Section 4(2) of the Securities Act of 1933 and Regulation D thereunder.

45. Separate Account CPPVUL I is currently divided into 132 sub-accounts, 28 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 104 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Separate Account CPPVUL I (however, in some instances, Separate Account CPPVUL I may own more than five percent of such investment company).

46. Fund UL is a "separate account" as defined by Rule 0–1(e) under the Act and is registered as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[16] Fund UL is currently divided into 73 sub-accounts, 25 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 48 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Fund UL (however, in some instances, Fund UL may own more than five percent of such investment company)

47. Separate Account Six is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[17]

48. Separate Account Six is currently divided into 77 sub-accounts, 28 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 49 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Separate Account Six (however, in some instances, Separate Account Six may own more than five percent of such investment company).

49. Separate Account Eight is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[18]

50. Separate Account Eight is currently divided into 51 sub-accounts, 11 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 40 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Separate Account Eight (however, in some instances, Separate Account Eight may own more than five percent of such investment company).

51. Separate Account Ten is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[19]

52. Separate Account Ten is currently divided into 130 sub-accounts, 32 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 98 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Separate Account Ten (however, in some instances, Separate Account Ten may own more than five percent of such investment company).

53. Separate Account Twelve is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[20]

54. Separate Account Twelve is currently divided into 146 sub-accounts, 29 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 117 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Separate Account Twelve (however, in some instances, Separate Account Twelve may own more than five percent of such investment company).

55. Separate Account Fourteen is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[21]

56. Separate Account Fourteen is currently divided into 102 sub-accounts, 29 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 73 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Separate Account Fourteen (however, in some instances, Separate Account Fourteen may own more than five percent of such investment company).

57. Separate Account PF II is a "separate account", as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[22]

58. Separate Account PF II is currently divided into 54 sub-accounts, 7 of which reflect the investment performance of a corresponding series of MIST and Met Series Fund or other affiliated fund, and 47 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Separate Account PF II (however, in some instances, Separate Account PF II may own more than five percent of such investment company).

59. Separate Account TM II is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[23]

60. Separate Account TM II is currently divided into 75 sub-accounts, 29 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 46 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Separate Account TM II (however, in some instances, Separate Account TM II may own more than five percent of such investment company).

61. Fund ABD II is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under

[16] File Nos. 333–96515, 333–96519, 333–56952, 333–113109, 002–88637 and 333–69771/811–03927.

[17] File Nos. 333–58809/811–08869.

[18] File Nos. 333–60215/811–08907.

[19] File Nos. 333–82013, 333–65922/811–09413.

[20] File Nos. 333–101814/811–21266.

[21] File Nos. 333–101815/811–21267.

[22] File Nos. 333–32581, 333–72336/811–08317.

[23] File Nos. 333–40191/811–08317.

the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[24]

62. Fund ABD II is currently divided into 105 sub-accounts, 27 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 78 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Fund ABD II (however, in some instances, Fund ABD II may own more than five percent of such investment company).

63. Fund BD II is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[25]

64. Fund BD II is currently divided into 32 sub-accounts, 11 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 21 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Fund BD II (however, in some instances, Fund BD II may own more than five percent of such investment company).

65. Fund BD IV is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[26]

66. Fund BD IV is currently divided into 98 sub-accounts, 31 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 67 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Fund BD IV (however, in some instances, Fund BD IV may own more than five percent of such investment company).

67. TLAC Separate Account 2002 is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[27]

68. TLAC Separate Account 2002 is currently divided into 136 sub-accounts, 31 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 105 of which reflects the performance of a registered investment company managed by an adviser that is not affiliated with TLAC Separate Account 2002 (however, in some instances, TLAC Separate Account 2002 may own more than five percent of such investment company).

69. Fund UL II is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[28]

70. Fund UL II is currently divided into 68 sub-accounts, 20 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 48 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Fund UL II (however, in some instances, Fund UL II may own more than five percent of such investment company).

71. Citicorp Separate Account is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[29]

72. Citicorp Separate Account is currently divided into 59 sub-accounts, 10 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 49 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Citicorp Separate Account (however, in some instances, Citicorp Separate Account may own more than five percent of such investment company).

73. First Citicorp Separate Account is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[30]

74. First Citicorp Separate Account is currently divided into 59 sub-accounts, 10 of which reflect the investment performance of a corresponding series of funds affiliated with MIST and Met Series Fund, and 49 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with First Citicorp Separate Account (however, in some instances, First Citicorp Separate Account may own more than five percent of such investment company).

75. VA Account One is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[31]

76. VA Account One is currently divided into 59 sub-accounts, 42 of which reflect the investment performance of a corresponding series of MIST or Met Series Fund, and 17 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with VA Account One (however, in some instances, VA Account One may own more than five percent of such investment company).

77. First VA Account One is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[32]

78. First VA Account One is currently divided into 152 sub-accounts, 83 of which reflect the investment performance of a corresponding series of MIST or Met Series Fund, and 14 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with First VA Account One (however, in some instances, First VA Account One may own more than five percent of such investment company).

79. VA Account Five is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts

[24] File Nos. 033–65339, 333–65500, 333–23327/811–07463.

[25] File Nos. 033–58131/811–07259.

[26] File Nos. 333–70659/811–08223.

[27] File Nos. 333–100434/811–21221.

[28] File Nos. 333–96521, 333–96517, 333–56958, 333–113110, 033–63927 and 333–69773/811–07411.

[29] File Nos. 033–81626, 333–71379/811–08628.

[30] File Nos. 033–83354, 333–71377/811–08732.

[31] File Nos. 033–39100, 333–34741 and 333–50540/811–05200.

[32] File Nos. 033–74174, 333–96773, 333–125613, 333–125617 and 333–125618/811–08036.

have been registered under the Securities Act of 1933.[33]

80. VA Account Five is currently divided into 58 sub-accounts, 42 of which reflect the investment performance of a corresponding series of MIST or Met Series Fund, and 16 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with VA Account Five (however, in some instances, VA Account Five may own more than five percent of such investment company).

81. Separate Account A was established as a segregated asset account under Delaware law in 1980. Separate Account A is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[34]

82. Separate Account A is currently divided into 157 sub-accounts, 80 of which reflect the investment performance of a corresponding series of MIST or Met Series Fund, and 77 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Separate Account A (however, in some instances, Separate Account A may own more that five percent of such investment company).

83. Separate Account UL is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[35]

84. Separate Account UL is currently divided into 89 sub-accounts, 50 of which reflect the investment performance of a corresponding series of MIST or Met Series Fund, and 39 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Separate Account UL (however, in some instances, Separate Account UL may own more than five percent of such investment company).

85. Separate Account DCVL serves as a separate account funding vehicle for certain Contracts that are exempt from registration under Section 4(2) of the Securities Act of 1933 and Regulation D thereunder.

86. Separate Account DCVL is currently divided into 53 sub-accounts, 21 of which reflect the investment performance of a corresponding series of MIST or Met Series Fund, and 32 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Separate Account DCVL (however, in some instances, Separate Account DCVL may own more than five percent of such investment company).

87. SE Separate Account Thirteen is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[36]

88. SE Separate Account Thirteen is currently divided into 17 sub-accounts, 4 of which reflect the investment performance of a corresponding series of MIST or Met Series Fund, and 13 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with SE Separate Account Thirteen (however, in some instances, SE Separate Account Thirteen may own more than five percent of such investment company).

89. SE Separate Account Seven serves as a separate account funding vehicle for certain Contracts that are exempt from registration under Section 4(2) of the Securities Act of 1933 and Regulation D thereunder.

90. SE Separate Account Seven is currently divided into 1 sub-account, 0 of which reflect the investment performance of a corresponding series of MIST or Met Series Fund, and 1 of which reflects the performance of a registered investment company managed by an adviser that is not affiliated with SE Separate Account Seven (however, in some instances, SE Separate Seven may own more than five percent of such investment company).

91. NEVL Separate Account Four serves as a separate account funding vehicle for certain Contracts that are exempt from registration under Section 4(2) of the Securities Act of 1933 and Regulation D thereunder.

92. NEVL Separate Account Four is currently divided into 34 sub-accounts, 21 of which reflect the investment performance of a corresponding series of MIST or Met Series Fund, and 13 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with NEVL Separate Account Four (however, in some instances, NEVL Separate Account Four may own more than five percent of such investment company).

93. NEVL Separate Account Five serves as a separate account funding vehicle for certain Contracts that are exempt from registration under Section 4(2) of the Securities Act of 1933 and Regulation D thereunder.

94. NEVL Separate Account Five is currently divided into 34 sub-accounts, 21 of which reflect the investment performance of a corresponding series of MIST or Met Series Fund, and 13 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with NEVL Separate Account Five (however, in some instances, NEVL Separate Account Five may own more than five percent of such investment company).

95. GA Separate Account Seven serves as a separate account funding vehicle for certain Contracts that are exempt from registration under Section 4(2) of the Securities Act of 1933 and Regulation D thereunder.

96. GA Separate Account Seven is currently divided into 64 sub-accounts, 23 of which reflect the investment performance of a corresponding series of MIST or Met Series Fund, and 41 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with GA Separate Account Seven (however, in some instances, GA Separate Account Seven may own more than five percent of such investment company).

97. GA Separate Account Eleven is a "separate account" as defined by Rule 0–1(e) under the Act and is registered under the Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933.[37]

98. GA Separate Account Eleven is currently divided into 55 sub-accounts, 40 of which reflect the investment performance of a corresponding series of MIST or Met Series Fund, and 15 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with GA Separate Account Eleven (however, in some instances, GA Separate Account Eleven may own more than five percent of such investment company).

99. Separate Account Thirty Three serves as a separate funding vehicle for certain Contracts that are exempt from registration under Section 4(2) of the

[33] File Nos. 333–54016/811–07060.

[34] File Nos. 333–125753, 333–125756 and 333–125757/811–03365.

[35] File Nos. 033–57320/811–06025.

[36] File Nos. 333–110185/811–08938.

[37] File Nos. 333–64216/811–04901.

Securities Act of 1933 and Regulation D thereunder.

100. Separate Account Thirty Three is currently divided into 64 sub-accounts, 23 of which reflect the investment performance of a corresponding series of MIST or Met Series Fund, and 41 of which reflect the performance of registered investment companies managed by advisers that are not affiliated with Separate Account Thirty Three (however, in some instances, Separate Account Thirty Three may own more than five percent of such investment company).

The Investment Companies

101. Shares of MIST and Met Series Fund are sold exclusively to insurance company separate accounts to fund benefits under variable annuity contracts and variable life insurance policies sponsored by the Insurance Companies or their affiliates. MIST is a Delaware statutory trust organized on July 27, 2000. Met Series Fund is a Maryland corporation organized on November 23, 1982. MIST and Met Series Fund are each registered under the Act as open-end management investment companies of the series type, and their securities are registered under the Securities Act of 1933.[38] Met Investors Advisory, LLC and MetLife Advisers, LLC serve as investment adviser to MIST and Met Series Fund, respectively. Each investment adviser is an affiliate of MetLife.

The Substitutions

102. Under the Contracts, the Insurance Companies reserve the right to substitute shares of one fund with shares of another.

103. Each Insurance Company, on its behalf and on behalf of the Separate Accounts, proposes to make certain substitutions of shares of thirty funds (the "Existing Funds") held in sub-accounts of its respective Separate Accounts for certain series (the "Replacement Funds") of MIST and Met Series Fund. The proposed substitutions are as follows:[39]

(1) Shares of T. Rowe Price Large Cap Growth Portfolio for shares of:

(a) AllianceBernstein Large Cap Growth Portfolio—Fund U, Fund ABD, Fund ABD II, Separate Account Nine, Separate Account Ten, Separate Account 2002, TLAC Separate Account 2002, Separate Account Thirteen, Separate Account Fourteen, Separate Account Eleven, Separate Account Twelve, Separate Account PF, Separate Account PF II, Fund UL, First Citicorp Separate Account, Citicorp Separate Account, Separate Account TM, Separate Account TM II, Fund BD, Fund BD II, Fund BD III, Fund BD IV, Separate Account QPN, Fund UL II, Fund UL III, Separate Account CPPVUL I and Separate Account PP.

(b) Appreciation Portfolio—Separate Account UL.

(c) (Janus Aspen Series) Growth and Income Portfolio—Separate Account QPN, Separate Account TM, Separate Account TM II, Separate Account CPPVUL I and Separate Account PP.

(d) VIP Growth Portfolio—VA Account One, First VA Account One, VA Account Five, GA Separate Account Eleven, Separate Account UL, GA Separate Account Seven, Separate Account Thirty Three, SE Separate Account Seven, SE Separate Account Thirteen, NEVL Separate Account Four, NEVL Separate Account Five, Separate Account CPPVUL I and Separate Account PP.

(2) Shares of Lord Abbett Growth and Income Portfolio for shares of:

(a) AllianceBernstein Growth and Income Portfolio—Separate Account QPN, Citicorp Separate Account, First Citicorp Separate Account, Separate Account TM, Separate Account TM II, Separate Account Nine, Separate Account Ten, Separate Account 2002, TLAC Separate Account 2002, Fund BD III, Fund BD IV, Fund UL III, Separate Account UL, Separate Account CPPVUL I and Separate Account PP.

(b) Mutual Shares Securities Fund—Fund U, Separate Account QPN, Separate Account QP, Fund ABD, Fund ABD II, Separate Account Nine, Separate Account Ten, Separate Account 2002, TLAC Separate Account 2002, Fund UL, Separate Account Eleven, Separate Account Twelve, Separate Account Thirteen, Separate Account Fourteen, Fund BD III, Fund BD IV, Separate Account PF, Separate Account PF II, Separate Account TM, Separate Account TM II, Separate Account Five, Separate Account Six, First VA Account One, Separate Account A, Fund UL II, Separate Account CPPVUL I and Separate Account PP.

(c) Oppenheimer Main Street Fund/VA—Separate Account QPN, Fund ABD, Fund ABD II, Separate Account Thirteen, Separate Account Fourteen, Separate Account Nine, Separate Account Ten, Separate Account 2002, TLAC Separate Account 2002, Separate Account Eleven, Separate Account Twelve, Fund BD III, Fund BD IV, Separate Account PF, Separate Account PF II, Separate Account QP, Separate Account Five, Separate Account Six, Fund UL III and Separate Account CPPVUL I.

(d) (Lord Abbett Series Fund) Growth & Income Portfolio—Separate Account QPN, Fund ABD, Fund ABD II, Separate Account Nine, Separate Account Ten, Separate Account 2002, TLAC Separate Account 2002, Separate Account Thirteen, Separate Account Fourteen, Separate Account Eleven, Separate Account Twelve, Fund BD III, Fund BD IV, Separate Account Five, Separate Account Six, Separate Account TM, and Separate Account TM II, Separate Account QP, Separate Account PP, Fund UL III and Separate Account CPPVUL I.

(e) VIP Growth and Income Portfolio—VA Account One, First VA Account One and VA Account Five.

(3) Shares of Neuberger Berman Real Estate Portfolio for shares of:

(a) Delaware VIP REIT Series—Fund U, Separate Account QPN, Separate Account QP, Fund ABD, Fund ABD II, Separate Account Nine, Separate Account Ten, Separate Account 2002, TLAC Separate Account 2002, Fund UL, Separate Account Eleven, Separate Account Twelve, Separate Account Thirteen, Separate Account Fourteen, Fund BD III, Fund BD IV, Separate Account Five, Separate Account Six, Fund UL II, Fund UL III, Separate Account CPPVUL I and Separate Account PP.

(b) U.S. Real Estate Portfolio—Fund ABD, Fund ABD II, Separate Account Seven, Separate Account Eight, Separate Account A, Separate Account PF, Separate Account PF II, Separate Account PP, First VA Account One and Separate Account CPPVUL I.

(4) Shares of Oppenheimer Global Equity Portfolio for shares of:

(a) Templeton Growth Securities Fund—Fund U, Separate Account QPN, Separate Account QP, Fund ABD, Fund ABD II, Separate Account Nine, Separate Account Ten, Separate Account 2002, TLAC Separate Account 2002, Separate Account Eleven, Separate Account Twelve, Separate Account Thirteen, Separate Account Fourteen, Fund BD III, Fund BD IV, Separate Account PF, Separate Account PF II, Separate Account Five, Separate Account Six, First VA Account One, Separate Account A, Fund UL, Fund UL II, Fund UL III, Separate Account CPPVUL I, Separate Account PP and Separate Account DCVL.

(b) Mercury Global Allocation V.I. Fund—Fund ABD, Fund ABD II, Separate Account Nine, Separate Account Ten, Separate Account 2002, TLAC Separate Account 2002, Separate Account Thirteen, Separate Account

[38] File Nos. 333–48456/811–10183 and 002–80751/811–03618, respectively.

[39] The specific classes of shares involved in the substitution are described in the fee tables located in Appendix 1.

Fourteen, Separate Account Eleven, Separate Account Twelve, Fund BD III and Fund BD IV.

(c) Global Franchise Portfolio—Fund ABD, Fund ABD II, Separate Account Seven, and Separate Account Eight.

(d) Oppenheimer Global Securities Fund/VA—Separate Account Thirteen, Separate Account Fourteen, Separate Account Nine, Separate Account Ten, Separate Account Eleven, Separate Account Twelve, Fund UL III and Separate Account CPPVUL I.

(5) Shares of Lord Abbett Mid Cap Value Portfolio for shares of: Mid Cap Value Portfolio—Separate Account QPN, Separate Account QP, Separate Account Five, Separate Account Six, Fund ABD, Fund ABD II, Separate Account Nine, Separate Account Ten, Separate Account 2002, TLAC Separate Account 2002, Fund BD III, Fund BD IV, Separate Account Thirteen, Separate Account Fourteen, Separate Account Eleven, Separate Account Twelve, Separate Account TM, Separate Account TM II, Fund UL III, Separate Account CPPVUL I and Separate Account PP

(6) Shares of Oppenheimer Capital Appreciation Portfolio for shares of: Oppenheimer Capital Appreciation Fund/VA—Separate Account PF, Separate Account PF II, Separate Account Thirteen, Separate Account Fourteen, Separate Account Nine, Separate Account Ten, First VA Account One, Separate Account Eleven, Separate Account A and Separate Account Twelve

(7) Shares of MFS Total Return Portfolio for shares of:

(a) VIP Asset Manager Portfolio—Separate Account Five and Separate Account Six.

(b) Equity and Income Portfolio—Fund ABD, Fund ABD II, Separate Account Seven, Separate Account Eight, Separate Account PF, Separate Account A, First VA Account One and Separate Account PF II.

(c) AIM V.I. Basic Balanced Fund—Separate Account CPPVUL I and Separate Account PP.

(d) Balanced Portfolio—Fund ABD, Fund ABD II, Separate Account Nine, Separate Account Ten, Separate Account 2002, TLAC Separate Account 2002, Separate Account Thirteen, Separate Account Fourteen, Separate Account Eleven, Separate Account Twelve, Fund BD III, Fund BD IV, Separate Account QP, Separate Account Five, Separate Account Six, Separate Account DCVL, Fund UL III, Separate Account CPPVUL I and Separate Account PP.

(e) MFS Total Return Series—Citicorp Separate Account and First Citicorp Separate Account.

(f) Alger American Balanced Portfolio—Separate Account 2002, TLAC Separate Account 2002, Separate Account Eleven, and Separate Account Twelve.

(8) Shares of Janus Aggressive Growth Portfolio for shares of:

(a) Van Kampen LIT Emerging Growth Portfolio—Separate Account QPN, Fund ABD, Fund ABD II, Separate Account PF, Separate Account PF II, Citicorp Separate Account, First Citicorp Separate Account, Separate Account TM, Separate Account TM II, Separate Account QP, Separate Account Seven, Separate Account Eight, Separate Account Five, Separate Account Six, Separate Account Nine, Separate Account Ten, Separate Account 2002, Separate Account A, TLAC Separate Account 2002, Fund UL, Fund UL II, Fund BD III, and Fund BD IV, Separate Account CPPVUL I, First VA Account One and Separate Account PP.

(b) MFS Emerging Growth Series—Citicorp Separate Account and First Citicorp Separate Account.

(9) Shares of BlackRock Money Market Portfolio for shares of:

(a) Van Kampen LIT Money Market Portfolio—Fund ABD, Fund ABD II, Separate Account Seven, Separate Account Eight, and Separate Account QPN.

(b) MFS Money Market Series—Citicorp Separate Account and First Citicorp Separate Account.

(10) Shares of Third Avenue Small Cap Value Portfolio for shares of:

(a) Mercury Value Opportunities V.I. Fund—Fund ABD, Fund ABD II, Separate Account Nine, Separate Account Ten, Separate Account 2002, TLAC Separate Account 2002, Separate Account Thirteen, Separate Account Fourteen, Separate Account Eleven, Separate Account Twelve, Fund BD III, and Fund BD IV.

(b) Lazard Retirement Small Cap Portfolio—Fund ABD, Fund ABD II, Fund ABD III, Fund BD IV, Fund U, Fund UL, Fund UL II, Separate Account Ten, Separate Account Five, Separate Account Six, Separate Account Nine, Separate Account QP, Separate Account QPN, Separate Account Eleven, Separate Account Thirteen, Separate Account A, Separate Account 2002, TLAC Separate Account 2002, Separate Account Fourteen, Separate Account Twelve, Separate Account TM, First VA Account One and Separate Account TM II.

(11) Shares of Salomon Strategic Bond Opportunities Portfolio for shares of: MFS Strategic Income Series—Citicorp Separate Account and First Citicorp Separate Account.

104. Set forth below is a description of the investment objectives, the principal investment policies and principal risk factors of each Existing Fund and its corresponding Replacement Fund.

Existing fund	Replacement fund
AIM V.I. Basic Balanced Fund—seeks long-term growth of capital and current income. The Fund normally invests a minimum of 30% and a maximum of 70% of its total assets in equity securities of large market capitalization companies and a minimum of 25% and a maximum of 70% of its total assets in investment grade non-convertible debt securities. The Fund does not invest in non-investment grade debt securities. The Fund may invest up to 25% of its total assets in convertible securities. The Fund may invest up to 25% of its total assets in foreign securities. In selecting the percentages of assets to be invested in equity or debt securities, the portfolio managers consider such factors as general market and economic conditions, as well as, trends, yields, interest rates and change in fiscal and monetary policies. In selecting equity investments, the portfolio managers seeks companies whose stock prices are undervalued and that provide the potential for attractive returns. The portfolio managers will purchase debt securities for both capital appreciation and income, and to provide portfolio diversification. Principal Risks: • Market Risk • Market Capitalization Risk • Investment Style Risk • Interest Rate Risk • Credit Risk • Foreign Investment Risk • Other Risks: The value of convertible securities in which the fund invests may also be affected by market interest rates, the risk that the issuer may default on interest or principal payments and the value of the underlying stock into which these securities may be converted.	MFS Total Retum Portfolio—seeks a favorable total return through an investment in a diversified portfolio. The Portfolio normally invests at least 40% but not more than 75% of its net assets in common stocks and related securities such as preferred stocks, and bonds, warrants or rights convertible into stock. The Portfolio may also invest in depositary receipts for such equity securities. At least 25% of the Portfolio's net assets is normally invested in non-convertible fixed-income securities and up to 20% of its net assets may be in non-investment grade debt securities. However, historically, the Portfolio does not invest a significant portion of its assets in non-investment grade debt securities. For the period January 1, 2001 to December 31, 2005, the Portfolio investment in non-investment grade debt securities has ranged from 0.08% to 0.96%. As of 12/31/05 the Portfolio had invested 0.56% of its assets in non-investment grade debt securities. The Portfolio may invest up to 20% of its net assets in foreign securities and may have exposure to foreign currencies through its investments in these securities. As of 12/31/05, the weighting of investments in foreign securities was 5.73%. The Portfolio focus on undervalued equity securities issued by companies with large market capitalizations ($5 billion or more). Principal Risks: • Market Risk • Market Capitalization Risk • Investment Style Risk • Interest Rate Risk • Credit Risk • Foreign Investment Risk
Alger American Balanced Portfolio—seeks current income and long-term capital appreciation. The Portfolio primarily invests in equity securities of large market capitalization companies, such as common or preferred stock, which are listed on U.S. exchanges or in the over-the-counter market. The Portfolio focuses on stocks of companies with growth potential. Under normal circumstances, at least 25% of the Portfolio's net assets are invested in fixed-income senior securities. The Portfolio does not invest in non-investment grade debt securities. The Portfolio may invest up to 20% of its assets in foreign securities. Principal Risks: • Market Risk • Market Capitalization Risk • Investment Style Risk • Interest Rate Risk • Credit Risk • Foreign Investment Risk	
Balanced Portfolio—seeks long-term capital growth, consistent with preservation of capital and balanced by current income. The Portfolio normally invests 50–60% of its assets in equity securities of any market capitalization companies selected primarily for their growth potential, these include common stocks, preferred stocks, convertible securities, or other securities selected for their growth potential. The Portfolio also invests 40–50% of its assets in securities selected primarily for their income potential, which primarily will include fixed-income securities. The Portfolio normally invests at least 25% of its assets in fixed-income senior securities. The Portfolio will limit its investments in high-yield/high-risk bonds to less than 35% of its net assets. There are no limits on the countries in which the Portfolio may invest and the Portfolio may at times have significant foreign exposure. The Portfolio may not invest more than 15% of its total assets in illiquid securities. Other types of investments that the Portfolio may invest its assets in include: Indexed/structured securities; options; futures; forwards; swap agreements; participatory notes; short sales; "against the box" and when issued, delayed delivery or forward commitment securities. Principal Risks: • Market Risk • Market Capitalization Risk • Interest Rate Risk • Credit Risk • Foreign Investment Risk • High-Yield Debt Security Risk • Other Risk: Derivatives Risk	

Existing fund	Replacement fund
Equity and Income Portfolio—seeks both capital appreciation and current income. Under normal circumstances, at least 80% of the Portfolio's assets will be invested in income producing equity securities (including common stocks, preferred stocks and convertible securities) and investment grade fixed-income securities (including securities rated BBB or higher by Standard's & Poors or Baa or higher by Moody's Investors Service, Inc. or unrated securities determined by the Adviser to be of comparable quality). The Portfolio generally does not invest in non-investment grade debt securities. The Portfolio, under normal market conditions will invest at least 65% of its total assets in income-producing equity securities of large market capitalization companies (including without limitation common or preferred stocks, interest paying convertible debentures or bonds, or zero coupon convertible securities). The Portfolio may purchase and sell certain derivative instruments, such as options, futures contracts and options on futures contracts. The Portfolio intends to diversify its investments among various industries, although it may invest up to 25% of its total assets in a particular industry at any one time. The Portfolio may invest up to 25% of its total assets in securities of foreign issuers. Principal Risks: • Market Risk • Market Capitalization Risk • Investment Style Risk • Interest Rate Risk • Credit Risk • Foreign Investment Risk • Other Risks: The prices of convertible securities are affected by changes similar to those of equity and fixed income securities. The value of a convertible security tends to decline as interest rates rise and, because of the conversion features, tend to vary with fluctuations in the market value of the underlying equity security. • Other Risks: Derivatives Risks	
MFS Total Retum Series—seeks above average in consistent with the prudent employment of capital. The Series' secondary objective is to provide reasonable opportunity for growth of capital and income. The Series is a "balanced fund" and invests in a combination of equity and fixed-income securities. Under normal market conditions the Series invests at least 40%, but not more than 75% of its net assets in common stocks and related securities (including, preferred stock, bonds, warrants or rights convertible into stock, and depositary receipts). At least 25% of the Portfolio's net assets is normally invested in non-convertible fixed-income securities (including, U.S. government securities, mortgage-backed, collateralized mortgage obligations securities and corporate bonds). The Series is permitted to invest in foreign securities and non-investment grade debt securities. The manager of the Series is also the manager of the Replacement Fund. Principal Risks: • Market Risk • Market Capitalization Risk • Investment Styles Risk • Foreign Investment Risk • High-Yield Debt Security Risk • Credit Risk • Interest Rate Risk • Other Risks: Derivatives Risk	
VIP Asset Manager Portfolio—seeks a high total retum with reduced risk over the long term by allocating its assets among stocks and bonds of large market capitalization companies and short term instruments. The Portfolio maintains a neutral mix over time of 50% of assets in stocks, 40% of assets in bonds, and 10% of assets in short-term money market instruments. The Portfolio may adjust the allocation among the asset classes gradually within the following ranges: stock class (30%–70%), bond class (20%–60%), and short-term and money market class (0%–50%). The portfolio manager selects issuers based on an evaluation of the security's current price relative to estimated long-term value. The Portfolio may invest up to 50% of its net assets in foreign securities. The Portfolio may invest up to 15% of its assets in non-investment grade debt securities. Principal Risks: • Market Risk • Market Capitalization Risk	

Existing fund	Replacement fund
• Investment Styles Risk • Foreign Investment Risk • High Yield Debt Security Risk • Credit Risk • Interest Rate Risk	
AllianceBemstein Growth and Income Portfolio—seeks long-term growth of capital through investments primarily in dividend-paying common stocks of good quality. The Portfolio primarily invests in dividend-paying common stocks of large, well-established "blue-chip" companies. The Fund may also invest in foreign securities. Although there are no stated limits on investment in foreign securities, for the period January 1, 2001 to December 31, 2005, investment in foreign securities ranged from 0% to 2.64%. As of 12/31/05, investments in foreign securities was 0%. Since the purchase of foreign securities entails certain political and economic risks, the Fund restricts its investments in these securities to issues of high quality. The Fund also may invest in fixed-income securities and convertible securities. The Fund also may try to realize income by writing covered call options listed on domestic securities exchanges. The Fund also may: invest in non-dividend paying stocks; purchase and sell financial forward and futures contracts and options on these securities for hedging purposes; make loans of portfolio securities up to 33⅓% of its total assets (including collateral for any security loaned); and invest up to 10% of its total assets in illiquid securities. Principal Risks: • Market Risk • Market Capitalization Risk • Investment Style Risk • Interest Rate Risk • Credit Risk • Foreign Investment Risk • Other Risk: Derivatives Risk	Lord Abbett Growth and Income Portfolio—seeks long-term growth of capital and income without excessive fluctuation in market value. The Portfolio normally invests 80% of its net assets in equity securities of large (at least $5 billion of market capitalization), seasoned U.S. and multinational companies that are believed to be undervalued. The Portfolio may also invest in foreign securities up to 10% of its assets. As of 12/31/05, 7.3% of the Portfolio's assets was invested in foreign securities. Principal risks: • Market Risk • Market Capitalization Risk • Investment Style Risk • Foreign Investment Risk
(Lord Abbett Series Fund) Growth and Income Portfolio—seeks long-term growth of capital and income without excessive fluctuations in market price. Under normal circumstances the Portfolio will invest at least 80% of its net assets in equity securities (including; common stocks, preferred stocks, convertible securities, warrants and similar investments) of large, seasoned U.S. and multinational companies. The Portfolio invests primarily in the securities of companies that fall within the market capitalization range of the Russell 1000 Index (between $471 million to $352 billion). The Portfolio may also invest up to 10% of its assets in the securities of foreign issuers, (the Portfolio does not consider American Depositary Receipts ("ADRs") as a foreign security). As of 12/31/05, 7.3% of the Portfolio's assets was invested in foreign securities. The manager of the Portfolio also manages the Replacement Fund. Principal Risks: • Market Risk • Investment Style Risk • Market Capitalization Risk • Foreign Investment Risk	
Mutual Shares Securities Fund—seeks capital appreciation. Income is a secondary goal. The Fund invests at least 65% of its assets in equity securities believed to be undervalued. The Fund invests primarily in medium- and large-capitalization companies with a market capitalization greater than $1.5 billion. The Fund may also invest between 25–50% of its assets in small-capitalization companies. The Fund may invest up to 35% of its assets in foreign securities, which may include sovereign debt and participations in foreign government debts. As of 12/31/05, 34% of the Portfolio's assets was invested in foreign securities. The Fund may from time to time attempt to hedge against currency risk using forward foreign currency exchange contracts. The Fund may also engage from time to time in an arbitrage strategy where it simultaneously purchases a security and sells another security short. The Fund may also invest in the securities of distressed companies, including bank debt, lower-rated or defaulted debt securities, comparable unrated debt securities, or other indebtedness of such companies. Principal Risks: • Market Risk • Investment Style Risk • Market Capitalization Risk • High-Yield Debt Security Risk • Foreign Investment Risk	

Existing fund	Replacement fund
• Credit Risk • Other Risk: Derivatives Risk	
Oppenheimer Main Street Fund/VA—seeks high total return (which includes growth in the value of its shares as well as current income). The Fund invests mainly in common stocks of U.S. companies of different capitalization ranges, presently focusing on large-capitalization issuers. The Fund does not currently emphasize investments in debt securities but may invest in them, including debt securities rated below investment grade (or, if unrated, determined by the investment adviser to be of comparable quality). The Fund may invest in other equity securities including, preferred stocks and convertible securities. The Fund may also invest in foreign equity and debt securities including those rated below investment grade by a nationally recognized ratings organization. Although there are no stated limits on investment in foreign securities, for the period January 1, 2001 to December 31, 2005, investment in foreign securities ranged from 1.0% to 3.8%. As of 12/31/05, investments in foreign securities was 1.2%. The Fund may also invest in a number of different kinds of derivative instruments, including exchange-traded options, futures contracts, mortgage-related securities and other hedging instruments. Principal Risks: • Market Risk • Investment Style Risk • Market Capitalization Risk • Interest Rate Risk • High-Yield Security Risk • Foreign Investment Risk • Other Risk: Derivatives Risk	
VIP Growth and Income Portfolio—seeks high total return through a combination of income and capital appreciation. Normally, the Portfolio invests a majority of its assets in common stocks with a focus on those that pay current dividends or show a potential for capital appreciation. Portfolio may invest in growth or value stocks of foreign and domestic issuers. Although there are no stated limits on investment in foreign securities, for the period December 31, 2002 to December 31, 2005, investment in foreign securities ranged from 0.8% to 9.5%. As of 12/31/05, investments in foreign securities was 9.5%. The Portfolio may also invest in bonds, including lower-quality debt securities, as well as stocks that are not currently paying dividends, but offer prospects for future income or capital appreciation. Principal Risks: • Market Risk • Investment Style Risk • Market Capitalization Risk • Interest Rate Risk • Credit Risk • Foreign Investment Risk • High-Yield Security Risk	
AllianceBernstein Large Cap Growth Portfolio [1]—seeks growth of capital. Normally the Portfolio invests at least 80% of its net assets in common stocks of large-capitalization companies (i.e., those within the market capitalization range of the Russell 1000 Growth Index but generally with a market capitalization of at least $5 billion). Normally, the Portfolio invests in about 40–60 companies, with the 25 most highly regarded of these companies usually constituting approximately 70% of the Portfolio's assets. The Portfolio may invest up to 20% of its assets in foreign securities. The Portfolio may also invest up to 20% of its assets in convertible securities. The Portfolio may, but usually does not, use derivatives. Principal Risks: • Market Risk • Investment Style Risk • Market Capitalization Risk • Foreign Investment Risk • Interest Rate Risk • Other Risks: Because the Portfolio may invest its assets in a small number of issuers, the Portfolio is more susceptible to any single-economic, political or regulatory event affecting those issuers than is a diversified portfolio.	T. Rowe Price Large Cap Growth Portfolio—seeks long-term growth of capital and, secondarily, dividend income. Normally, the Portfolio invests at least 80% of these assets in the common stocks and other securities of large capitalization companies (i.e., those within the market capitalization range of the Russell 1000 Index). The investment adviser seeks companies that have the ability to pay increasing dividends through strong cash flow. The Portfolio may also purchase other securities, including foreign stocks, hybrid securities and futures and options, in keeping with the Portfolio's investment objective. Historically, the Portfolio has not invested in derivatives. As of 12/31/05, investments in derivatives was 0%. The Portfolio may invest up to 30% of its assets in foreign securities, excluding American Depositary Receipts. Principal Risks: • Market Risk • Market Capitalization Risk • Investment Style Risk • Foreign Investment Risk • Other Risks: Derivatives Risk

Existing fund	Replacement fund
Appreciation Portfolio—seeks long-term capital growth consistent with the preservation of capital; current income is its secondary goal. The Portfolio normally invests at least 80% of its assets in the common stocks of "blue chip" companies with total market capitalizations of more than $5 billion. The Portfolio employs a "buy-and-hold" investment strategy, which has generally resulted in an annual portfolio turnover of below 15%. The Portfolio may invest up to 10% of its assets in foreign securities. The Portfolio does not use derivatives. Principal Risks: • Market Risk • Investment Style Risk • Market Capitalization Risk • Foreign Investment Risk	
(Janus Aspen Series) Growth and Income Portfolio—seeks long-term capital growth and current income. The Portfolio normally invests in common stocks. It will normally invest up to 75% of its assets in equity securities selected for their growth potential and at least 25% of its assets in securities the portfolio manager believes have income potential. The Portfolio may invest significantly in foreign securities. The Portfolio will limit its investments in high-yield/high-risk bonds to less than 35% of its net assets. The Portfolio may also invest in the following securities: Indexed/structured securities; options; futures; swap agreements; participatory notes and other types of derivatives; short sales "against the box"; and securities purchased on a when-issued, delayed delivery or forward commitment basis. As of June 30, 2005, the Portfolio held no high-yield/high-risk bonds. Principal Risks: • Market Risk • Investment Style Risk • Market Capitalization Risk • Interest Rate Risk • Credit Risk • Foreign Investments Risk • High-Yield Debt Security Risk • Other Risk: Derivative Risk	
VIP Growth Portfolio[2]—seeks capital appreciation. Normally, the Portfolio invests at least 80% of its assets in common stocks of foreign and domestic issuers that have above average growth potential. The Portfolio may invest up to 50% of its assets in the securities of foreign issuers. The Portfolio may also use various techniques, such as buying and selling futures contracts, and exchange traded funds to increase the Portfolio's exposure to changing securities prices or to other factors that affect security values. Principal Risks: • Market Risk • Market Capitalization Risk • Investment Style Risk • Foreign Investments Risk • Other Risk: Derivatives Risk	
Delaware VIP REIT Series,[13]—seeks long-term total return, and a secondary objective of capital appreciation. The Series is non-diversified. Under normal circumstances the Series will invest at least 80% of its net assets in securities of real estate investment trusts. The Series may also invest in the equity securities of real estate industry operating companies. The Series may invest up to 10% of its net assets in foreign securities, not including American Depositary Receipts. The Series may also invest in convertible securities, debt and non-traditional equity securities, options an futures; repurchase agreements; restricted securities; illiquid securities; and when issued or delayed delivery securities. Principal Risks: • Market Risk • Interest Rate Risk • Real Estate Investment Risk • Foreign Investment Risk • Other Risks: Because the Series may invest its assets in a small number of issuers, the Series is more susceptible to any single-economic, political or regulatory event affecting those issuers than is a diversified portfolio • Other Risk: Derivatives Risk	Neuberger Berman Real Estate Portfolio—seeks total return through investment in real estate securities, emphasizing both capital appreciation and current income. The Portfolio is non-diversified. The Portfolio invests, normally, at least 80% of its assets in equity securities of real estate investment trusts and other securities issued by real estate companies. The Portfolio may invest up to 20% of its assets in investment grade or non-investment grade (minimum rating of B) debt securities. Principal Risks: • Market Risk • Real Estate Investment Risk • Interest Rate Risk • Credit Risk • High-Yield Debt Security Risk • Market Capitalization Risk • Investment Style Risk • Other Risks: Because the Portfolio may invest its assets in a small number of issuers, the Portfolio is more susceptible to any single-economic, political or regulatory event affecting those issuers than is a diversified portfolio.

Existing fund	Replacement fund
U.S. Real Estate Portfolio—seeks above average current income and long-term capital appreciation. The Portfolio is non-diversified. Under normal circumstances, at least 80% of the Portfolio's assets will be invested in equity securities of companies in the U.S. real estate industry, which includes real estate investment trusts and real estate operating companies. The portfolio manager uses a value-driven approach to its bottom-up security selection approach. Principal Risks: • Market Risk • Investment Style Risk • Interest Rate Risk • Real Estate Investment Risk • Other Risks: Because the Portfolio may invest its assets in a small number of issues, the Portfolio is more susceptible to any single-economic, political or regulatory event affecting those issuers than is a diversified portfolio	
Mercury Global Allocation V.I. Fund—seeks high total investment returns (which includes a combination of capital appreciation and investment income). The Fund invests in equity, debt and money market securities. The Fund may invest up to 35% of its net assets in debt securities rated below investment grade corporate loans and "distressed securities." Generally, the Fund seeks diversification across markets, countries, industries and issuers as one of its strategies to reduce volatility. Although the Fund has no geographical restrictions on its investments it typically invests in the securities of the companies and governments of North and South America, Europe and the Far East. As of June 30, 2005, approximately 58% of the Portfolio's assets was invested in equity securities and approximately 19.85% in debt securities and the remainder is invested in cash or cash equivalents. Below investment grade debt securities amounted to 7.15%. Principal Risks: • Market Risk • Interest Rate Risk • Credit Risk • Investment Style Risk • Foreign Investment Risk • High-Yield Debt Security Risk	Oppenheimer Global Equity Portfolio—seeks capital appreciation. Under normal circumstances the portfolio invests at least 80% of its net assets in equity securities. The Portfolio seeks broad portfolio diversification in different countries to help moderate the special risks of foreign investing. The Portfolio may invest without limitation in foreign securities, including developing and emerging markets. The Portfolio emphasizes its investments in developed markets such as the United States, Western european countries and Japan. The Portfolio does not intent to invest more than five percent of its net assets in debt securities including below investment grade securities. The Portfolio may also use derivatives to hedge or protect its assets from unfavorable shift in securities prices or interest rates, to maintain exposure to broad equity markets or, for speculative purposes to enhance return. However, for the past 5 years the portfolio has almost never used derivatives. Principal Risks: • Market Risk • Investment Style Risk • Foreign Investment Risk • Market Capitalization Risk • Other Risks: Derivative Risk
Global Franchise Portfolio—seeks long-term capital appreciation. The Portfolio invests primarily in equity securities of any size issuers located throughout the world that are believed to have, among other things, resilient business franchise and growth potential. Under normal market conditions the Portfolio will invest in securities of issuers from at least three different countries, including both developed and emerging market countries, and which may include the United States. Securities are selected on a global basis with a strong bias towards value. The Portfolio is non-diversified and may concentrate its holdings in a relatively small number of companies and may invest up to 25% of its assets in a single issuer. Principal Risks • Market Risk • Investment Style Risk • Foreign Investment Risk • Market Capitalization Risk • Investment Style Risk • Other Risks: Because the Portfolio may invest its assets in a small number of issuers, the portfolio is more susceptible to any single-economic, political or regulatory event affecting those issuers than is a diversified portfolio.	
Oppenheimer Global Securities Fund/VA—seeks long-term capital appreciation. The Fund invests a substantial portion of its assets in the common stock and other equity securities (including preferred stocks and convertible securities) of foreign issuers, "growth-type" companies, cyclical industries and special situations that are considered to have appreciation possibilities. The Fund may invest in both developed and emerging markets and will normally invest in at least three different countries (one of which may be the United States). Typically the Fund invests in a number of different countries. The Fund may invest in the securities of issuers of any market capitalization range. The Fund can also use hedging instruments and certain derivative investments to try and manage investment risks.	

Existing fund	Replacement fund
Principal Risks: • Market Risk • Market Capitalization Risk • Investment Style Risk • Foreign Investment Risk • Credit Risk • Other Risks: Derivatives Risk	
Templeton Growth Securities Fund—Seeks long term capital growth. The Fund invests mainly in equity securities of companies located anywhere in the world, including those in the U.S. and emerging markets. The Fund may invest without limitation in foreign securities. Up to 15% of the Fund's net assets may be invested in debt securities, including 10% of net assets in debt securities rated below investment grade. The Fund may also invest up to five percent of its assets in swap agreements, put and call options and collars. The portfolio manager investment philosophy is "bottom-up", value-oriented and long-term. The Fund may from time to time have significant investments in particular countries or in particular sectors. Principal Risks: • Market Risk • Investment Style Risk • Foreign Investment risk • Other Risks: Derivatives Risk • Other Risks: By focusing on investments in particular countries or sectors from time to time, the Fund carries greater risks of adverse developments in a country or sector than a fund that always invests in a wide variety of countries and sectors.	
Mercury Value Opportunities V.I. Fund[4]—seeks long-term growth of capital. The fund primarily invests in common stock of small-cap companies and emerging growth companies that Fund management believes have special investment value. The Fund tries to choose investments that will increase in value. The Fund also seeks to invest in emerging growth companies that occupy dominant positions in developing industries, have strong management and demonstrate successful product development and marketing capabilities. The Fund can invest up to 30% of its assets in foreign securities including securities of emerging market issuers. Principal Risks: • Market Risk • Market Capitalization Risk • Investment Style Risk • Foreign Investment Risk	Third Avenue Small Cap Value Portfolio—seeks long-term capital appreciation. Normally, the Portfolio, which is non-diversified, invests at least 80% of its net assets in equity securities of small companies whose market capitalization is no greater than nor less than the range of capitalization of companies in the Russell 2000 Index or the S&P Small Cap 600 Index. The Portfolio seeks to acquire common stocks of well-financed companies at a substantial discount to what the investment adviser believes is their true value. The Portfolio may invest up to 25% of its assets in foreign securities. As of December 31, 2005, 11.4% of the Portfolio's assets were invested in foreign securities. Principal Risks: • Market Risk • Market Capitalization Risk • Investment Style Risk • Foreign Investment Risk Other Risks: Because the Portfolio may invest its assets in a small number of issuers, the Portfolio is more susceptible to any single-economic, political or regulatory event affecting those issuers than is a diversified portfolio.
Lazard Retirement Small Cap Portfolio[5]—seeks long-term capital appreciation. Under normal circumstances, at least 80% of the Portfolio's assets are invested in equity securities, primarily common stock of small-cap companies with market capitalizations within the range of the companies included in the Russel 2000 Index. The portfolio manager looks for companies that are undervalued relative to their earnings, cash flow, asset values or other measures of value.The Portfolio may also invest up to 20% of its assets in equity securities of larger U.S. companies. The Portfolio occasionally invests in foreign securities. There are no stated limits for investments in foreign securities. For the period December 31, 2001 to December 31, 2005, the Portfolio's investment in foreign securities ranged from 0% to 3.4% of its assets. As of December 31, 2005,the weighting of investments in foreign securities was 0.07%. Principal Risks: • Market Risk • Market Capitalization Risk • Investment Style Risk	

Existing fund	Replacement fund
Mid-Cap Value Portfolio—seeks capital appreciation through investments, primarily in equity securities, which are believed to be undervalued in the marketplace. The Portfolio invests at least 80% of its assets in mid-sized companies with a capitalization range of the companies in the Russell Mid Cap Index, as of February 28, 2005 the market capitalization range of the Russell Mid Cap Index was $564 million to $37 billion. The portfolio invests primarily in common stocks, including convertible securities, of companies with good prospects for improvement in earning trends or asset values that are not yet fully recognized. The Portfolio may invest up to 10% of its assets in foreign securities. The manager of the Portfolio also manages the Replacement Fund. Principal Risks: • Market Risk • Market Capitalization Risk • Investment Style Risk • Foreign Investment Risk	Lord Abbett Mid-Cap Value Portfolio—seeks capital appreciation through investments, primarily in equity securities, which are believed to be undervalued in the marketplace. The Portfolio invests at least 80% of its assets in mid-sized companies in the Russell Mid Cap Index which is roughly $500 million to $10 billion. The Portfolio invests primarily in common stocks, including convertible securities, of companies with good prospects for improvement in earning trends or asset values that are not yet fully recognized. The Portfolio may invest up to 10% of its assets in foreign securities. Principal Risks: • Market Risk • Market Capitalization Risk • Investment Style Risk • Foreign Investment Risk
Oppenheimer Capital Appreciation Fund/VA—seeks capital appreciation by investing in securities of well-known established companies. The Fund invests mainly in the common stock of "growth companies" of any market capitalization. The Fund currently focuses on the securities of mid-cap and large-cap companies and will not invest more than 25% of its assets in any one industry. The Fund may also invest up to 35% of its assets in the securities of foreign issuers. The manager of the Fund also manages the Replacement Fund. Principal Risk: • Market Risk • Foreign Investment Risk • Market Capitalization Risk • Investment Style Risk	Oppeheimer Capital Appreciation Portfolio—seeks capital appreciation. The Portfolio mainly invests in common stocks of growth companies of any market capitalization. The Portfolio currently focuses on the securities of mid-cap and large-cap companies. The Portfolio may also invest up to 35% of its assets in the securities of foreign issuers. Principal Risks: • Market Risks • Foreign Investment Risk • Market Capitalization Risk • Investment Style Risk
MFS Money Market Series—seeks as high a level of current income as is considered consistent with the preservation of capital and liquidity. The Series invests in high quality money market obligations including U.S. government securities, certificates of deposit, commercial paper, certificates of deposit, commercial paper, municipal securities and other short-term obligations which are rated within the highest credit rating. The Series may also invest up to 35% of its total assets in short-term notes of other debt securities that are of comparable high quality and liquidity. The Series may invest up to 20% of its total assets in municipal securities when backed by a letter of credit or guarantee from an issuing bank. Principal Risks: • Market Risk • Foreign Investment Risk • Interest Rate Risk • Credit Risk	Black Rock Money Market Portfolio—seeks a high level of current income consistent with preservation of capital. The Portfolio invests in the highest quality money market obligations including commercial paper and asset-backed securities. The Portfolio may also invest in U.S. dollar-denominated securities issued by foreign companies or banks or their U.S. affiliates. Principal Risks: • Market Risk • Foreign Investment Risk • Interest Rate Risk • Credit Risk
Van Kampen LIT—Money Market Portfolio—seeks the protection of capital and high current income through investing in money market instruments. The Portfolio invests in U.S. dollar-denominated money market securities, including U.S. government securities, bank obligations, commercial paper and repurchase agreements secured by such obligations. The Portfolio's investments are limited to those securities that meet maturity, quality and diversification standards with which money market funds must comply. Principal Risks: • Market Risk • Interest Rate Risk • Credit Risk • Investment Style Risk	

Existing fund	Replacement fund
MFS Strategic Income Series—seeks high current income by investment in fixed-income securities. Significant capital appreciation is the secondary objective. At least 65% of its assets are invested in U.S. government securities, foreign government securities, mortgage- and asset-backed securities, corporate bonds (including up to 100% of its assets in junk bonds) and emerging market securities. The Series may invest in derivative securities including futures and forward contracts, options on futures contracts, foreign currencies, securities and bond indices, structured notes and indexed securities, and swaps, caps, floors and collars. The Series is non-diversified. Principal Risks: • Market Risk • Interest Rate Risk • Foreign Investment Risk • Credit Risk • High-Yield Debt Security Risk • Other Risks: Because the Series may invest its assets in a small number of issuers, the Series is more susceptible to any single-economic, political or regulatory event affecting those issuers than is a diversified portfolio. • Other Risks: Derivatives Risk	Salomon Strategic Bond Opportunities Portfolio—seeks to maximize total return consistent with preservation of capital. Under normal circumstances, the Portfolio invests at least 80% of its assets in U.S. investment grade securities including U.S. government securities, U.S. and foreign high-yield debt, including securities of emerging market issuers and foreign government securities. Up to 100% of the Portfolio's assets may be invested in high-yield, high risk foreign securities. The Portfolio may attempt to avoid the risk of an unfavorable shift in currency overnight rates by entering into forward contracts or buying or selling a futures contract and options on futures contracts. The Portfolio may also purchase futures contract or options on futures contracts to maintain exposure to the broad fixed-income markets. Principal Risks: • Market Risk • Interest Rate Risk • Credit Risk • Foreign Investment Risk • High-Yield Debt Security Risk • Other Risks: Derivatives Risk
MFS Emerging Growth Series[6]—seeks to provide long-term growth of capital. Normally the Series invests at least 65% of its net assets in common stocks and related securities of emerging growth companies of any size (currently invests primarily in large-cap companies). The Series may invest in securities listed on a securities exchange or in the over-the-counter markets. The Series may invest in foreign securities including emerging market securities. The Series may also use derivatives including forward contracts and futures contracts. The Series may invest up to five percent of its assets in non-investment grade debt securities, but generally does not do so. As of December 31, 2005, there were 123 securities in the Series. Principal Risks: • Market Risk • Market Capitalization Risk • Investment Style Risk • Foreign Investment Risk • Other Risks: Derivatives Risk	Janus Aggressive Growth Portfolio—seeks long-term growth of capital. The Portfolio invests primarily in common stocks selected for their growth potential. Investments may be made in companies of any size. The Portfolio may invest without limit in foreign securities and up to 10% of its assets in high-yield/high risk debt securities. Although there is no stated limit for investment in foreign securities, for the period February 2001 to December 31, 2005, the Portfolio's investments in foreign securities ranged from 3.10% to 24.6%. As of 12/31/05, the weighting of investments in foreign securities was 23.0%. The Adviser actively manages foreign currency exposure through the use of forward foreign currency exchange contracts, in conjunction with stock selection, in an attempt to protect and possibly enhance the Portfolio's market value. As of 12/31/05, the Portfolio had 0% of its investments in derivatives. The Portfolio is non-diversified. At December 31, 2005 there were 86 securities in the investment portfolio. At December 31, 2005 none of the Portfolio's assets were invested in high-yield high risk debt securities. For the period December 31, 2001 to December 31, 2005, the Portfolio's investments in high-yield high risk debt securities ranged from 0% to 2.4%. Principal Risks: • Market Risk • High-Yield Debt Security Risk • Market Capitalization Risk • Investment Style Risk • Foreign Investment Risk • Interest Rate Risk • Credit Risk • Other Risks: Because the Portfolio may invest its assets in a small number of issuers, the Portfolio is more susceptible to any single-economic, political or regulatory event affecting those issuers than is a diversified portfolio. • Other Risks: Derivatives Risk
Van Kampen LIT Emerging Growth Portfolio[7]—seeks capital appreciation. The Portfolio invests primarily in companies considered by the Portfolio's investment adviser to be emerging growth companies. The investment adviser seeks companies that it expects have rates of earnings growth that will accelerate, or whose rates of earnings growth are expected to exceed that of the overall economy. The Portfolio invests in companies of any size, including larger, more established companies or smaller, developing companies. The Portfolio may invest up to 25% of its total assets in securities of foreign issuers. As of 12/31/05, the Portfolio had 5.7% invested in foreign securities. The Portfolio may purchase and sell derivative investments, such as options, futures contracts and options on futures contracts. As of 12/31/05, the Portfolio has 0% of its investments in derivatives: As of December 31, 2005, there were 104 securities in the Portfolio. Principal Risks: • Market Risk • Market Capitalization Risk • Credit Risk • Investment Style Risk • Foreign Investment Risk • Other Risk: Derivatives Risk	

[1] With respect to AllianceBernstein Large Cap Growth Portfolio and T. Rowe Price Large Cap Growth Portfolio, although income is not a stated objective of AllianceBernstein Large Cap Growth Portfolio, approximately 52% of the Portfolio's assets are invested in dividend paying securities. Moreover, at June 30, 2005, 4 of the top 10 securities held by Alliance-Bernstein Large Cap Growth Portfolio are held by T. Rowe Price Large Cap Growth Portfolio. AllianceBernstein Large Cap Growth Portfolio's dividend yield as of June 30, 2005 was 0.45% T. Rowe Price Large Cap Growth Portfolio's dividend yield as of June 30, 2005 was 1.00%.

[2] With respect to VIP Growth Portfolio and T. Rowe Price Large Cap Growth Portfolio, although income is not a stated objective of VIP Growth Portfolio, approximately 71.7% of the Portfolio's assets are invested in dividend paying securities. Moreover, at June 30, 2005, 5 of the top 10 securities held by VIP Growth Portfolio are held by T. Rowe Price Growth Stock Portfolio. VIP Growth Portfolio's dividend yield as of June 30, 2005 was 0.50%. T. Rowe Price Large Cap Growth Portfolio's dividend yield as of June 30, 2005 was 1.00%.

[3] As of June 30, 2005, neither Delaware VIP REIT Series, U.S. Real Estate Portfolio nor Neuberger Berman Real Estate Portfolio had any investments in mortgage-backed securities or debt securities including in non-investment grade debt securities. Each Portfolio had over 96.3% of its assets invested in real estate investment trusts or common stock equities with the balance in cash and repurchase agreements.

[4] Although Third Avenue Small Cap Value Portfolio is classified as a non-diversified fund, its investments are similar to a diversified fund. As of 12/31/05, Third Avenue Small Cap Portfolio's top ten holdings amounted to 20.95% with no portfolio holdings in excess of 2.8%. Mercury Value Opportunities V.I. Fund's top ten holdings at 12/31/05 amounted to 18.4% of its portfolio with no holding in excess of 2.9%. Third Avenue Small Cap Value Portfolio will continue to be managed as a diversified portfolio indefinitely.

[5] Although Third Avenue Small Cap Value Portfolio is classified as a non-diversified fund, its investments are similar to a diversified fund. As of 12/31/05, Third Avenue Small Cap Portfolio's top ten holdings amounted to 20.95% with no portfolio holding in excess of 2.8%. Lazard Retirement Small Cap Portfolio's top ten holdings at 12/31/05 amounts to 12.5% with no portfolio holding in excess of 1.5%. Third Avenue Small Cap Value Portfolio will continue to be managed as a diversified portfolio indefinitely.

[6] Although Janus Aggressive Growth Portfolio is classified as a non-diversified fund, its investments are similar to a diversified fund. As of 12/31/05, Janus Aggressive Growth Portfolio's top ten holdings amounted to 24.61% with no portfolio holding in excess of 3.83%. MFS Growth Series' top ten holding at 12/31/05 amounted to 21.51% with no portfolio holding in excess of 2.43%. Janus Aggressive Growth Portfolio will continue to be managed as a diversified portfolio indefinitely.

[7] Although Janus Aggressive Growth Portfolio is classified as a non-diversified fund, its investments are similar to a diversified fund. As of 12/31/05, Janus Aggressive Growth Portfolio's top ten holdings amounted to 24.61% with no portfolio holding in excess of 3.83%. Van Kampen LIT Emerging Growth Portfolio's top ten holdings at 12/31/05 amounted to 17.46% with no portfolio holding in excess of 2.43%. Janus Aggressive Growth Portfolio will continue to be managed as a diversified portfolio indefinitely.

Description of the Contracts

105. The annuity contracts are individual and group flexible premium fixed and variable deferred annuity contracts. The annuity contracts provide for the accumulation of values on a variable basis, fixed basis, or both, during the accumulation period, and provide settlement or annuity payment options on a variable basis, fixed basis, or both. The immediate annuity contracts provide for a series of payments under various pay-out types on a variable basis, fixed basis or both. Under the annuity contracts, the Insurance Companies reserve, explicitly or by implication, the right to substitute shares of one fund with shares of another, including a fund of a different registered investment company.

106. Under the annuity contracts, the Contract owners may currently select between a number of variable account investment options and, under some Contracts, one fixed account investment option. Many of the Contracts provide that a maximum of 12 transfers can be made every year without charge or that a $10 contractual limit charge will apply or that no transfer charge will apply. Currently, during the accumulation period, Contract owners may transfer between the variable account options or from variable account options to fixed account options without limitation. Some of the Contracts have no contractual limit on transfers during the accumulation period. Some Contract owners may make transfers from the fixed account option subject to certain minimum transfer amounts ($500 or the total interest in the account) and maximum limitations. Some of the Contracts have additional restrictions on transfers from the fixed account to the variable account. During the income period or under the immediate annuity, Contract owners may currently make unlimited transfers among investment portfolios and from investment portfolios to the fixed account option. Transfers from the fixed account option are not permitted during the payout period. No fees or other charges are currently imposed on transfers for most of the Contracts. Under certain annuity contracts, the Insurance Companies reserve the right to impose additional restrictions on transfers. Any transfer limits will be suspended in connection with the substitutions as described in more detail below.

107. The Insurance Companies issue two types of life insurance policies: (1) A flexible premium joint and last survivor variable life insurance policy and (2) a flexible premium single-life variable life insurance policy. Policy owners may allocate account value among the General Account and the available investment portfolios. The minimum face amount of the insurance ranges from $50,000 to $100,000 (except that Contracts that are exempt from registration have a minimum face amount of $1,000,000). Under the policies, the Insurance Companies reserve, explicitly or by implication, the right to substitute shares of one fund with shares of another, including a fund of a different investment company.

108. All or part of the account value may be transferred from any investment portfolio to another investment portfolio, or to the General Account. The minimum amount that can be transferred is the lesser of the minimum transfer amount (which ranges from $1 to $500), or the total value in an investment portfolio or the General Account. Certain policies provide that twelve transfers in a policy year can be made without charge. A transfer fee of $25 is payable for additional transfers in a policy year, but these fees are not currently charged. Other policies do not currently limit the number of transfers; however, the Insurance Companies reserve the right to limit transfers to four or twelve (depending on the policy) per policy year and to impose a $25 charge on transfers in excess of 12 per year or on any transfer.

109. Certain policies provide that the maximum amount that can be transferred from the General Account in any policy year is the greater of:

(a) 15% to 25% (depending on the policy) of a policy's cash surrender value in the General Account at the beginning of the policy year, or

(b) the previous policy year's General Account maximum withdrawal amount, not to exceed the total cash surrender value of the policy.

Transfers from the General Account of other policies are subject to similar limitations. Some policies limit the number of transfers from the General Account to four.

110. Transfers resulting from policy loans are not counted for purposes of the limitations on the amount or frequency of transfers allowed in each policy year.

111. Under the policies, the Insurance Companies reserve the right to impose additional restrictions on transfers. All transfer limits will be suspended in connection with the substitutions as described in more detail below.

Reasons for the Substitution

112. The substitutions are expected to provide significant benefits to Contract owners, including improved selection of portfolio managers and simplification of fund offerings through the elimination of overlapping offerings. Based on generally better performance records and generally lower total expenses of the Replacement Funds, the Substitution Applicants believe that the sub-advisers to the Replacement Funds overall are better positioned to provide consistent above-average performance for their Funds than are the advisers or sub-advisers of the Existing Funds. At the same time, Contract owners will continue to be able to select among a large number of funds, with a full range of investment objectives, investment strategies, and managers.

113. Further, many of the Existing Funds are smaller than their respective Replacement Funds. As a result, various costs such as legal, accounting, printing and trustee fees are spread over a larger base with each Contract owner bearing a smaller portion of the cost than would

be the case if the Fund were smaller in size.

114. Those substitutions which replace outside funds with funds for which either Met Investors Advisory, LLC or MetLife Advisers, LLC acts as investment adviser will permit each adviser, under an order of the Commission ("Multi-Manager Order"),[40] to hire, monitor and replace sub-advisers as necessary to seek optimal performance. Met Series Fund and MIST have been subject to the Multi-Manager Order since 1999 and 2000, respectively.

115. In addition, Contract owners with sub-account balances invested in shares of the Replacement Funds will, except as follows, have the same or lower total expense ratios taking into account fund expenses (including Rule 12b–1 fees, if any) and current fee waivers. In the following substitutions, the total operating expense ratios of the Replacement Funds are higher because expenses, other than the management fee, are somewhat higher:

- Mercury Global Allocation V.I. Fund/Oppenheimer Global Equity Portfolio—total expenses of Class B shares are 16 basis points higher than those of Mercury Global Allocation V.I. Fund
- Templeton Growth Securities Portfolio/Oppenheimer Global Equity Portfolio—total expenses of Class A and Class B shares are 11 basis points higher each than those of Templeton Growth Securities Portfolio
- Oppenheimer Global Securities Fund/VA/Oppenheimer Global Equity Portfolio—total expenses of Class B shares are 26 basis points higher than those of Oppenheimer Global Securities Fund/VA
- VIP Growth Portfolio/T. Rowe Price Large Cap Growth Portfolio—total expenses of Class A and Class B shares are each 8 basis points higher than those of Initial Class and Service Class II shares of VIP Growth Portfolio, respectively

116. In the following substitutions, the management fee of the Replacement Fund is higher than that of the respective Existing Fund:

- Equity and Income Portfolio/MFS Total Return Portfolio—management fee is 11 basis points higher
- VIP Growth and Income Portfolio/Lord Abbett Growth and Income Portfolio—management fee is 3 basis points higher
- VIP Growth Portfolio/T. Rowe Price Large Cap Stock Portfolio—management fee is 3 basis points higher
- VIP Asset Manager Portfolio/MFS Total Return Portfolio—management fee is 5 basis points higher
- Balanced Portfolio/MFS Total Return Portfolio—management fee is 2 basis points higher

117. The Substitution Applicants propose to limit Contract charges attributable to Contract value invested in the Replacement Funds following the proposed substitutions to a rate that would offset the difference in the expense ratio between each Existing Fund's net expense ratio for fiscal year 2005 and the net expense ratio for the respective Replacement Fund.

118. Except as stated above for Contract owners with account balances in certain classes of 5 of the 30 funds involved in the substitutions, the substitutions will result in decreased net expense ratios (ranging from 2 basis points to 37 basis points). Moreover, there will be no increase in Contract fees and expenses, including mortality and expense risk fees and administration and distribution fees charged to the Separate Accounts as a result of the substitutions. The Substitution Applicants believe that the Replacement Funds have investment objectives, policies and risk profiles that are either substantially the same as, or sufficiently similar to, the corresponding Existing Funds to make those Replacement Funds appropriate candidates as substitutes. The Insurance Companies considered the performance history of the Existing Funds and the Replacement Funds and determined that no Contract owners would be materially adversely affected as a result of the substitutions.

119. In addition, as a result of the substitutions, neither Met Investors Advisory, LLC, MetLife Advisers, LLC nor any of their affiliates will receive increased amounts of compensation from the charges to the Separate Accounts related to the Contracts or from Rule 12b–1 fees or revenue sharing currently received from the investment advisers or distributors of the Existing Funds.

120. MetLife Advisers, LLC or Met Investors Advisory, LLC is the adviser of each of the Replacement Funds. Each Replacement Fund currently offers, or by May 1, 2006 will offer, up to five classes of shares, three of which, Class A, Class B and Class F, are involved in the substitutions. No Rule 12b–1 Plan has been adopted for any Replacement Fund's Class A shares. Each Replacement Fund's Class B shares and Class F shares have adopted a Rule 12b–1 distribution plan whereby up to 0.50% and 0.50% of a Fund's assets attributable to its Class B shares and Class F shares, respectively, may be used to finance the distribution of the Fund's shares. Currently, payments under the plan are limited to 0.25% for Class B shares and 0.20% for Class F shares. The Boards of Trustees/Directors of each of MIST and Met Series Fund may increase payments under its plans to the full amount without shareholder approval.

121. While each Replacement Fund's Class B and Class F Rule 12b–1 fees can be raised to 0.50% and 0.50%, respectively, of net assets by the Fund's Board of Trustees/Directors, the Rule 12b–1 fees of 0.25% of the Existing Funds' shares cannot be raised by the Fund's Board of Trustees, without shareholder approval, except as follows:

AllianceBernstein Large Cap Growth Portfolio—can be raised by the Board up to 0.50%

AllianceBernstein Growth and Income Portfolio—can be raised by the Board up to 0.50%

Mutual Shares Securities Fund—can be raised by the Board up to 0.35%

Templeton Growth Securities Fund—can be raised by the Board up to 0.35%

Van Kampen LIT Emerging Growth Portfolio—can be raised by the Board up to 0.35%

Van Kampen LIT Money Market Portfolio—can be raised by the Board up to 0.35%

The distributors of the Existing Funds pay to the Insurance Companies, or their affiliates, any 12b–1 fees associated with the class of shares sold to the Separate Accounts. Similarly, the distributors for MIST and Met Series Fund will receive from the applicable class of shares held by the Separate Accounts Rule 12b–1 fees in the same amount or a lesser amount than the amount paid by the Existing Funds.

122. Met Series Fund and MIST represent that, except as set forth in the following sentence, Rule 12b–1 fees for the Replacement Funds' Class B shares issued in connection with the proposed substitutions will not be raised above 0.25% of net assets without approval of a majority in interest of those Contract owners whose shares were involved in the proposed substitutions. For the following substitutions, Rule 12b–1 fees for the Replacement Funds' Class B

[40] New England Funds Trust I, et al., Investment Company Release No. 22824 (September 17, 1997) (order), amended by New England Funds Trust I, *et al.*, Investment Company Release No. 23859 (June 4, 1999). Under the Multi-Manager Order, Met Investors Advisory LLC and MetLife Advisers, LLC are each authorized to enter into and amend sub-advisory agreements without shareholder approval under certain conditions.

shares will not exceed the amounts set forth below:

AllianceBernstein Growth and Income Portfolio/Lord Abbett Growth and Income Portfolio—0.35%
Van Kampen LIT Emerging Growth Portfolio/Janus Aggressive Growth Portfolio—0.35%
Van Kampen LIT Money Market Portfolio/BlackRock Money Market Portfolio—0.35%
Mutual Shares Securities Fund/Lord Abbett Growth and Income Portfolio—0.35%

123. In addition, with respect to Class F shares issued in connection with the proposed substitutions, the 12b–1 fee of 0.20% will not be raised without approval of a majority in interest of those Contract owners whose shares were involved in the proposed substitutions.

124. Appendix 1 describes each proposed substitution with respect to the amount of each Fund's assets, comparative performance history and comparative fund expenses. Performance history takes into account the one-, three-, five- and ten-year periods ended December 31, 2005. If the Replacement Fund has not been in existence for a significant period of time, the performance of a comparable fund managed by the same sub-adviser with substantially similar investment objectives and policies as the Replacement Fund, may be used. The Substitution Applicants represent that this use of comparable fund performance rather than a sub-adviser's applicable composite performance is not materially misleading. Comparative fund expenses are based on actual expenses including waivers for the year ended December 31, 2005 or for Funds commencing operations in 2005, estimated expenses including waivers for the year ended December 31, 2006. Where a Fund has multiple classes of shares involved in the proposed substitution, the expenses of each class are presented. Current Rule 12b–1 fees are also the maximum 12b–1 fees unless otherwise noted in the fee tables.

125. The Substitution Applicants agree that for those who were Contract owners on the date of the proposed substitutions, the Insurance Companies will reimburse, on the last business day of each fiscal period (not to exceed a fiscal quarter) during the twenty-four months following the date of the proposed substitutions, the subaccount investing in the Replacement Fund such that the sum of the Replacement Fund's operating expenses (taking into account fee waivers and expense reimbursements) and subaccount expenses (asset-based fees and charges deducted on a daily basis from subaccount assets and reflected in the calculation of subaccount unit values) for such period will not exceed, on an annualized basis, the sum of the Existing Fund's operating expenses (taking into account fee waivers and expense reimbursements) and subaccount expenses for fiscal year 2005, except with respect to the AIM V.I. Basic Balanced Fund/MFS Total Return Portfolio, Balanced Portfolio (Institutional Class only)/MFS Total Return Portfolio, VIP Growth and Income Portfolio/Lord Abbett Growth and Income Portfolio and VIP Growth Portfolio (Initial Class and Service Class 2 shares only)/T. Rowe Price Large Cap Growth Portfolio substitutions.

126. The Substitution Applicants agree that with respect to the AIM V.I. Basic Balanced Fund/MFS Total Return Portfolio, Balanced Portfolio (Institutional Class only)/MFS Total Return Portfolio, VIP Growth and Income Portfolio/Lord Abbett Growth and Income Portfolio and VIP Growth Portfolio (Initial Class and Service Class 2 shares only)/T. Rowe Price Large Cap Growth Portfolio substitutions, the Insurance Companies will reimburse, on the last business day of each fiscal period (not to exceed a fiscal quarter) during the for the life of each Contract outstanding on the date of the proposed substitutions, the subaccount investing in the Replacement Fund such that the sum of the Replacement Fund's operating expenses (taking into account fee waivers and expense reimbursements) and subaccount expenses (asset-based fees and charges deducted on a daily basis from subaccount assets and reflected in the calculation of subaccount unit values) for such period will not exceed, on an annualized basis, the sum of the Existing Fund's operating expenses (taking into account fee waivers and expense reimbursements) and subaccount expenses for fiscal year 2005.

127. The Substitution Applicants further agree that, except with respect to the AIM V.I. Basic Balanced Fund/MFS Total Return Portfolio, Balanced Portfolio (Institutional Class only)/MFS Total Return Portfolio, VIP Growth and Income Portfolio/Lord Abbett Growth and Income Portfolio and VIP Growth Portfolio (Initial Class and Service Class 2 shares only)/T. Rowe Price Large Cap Growth Portfolio substitutions, the Insurance Companies will not increase total separate account charges (net of any reimbursements or waivers) for any existing owner of the Contracts on the date of the substitutions for a period of two years from the date of the substitutions. With respect to the AIM V.I. Basic Balanced Fund/MFS Total Return Portfolio, Balanced Portfolio (Institutional Class only)/MFS Total Return Portfolio, VIP Growth and Income Portfolio/Lord Abbett Growth and Income Portfolio and VIP Growth Portfolio (Initial Class and Service Class 2 shares only)/T. Rowe Price Large Cap Growth Portfolio substitutions, the agreement not to increase separate account charges will extend for the life of each Contract outstanding on the date of the proposed substitutions.

128. By a supplement to the prospectuses for the Contracts and the Separate Accounts, each Insurance Company will notify all owners of the Contracts of its intention to take the necessary actions, including seeking the order requested by this Application, to substitute shares of the funds as described herein. The supplement will advise Contract owners that from the date of the supplement until the date of the proposed substitution, owners are permitted to make one transfer of Contract value (or annuity unit exchange) out of the Existing Fund sub-account to one or more other sub-accounts without the transfer (or exchange) being treated as one of a limited number of permitted transfers (or exchanges) or a limited number of transfers (or exchanges) permitted without a transfer charge. The supplement also will inform Contract owners that the Insurance Company will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. The one exception to this is that the Insurance Companies may impose restrictions on transfers to prevent or limit "market timing" activities by Contract owners or agents of Contract owners. The supplement will also advise Contract owners that for at least 30 days following the proposed substitutions, the Insurance Companies will permit Contract owners affected by the substitutions to make one transfer of Contract value (or annuity unit exchange) out of the Replacement Fund sub-account to one or more other sub-accounts without the transfer (or exchange) being treated as one of a limited number of permitted transfers (or exchanges) or a limited number of transfers (or exchanges) permitted without a transfer charge.

129. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's Contract value, cash value, or death benefit or in the dollar value of his or her investment in the

Separate Accounts. The process for accomplishing the transfer of assets from each Existing Fund to its corresponding Replacement Fund will be determined on a case-by-case basis.

130. In most cases, it is expected that the substitutions will be effected by redeeming shares of an Existing Fund for cash and using the cash to purchase shares of the Replacement Fund. In certain other cases, it is expected that the substitutions will be effected by redeeming the shares of an Existing Fund in-kind; those assets will then be contributed in-kind to the corresponding Replacement Fund to purchase shares of that Fund. All in-kind redemptions from an Existing Fund of which any of the Substitution Applicants is an affiliated person will be effected in accordance with the conditions set forth in the Commission's no-action letter issued to *Signature Financial Group, Inc.* (available December 28, 1999). In-kind purchases of shares of a Replacement Fund will be conducted as described below.

131. Contract owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or an Insurance Company's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including brokerage, legal, accounting, and other fees and expenses, will be paid by the Insurance Companies. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions. No fees will be charged on the transfers made at the time of the proposed substitutions because the proposed substitutions will not be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year.

132. In addition to the prospectus supplements distributed to owners of Contracts, within five business days after the proposed substitutions are completed, Contract owners will be sent a written notice informing them that the substitutions were carried out and that they may make one transfer of all Contract value or cash value under a Contract invested in any one of the sub-accounts on the date of the notice to one or more other sub-accounts available under their Contract at no cost and without regard to the usual limit on the frequency of transfers from the variable account options to the fixed account options. The notice will also reiterate that (other than with respect to "market timing" activity) the Insurance Company will not exercise any rights reserved by it under the Contracts to impose additional restrictions on transfers or to impose any charges on transfers until at least 30 days after the proposed substitutions. The Insurance Companies will also send each Contract owner current prospectuses for the Replacement Funds involved to the extent that they have not previously received a copy.

133. Each Insurance Company also is seeking approval of the proposed substitutions from any state insurance regulators whose approval may be necessary or appropriate.

Applicants' Legal Analysis

1. The Substitution Applicants request that the Commission issue an order pursuant to Section 26(c) of the Act approving the proposed substitutions. Section 26(c) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Specifically, Section 26(c) states:

> It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provision of this title.

2. The Substitution Applicants note that the proposed substitutions appear to involve substitutions of securities within the meaning of Section 26(c) of the Act. The Substitution Applicants, therefore, request an order from the Commission pursuant to Section 26(c) approving the proposed substitutions.

3. The Substitution Applicants state that the Contracts expressly reserve or by implication reserve to the applicable Insurance Company the right, subject to compliance with applicable law, to substitute shares of another investment company for shares of an investment company held by a sub-account of the Separate Accounts. The prospectuses for the Contracts and the Separate Accounts contain appropriate disclosure of this right.

4. The Substitution Applicants note that in the case of the AIM V.I. Basic Balanced Fund/MFS Total Return Portfolio, Balanced Portfolio (Institutional Class only)/MFS Total Return Portfolio, VIP Growth and Income Portfolio/Lord Abbett Growth and Income Portfolio and VIP Growth Portfolio (Initial Class and Service Class 2 shares only)/T. Rowe Price Large Cap Growth Portfolio substitutions, for affected Contract owners, the Replacement Fund's net expenses will not, for the life of the Contracts, exceed the 2005 net expenses of the Existing Fund. In addition, Contract owners with balances invested in the Replacement Fund will have, taking into effect any applicable expense waivers, a lower expense ratio in many cases and, for the others, a similar expense ratio. However, the Substitution Applicants, as described above, propose to limit Contract charges attributable to Contract value invested in the Replacement Funds following the proposed substitutions to a rate that would offset the expense ratio difference between the Existing Funds' 2005 net expense ratio and the net expense ratios for the Replacement Funds.

5. The Substitution Applicants assert that the proposed Replacement Fund for each Existing Fund has an investment objective that is at least substantially similar to that of the Existing Fund. Moreover, the Substitution Applicants submit that the principal investment policies of the Replacement Funds are similar to those of the corresponding Existing Funds. In addition, the following Existing Funds are not being offered for new sales, but only are available as investment options under Contracts previously or currently offered by the Insurance Companies or, if available, are available only for additional contributions and/or transfers from other investment options under Contracts not currently offered: AllianceBernstein Large Cap Growth Portfolio, AllianceBernstein Growth and Income Portfolio, Delaware VIP REIT Series, Appreciation Portfolio, VIP Asset Manager Portfolio, VIP Growth Portfolio, Balanced Portfolio, (Janus Aspen Series) Growth and Income Portfolio, Growth and Income Portfolio, Mid-Cap Value Portfolio, Templeton Growth Securities Fund and Van Kampen LIT Emerging Growth Portfolio.

6. The Substitution Applicants submit there is little likelihood that significant additional assets, if any, will be allocated to the above-listed Existing Funds and, therefore, because of the cost of maintaining such Funds as investment options under the Contracts, it is in the interest of shareholders to substitute the applicable Replacement Funds which are currently being offered as investment options by the Insurance Companies.

7. In each case, the applicable Insurance Companies believe that it is in the best interests of the Contract owners to substitute the Replacement Fund for the Existing Fund. The Insurance Companies believe that the new sub-adviser will, over the long term, be positioned to provide at least comparable performance to that of the Existing Fund's sub-adviser.

8. The Substitution Applicants believe that most of the assets of the Existing Funds belong to owners of variable annuity and variable life insurance contracts issued by insurance companies unaffiliated with MetLife. As such, Contract owners and future owners of contracts issued by affiliated insurance companies of MetLife cannot expect to command a majority voting position in any of the Existing Funds in the event that they, as a group, desire that an Existing Fund move in a direction different from that generally desired by owners of non-MetLife affiliated contracts.

9. In addition to the foregoing, the Substitution Applicants generally submit that the proposed substitutions meet the standards that the Commission and its staff have applied to similar substitutions that the Commission has in the past approved. In every proposed substitution except for four substitutions where expense offsets will be applied if the separate account level, the management fee and current 12b–1 fee of the Replacement Funds as well as the management fee and maximum 12b–1 fee, will be the same as, or lower than, those of the Existing Funds. Total operating expenses of the Replacement Funds will be similar to, or lower than those of the Existing Funds.

10. The Substitution Applicants stated that they anticipate the Contract owners will be better off with the array of sub-accounts offered after the proposed substitutions than they have been with the array of sub-accounts offered prior to the substitutions. The Substitution Applicants believe that the proposed substitutions retain for Contract owners the investment flexibility which is a central feature of the Contracts. If the proposed substitutions are carried out, all Contract owners will be permitted to allocate purchase payments and transfer Contract values and cash values between and among approximately the same number of sub-accounts as they could before the proposed substitutions.

11. The Substitution Applicants contend that none of the proposed substitutions is of the type that Section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer Contract or cash values into other sub-accounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected sub-accounts into any of the remaining sub-accounts without cost or other disadvantage. The Substitution Applicants believe that the proposed substitutions, therefore, will not result in the type of costly forced redemption which Section 26(c) was designed to prevent.

12. The Substitution Applicants further contend that the proposed substitutions also are unlike the type of substitution which Section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their account values. They also select the specific type of insurance coverage offered by an Insurance Company under their Contract as well as numerous other rights and privileges set forth in the Contract. Contract owners may also have considered each Insurance Company's size, financial condition, relationship with MetLife, and its reputation for service in selecting their Contract. These factors will not change as a result of the proposed substitutions.

13. The Section 17 Applicants request an order under Section 17(b) exempting them from the provisions of Section 17(a) to the extent necessary to permit the Insurance Companies to carry out each of the proposed substitutions.

14. The Section 17 Applicants note that Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act generally prohibits the persons described above, acting as principals, from knowingly purchasing any security or other property from the registered company.

15. The Section 17 Applicants assert that Section 2(a)(3) of the Act defines the term "affiliated person of another person" in relevant part as:

> (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; * * * (E) if such other person is an investment company, any investment adviser thereof * * *.

16. The Section 17 Applicants note that because shares held by a separate account of an insurance company are legally owned by the insurance company, the Insurance Companies and their affiliates collectively own of record substantially all of the shares of MIST and Met Series Fund. Therefore, MIST and Met Series Fund and their respective funds are arguably under the control of the Insurance Companies notwithstanding the fact that Contract owners may be considered the beneficial owners of those shares held in the Separate Accounts. If MIST and Met Series Fund and their respective funds are under the control of the Insurance Companies, then each Insurance Company is an affiliated person or an affiliated person of an affiliated person of MIST and Met Series Fund and their respective funds. If MIST and Met Series Fund and their respective funds are under the control of the Insurance Companies, then MIST and Met Series Fund and their respective funds are affiliated persons of the Insurance Companies.

17. The Section 17 Applicants note that regardless of whether or not the Insurance Companies can be considered to control MIST and Met Series Fund and their respective funds, because the Insurance Companies own of record more than five percent of the shares of each of them and are under common control with each Replacement Fund's investment adviser, the Insurance Companies are affiliated persons of both MIST and Met Series Fund and their respective funds. Likewise, their respective funds are each an affiliated person of the Insurance Companies.

18. The Section 17 Applicants note that in addition to the above, the Insurance Companies, through their separate accounts in the aggregate own more than five percent of the outstanding shares of the following Existing Funds: AllianceBernstein Large Cap Growth Portfolio, AllianceBernstein Growth and Income Portfolio, Delaware VIP REIT Series, Templeton Growth Securities Fund, Mid-Cap Value Portfolio, Equity and Income Portfolio, Global Franchise Portfolio, Van Kampen LIT Emerging Growth Portfolio, Van Kampen LIT Money Market Portfolio, (Janus Aspen Series) Growth and Income Portfolio, Growth and Income Portfolio, MFS Money Market Series, Lazard Retirement Small Cap Portfolio and VIP Growth Portfolio. Therefore, each Insurance Company is an affiliated person of those funds.

19. The Section 17 Applicants assert that because the substitutions may be effected, in whole or in part, by means of in-kind redemptions and purchases, the substitutions may be deemed to involve one or more purchases or sales of securities or property between affiliated persons. The proposed transactions may involve a transfer of portfolio securities by the Existing Funds to the Insurance Companies; immediately thereafter, the Insurance Companies would purchase shares of the Replacement Funds with the portfolio securities received from the Existing Funds. Accordingly, as the Insurance Companies and certain of the Existing Funds listed above, and the Insurance Companies and the Replacement Funds, could be viewed as affiliated persons of one another under Section 2(a)(3) of the Act, it is conceivable that this aspect of the substitutions could be viewed as being prohibited by Section 17(a). The Section 17 Applicants are not seeking relief with respect to transactions with the Existing Funds where Section 17(a) does not apply. However, the Section 17 Applicants have determined that it is prudent to seek relief from Section 17(a) in the context of this Application for the in-kind purchases and sales of the Replacement Fund shares.

20. The Section 17 Applicants note that Section 17(b) of the Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that:

(a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(b) The proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and records filed under the Act; and

(c) The proposed transaction is consistent with the general purposes of the Act.

21. The Section 17 Applicants submit that the terms of the proposed in-kind purchases of shares of the Replacement Funds by the Insurance Companies, including the consideration to be paid and received are reasonable and fair and do not involve overreaching on the part of any person concerned. The Section 17 Applicants also submit that the proposed in-kind purchases by the Insurance Companies are consistent with the policies of: (1) MIST and of its Lord Abbett Growth and Income, Neuberger Berman Real Estate, Third Avenue Small Cap Value, Lord Abbett Mid Cap Value, Oppenheimer Capital Appreciation and Janus Aggressive Growth Portfolios; and (2) Met Series Fund and of its T. Rowe Price Large Cap Growth, MFS Total Return, Oppenheimer Global Equity, Salomon Strategic Bond Portfolio and BlackRock Money Market Portfolios, as recited in the current registration statements and reports filed by each under the Act. Finally, the Section 17 Applicants submit that the proposed substitutions are consistent with the general purposes of the Act.

22. The Section 17 Applicants note that to the extent that the in-kind purchases by the Insurance Company of the Replacement Funds' shares are deemed to involve principal transactions among affiliated persons, the procedures described below should be sufficient to assure that the terms of the proposed transactions are reasonable and fair to all participants. The Section 17 Applicants maintain that the terms of the proposed in-kind purchase transactions, including the consideration to be paid and received by each fund involved, are reasonable, fair and do not involve overreaching principally because the transactions will conform with all but one of the conditions enumerated in Rule 17a–7. The proposed transactions will take place at relative net asset value in conformity with the requirements of Section 22(c) of the Act and Rule 22c–1 thereunder with no change in the amount of any Contract owner's contract value or death benefit or in the dollar value of his or her investment in any of the Separate Accounts. Contract owners will not suffer any adverse tax consequences as a result of the substitutions. The fees and charges under the Contracts will not increase because of the substitutions. Even though the Separate Accounts, the Insurance Companies, MIST and Met Series Fund may not rely on Rule 17a–7, the Section 17 Applicants believe that the Rule's conditions outline the type of safeguards that result in transactions that are fair and reasonable to registered investment company participants and preclude overreaching in connection with an investment company by its affiliated persons.

23. The Section 17 Applicants assert that when the Commission first proposed, and then adopted, Rule 17a-7, it noted that the purpose of the Rule was to eliminate the filing and processing of applications "in circumstances where there appears to be no likelihood that the statutory finding for a specific exemption under Section 17(b) could not be made" by establishing "conditions as to the availability of the exemption to those situations where the Commission, upon the basis of its experience, considers that there is no likelihood of overreaching of the investment companies participating in the transaction." The Section 17 Applicants assert that where, as here, they or the relevant investment company would comply in substance with most, but not all of the conditions of the Rule, the Commission should consider the extent to which they would meet these or other similar conditions and issue an order if the protections of the Rule would be provided in substance.

24. The Section 17 Applicants stated that, the Commission explained its concerns with transactions of the type covered by Rule 17a-7 when it amended the Rule in 1981 to also exempt certain purchase and sale transactions between an investment company and a non-investment company affiliate. Previously, the Rule had only exempted transactions between investment companies and series of investment companies. Its expansion to cover transactions between an investment company (or series thereof) and a non-investment company affiliate demonstrates that such transactions can be reasonable and fair and not involve overreaching. The Commission stated:

> The Commission is concerned that this practice—left unregulated and in violation of Section 17(a)—could result in serious harm to registered investment companies. For example, an unscrupulous investment adviser might "dump" undesirable securities on a registered investment company or transfer desirable securities from a registered investment company to another more favored advisory client in the complex. Moreover, the transaction could be effected at a price which is disadvantageous to the registered investment company.
>
> Nevertheless, upon considering the matter, the Commission believes that it would be appropriate to exempt by rulemaking certain of these transactions provided that certain conditions, described below, are met. Accordingly, the Commission proposes to amend Rule 17a-7 to exempt certain transactions which heretofore have not been exempted by the rule, both with respect to the persons which could participate in the transaction, and the securities which could be purchased and sold. The Commission has determined that the proposed expansion of the rule is consistent with the existing rule's purposes (1) to eliminate the necessity of filing and processing applications under circumstances where there appears to be little likelihood that the statutory finding for a specific exemption under Section 17(b) of the Act could not be made, and (2) to permit investment companies which heretofore had chosen to avoid the application procedures of Section 17(b) of the Act by purchasing and

selling securities on the open market, thereby incurring actual brokerage charges, to avoid the payment of brokerage commissions by effecting such transactions directly. Moreover, the proposed amendment would enhance the role of disinterested directors as watchdogs to protect shareholder interest.

25. The Section 17 Applicants state that the boards of MIST and Met Series Fund have adopted procedures, as required by paragraph (e)(1) of Rule 17a-7, pursuant to which the series of each may purchase and sell securities to and from their affiliates. The Section 17 Applicants will carry out the proposed Insurance Company in-kind purchases in conformity with all of the conditions of Rule 17a-7 and each series' procedures thereunder, except that the consideration paid for the securities being purchased or sold may not be entirely cash. Nevertheless, the circumstances surrounding the proposed substitutions will be such as to offer the same degree of protection to each Replacement Fund from overreaching that Rule 17a-7 provides to them generally in connection with their purchase and sale of securities under that Rule in the ordinary course of their business. In particular, the Insurance Companies (or any of their affiliates) cannot effect the proposed transactions at a price that is disadvantageous to any of the Replacement Funds. Although the transactions may not be entirely for cash, each will be effected based upon (1) the independent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a-7, and (2) the net asset value per share of each fund involved valued in accordance with the procedures disclosed in its respective Investment Company's registration statement and as required by Rule 22c-1 under the Act. No brokerage commission, fee, or other remuneration will be paid to any party in connection with the proposed in kind purchase transactions.

26. The Section 17 Applicants assert that the sale of shares of Replacement Funds for investment securities, as contemplated by the proposed Insurance Company in-kind purchases, is consistent with the investment policy and restrictions of the Investment Companies and the Replacement Funds because (1) the shares are sold at their net asset value, and (2) the portfolio securities are of the type and quality that the Replacement Funds would each have acquired with the proceeds from share sales had the shares been sold for cash. To assure that the second of these conditions is met, Met Investors Advisory LLC, MetLife Advisers, LLC and the sub-adviser, as applicable, will examine the portfolio securities being offered to each Replacement Fund and accept only those securities as consideration for shares that it would have acquired for each such fund in a cash transaction.

27. The Section 17 Applicants contend that the proposed Insurance Company in-kind purchases, as described herein, are consistent with the general purposes of the Act as stated in the Findings and Declaration of Policy in Section 1 of the Act. The proposed transactions do not present any of the conditions or abuses that the Act was designed to prevent. In particular, Sections 1(b)(2) and (3) of the Act state, among other things, that the national public interest and the interest of investors are adversely affected

when investment companies are organized, operated, managed, or their portfolio securities are selected in the interest of directors, officers, investment advisers, depositors, or other affiliated persons thereof, or in the interests of other investment companies or persons engaged in other lines of business, rather than in the interest of all classes of such companies' security holders; * * * when investment companies issue securities containing inequitable or discriminatory provisions, or fail to protect the preferences and privileges of the holders of their outstanding securities * * *.

For all the reasons stated throughout this notice, the abuses described in Sections 1(b)(2) and (3) of the Act will not occur in connection with the proposed in-kind purchases.

28. The Section 17 Applicants note that the Commission has previously granted exemptions from Section 17(a) in circumstances substantially similar in all material respects to those presented in this Application to applicants affiliated with an open-end management investment company that proposed to purchase shares issued by the company with investment securities of the type that the company might otherwise have purchased for its portfolio. In these cases, the Commission issued an order pursuant to Section 17(b) of the Act where the expense of liquidating such investment securities and using the cash proceeds to purchase shares of the investment company would have reduced the value of investors' ultimate investment in such shares.

29. The Section 17 Applicants request that the Commission issue an order pursuant to Section 17(b) of the Act exempting the Separate Accounts, the Insurance Companies, MIST, Met Series Fund and each Replacement Fund from the provisions of Section 17(a) of the Act to the extent necessary to permit the Insurance Companies on behalf of the Separate Accounts to carry out, as part of the substitutions, the in-kind purchase of shares of the Replacement Funds which may be deemed to be prohibited by Section 17(a) of the Act.

30. The Section 17 Applicants represent that the proposed in-kind purchases meet all of the requirements of Section 17(b) of the Act and that an exemption should be granted, to the extent necessary, from the provisions of Section 17(a).

Conclusion

Applicants assert that for the reasons summarized above, the proposed substitutions and related transactions meet the standards of Section 26(c) of the Act and are consistent with the standards of Section 17(b) of the Act and that the requested orders should be granted.

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,

Secretary.

Appendix 1

1. AllianceBernstein Large Cap Portfolio—T. Rowe Price Large Cap Growth Portfolio

The aggregate amount of assets in the AllianceBernstein Large Cap Growth Portfolio as of December 31, 2005 was approximately $1.243 billion. As of December 31, 2005, T. Rowe Price Large Cap Growth Portfolio's assets were approximately $370 million. As set forth below, the historical performance of T. Rowe Price Large Cap Growth Portfolio for the three- and five-year periods ended December 31, 2005 was comparable to or exceeded that of AllianceBernstein Large Cap Portfolio. For the one-year period ended December 31, 2005, the performance of AllianceBernstein Large Cap Growth Portfolio exceeded that of T. Rowe Price Large Cap Growth Portfolio. T. Rowe Price Large Cap Portfolio's Class B shares commenced operations on July 30, 2002.

[Percent]

	AllianceBernstein Large Cap Growth Portfolio (Class B)	T. Rowe Price Large Cap Portfolio (Class B)
One Year	14.84	6.33
Three Years	15.36	*15.11
Five Years	−2.59	*0.92

*For each period beyond one year performance is based on the performance of Class A shares adjusted to include effect of 0.25% 12b–1 fees for Class B shares.

In addition, as set forth below, the management fee and total operating expenses of T. Rowe Price Large Cap Portfolio are lower than those of AllianceBernstein Large Cap Growth Portfolio.

[Percent]

	AllianceBernstein Large Cap Growth Portfolio (Class B)	T. Rowe Price Large Cap Portfolio (Class B)
Management Fee	0.75	0.60
12b–1 Fee	0.25	0.25
Other Expenses	0.06	0.12
Total Expenses	1.06	0.97
Waivers	.....	*0.01
Net Expenses	1.06	0.96

*Voluntary waiver which can be discontinued at any time.

2. AllianceBernstein Growth and Income Portfolio—Lord Abbett Growth and Income

The aggregate amount of assets in the AllianceBernstein Growth and Income Portfolio as of December 31, 2005 was approximately $2.645 billion. As of December 31, 2005, Lord Abbett Growth and Income Portfolio's assets were approximately $3.116 billion. As set forth below, the historical performance of Lord Abbett Growth and Income Portfolio for the one-, three- and five-year periods ended December 31, 2005 has been comparable to that of AllianceBernstein Growth and Income Portfolio. Class B shares of Lord Abbett Growth and Income Portfolio commenced operations on March 22, 2001.

[Percent]

	AllianceBernstein Growth and Income (Class B)	Lord Abbett Growth and Income Portfolio	
		(Class B)	(Class A)
One Year	4.82	3.39	3.68
Three Years	15.43	15.04	15.34
Five Years	3.67	*3.23	3.48

*For each period beyond three years performance is based on the performance of the Class A shares adjusted to include the effect of 0.25% 12b–1 fees for Class B shares.

In addition, as set forth below, the management fee and total operating expenses of Lord Abbett Growth and Income Portfolio are lower than those of AllianceBernstein Growth and Income Portfolio.

[Percent]

	AllianceBernstein Growth and Income Portfolio (Class B)*	Lord Abbett Growth and Income Portfolio	
		(Class B)	(Class A)
Management Fee	0.55	0.50	0.50
12b–1 Fee	0.25 + (0.50%)	0.25 + (0.35%)	
Other Expenses	0.05	0.04	0.04
Total Expenses	0.85	0.79	0.54
Waivers	.....	.....	.....
Net Expenses	0.85	0.79	0.54

*Separate Account UL Contract owners will receive Class A shares of Lord Abbett Growth and Income Portfolio.
+Trustees can increase 12b–1 fee to this amount without shareholder approval.

3. Delaware VIP REIT Series—Neuberger Berman Real Estate Portfolio

The aggregate amount of assets in the Delaware VIP REIT Series as of December 31, 2005 was approximately $840 million. As of December 31, 2005, Neuberger Berman Real Estate Portfolio's assets were approximately $572 million. The Substitution Applicants believe that there is no adequate comparable performance information because Neuberger Berman Real Estate Portfolio commenced operations on May 1, 2004. Consequently, Neuberger Berman Real Estate does not have a significant performance history. The Substitution Applicants believe that Neuberger Berman Real Estate Portfolio, as set forth below, based on its short-term performance and the performance history of its comparable retail mutual fund for the one- and three-years ended December 31, 2005 (whose expenses are higher than those of the Replacement Fund), will have over the long-term, good performance.

[Percent]

	Delaware VIP REIT Series (Standard)	Neuberger Berman Real Estate Portfolio (Class A)	Neuberger Berman Real Estate Portfolio (Retail)
One Year	17.17	13.61	13.08
Three Years	23.67		27.74

In addition, as set forth below, the management fee of Neuberger Berman Real Estate Portfolio is lower than that of Delaware VIP REIT Series and total operating expenses of each Portfolio, are the same.

[Percent]

	Delaware VIP REIT Series (Standard)	Neuberger Berman Real Estate Portfolio (Class A)
Management Fee	0.73	0.67
12b–1 Fee		
Other Expenses	0.12	0.03
Total Expenses	0.85	0.70
Waivers		
Net Expenses	0.85	0.70

4. Appreciation Portfolio—T. Rowe Price Large Cap Growth Portfolio

The aggregate amount of assets in the Appreciation Portfolio as of December 31, 2005 was approximately $785 million. As of December 31, 2005, T. Rowe Price Large Cap Growth Portfolio's assets were approximately $371 million. As set forth below, the historical performance of the T. Rowe Price Large Cap Growth Portfolio for the one-, three- and five-year periods ended December 31, 2005 has exceeded that of Appreciation Portfolio.

[Percent]

	Appreciation Portfolio (Service Shares)	T. Rowe Price Large Cap Growth Portfolio (Class A)
One Year	4.38	6.59
Three Years	9.93	15.30
Five Years	0.07	1.17

In addition, as set forth below, the management fee and total operating expenses of T. Rowe Price Large Cap Growth Portfolio are lower than those of Appreciation Fund.

[Percent]

	Appreciation Portfolio (Service Shares)	T. Rowe Price Large Cap Growth Portfolio (Class A)
Management Fee	0.75	0.60
12b–1 Fee	0.25	
Other Expenses	0.05	0.12
Total Expenses	1.05	0.72
Waivers		+0.01
Net Expenses	1.05	0.71

+ Voluntary waiver which can be discontinued at any time.

5. VIP Asset Manager Portfolio—MFS Total Return Portfolio

The aggregate amount of assets in the Asset Manager Portfolio as of December 31, 2005 was $2.497 billion. As of December 31, 2005, MFS Total Return Portfolio's assets were approximately $511 million. As set forth below, the historical performance of MFS Total Return Portfolio has, except for the one year ended December 31, 2005, exceeded that of Asset Manager Portfolio for the one-, three-, five- and ten-year periods ended December 31, 2005.

[Percent]

	Asset Manager Portfolio (Service Class 2)	MFS Total Return Portfolio (Class F)*
One Year	3.78	2.92
Three Years	8.70	10.11
Five Years	2.24	3.89
Ten Years	6.54	8.30

*Class F shares will first be issued in connection with the substitution. Performance for each period is based on the performance of Class A shares adjusted to include the effect of 0.20% 12b–1 fees for Class F shares.

In addition, as set forth below, the combined management fee and 12b–1 fee are the same, and total operating expenses of MFS Total Return Portfolio are less than, those of Asset Manager Portfolio.

[Percent]

	Asset Manager Portfolio (Service Class 2)	MFS Total Return Portfolio (Class F)*
Management Fee	0.52	0.57
12b–1 fee	0.25	0.20
Other Expenses	0.13	0.04
Total Expenses	0.90	0.81
Waivers	+0.01	
Net Expenses	0.89	0.81

*Expense numbers have been adjusted to reflect increase in management fee anticipated to take effect on May 1, 2006.
+Voluntary waiver which may be discontinued at any time.

6. Mutual Shares Securities Fund—Lord Abbett Growth and Income Portfolio

The aggregate amount of assets in the Mutual Shares Securities Fund as of December 31, 2005 was approximately $3.857 billion. As of December 31, 2005, Lord Abbett Growth and Income Portfolio's assets were approximately $3.116 billion. As set forth below, the historical performance of Lord Abbett Growth and Income for the one year period ended December 31, 2005 was less than that of Mutual Shares Securities Fund and was comparable to the performance of Mutual Shares Securities Fund for the three-year period ended December 31, 2005.

[Percent]

	Mutual Shares Securities Fund (Class 2)	Lord Abbett Growth and Income Portfolio (Class B)
One Year	10.55	3.39
Three Years	15.94	15.04

In addition, as set forth below, the management fee and total operating expenses of Lord Abbett Growth and Income Portfolio, are lower than those of Mutual Shares Securities Fund.

[Percent]

	Mutual Shares Securities Fund (Class 2)	Lord Abbett Growth and Income Portfolio (Class B)
Management Fee	0.60	0.50
12b–1 Fee	0.25 *(0.35)	0.25 *(0.35)
Other Expenses	0.18	0.04
Total Expenses	1.03	0.74
Waivers		
Net Expenses	1.03	0.74

*Trustees may increase 12b–1 fee to this amount without shareholder approval.

7. Templeton Growth Securities Fund—Oppenheimer Global Equity Portfolio

The aggregate amount of assets in the Templeton Growth Securities Fund as of December 31, 2004 was approximately $2.692 billion. As of December 31, 2005, Oppenheimer Global Equity Portfolio's assets were $275 million. As set forth below, the historical performance of Oppenheimer Global Equity Portfolio for the one-, three- and five-year period ended December 31, 2005 has generally exceeded that of Templeton Growth Securities Portfolio. However, effective May 1, 2005, the Oppenheimer Global Equity Portfolio changed its sub-adviser to OppenheimerFunds, Inc. and the Portfolio also changed its investment objective and principal investment strategies. The Substitution Applicants believe that the historical performance information of Oppenheimer Global Equity Portfolio does not provide an adequate basis to compare performance. The Substitution Applicants believe that the Oppenheimer Global Equity Portfolio will provide superior performance based on the performance history of its comparable retail fund for the one-, three- and five-year periods ended December 31, 2005 (whose expenses are higher than those of the Replacement Fund), which performance has generally exceeded that of Templeton Growth Securities Fund. Templeton Growth Securities Fund Class 1 and Class 2 shares will generally be substituted by Class A and Class B shares, respectively, of Oppenheimer Global Equity Portfolio. For certain separate account substitutions, Contract owners will receive Class A shares of Oppenheimer Global Equity Portfolio.

[Percent]

	Templeton Growth Securities Fund (Class 1)	Oppenheimer Global Equity Portfolio (Class A)	Oppenheimer Global Equity Portfolio (Retail)
One Year	9.06	16.22	13.83
Three Years	18.91	20.85	24.56
Five Years	6.34	4.46	5.74

As set forth below, the management fee and total operating expenses of Oppenheimer Global Equity Portfolio are lower than those of Templeton Growth Securities Fund.

[Percent]

	Templeton Growth Securities Fund		Oppenheimer Global Equity Portfolio	
	Class 1	Class 2	Class A	Class B
Management Fee	0.75	0.75	0.60	0.60
2b–1 Fee		0.25 +(0.35)		0.25 +(0.35)
Other Expenses	0.07	0.07	0.33	0.33
Total Expenses	0.82	1.07	0.93	1.18
Waivers				
Net Expenses	0.82	1.07	0.93	1.18

+ Trustees can increase 12b–1 fee to this amount without shareholder approval.

8. Mid Cap Value Portfolio—Lord Abbett Mid Cap Value Portfolio

The aggregate amount of assets in the Mid Cap Value Fund as of December 31, 2005 was approximately $1.197 billion. As of December 31, 2005, Lord Abbett Mid Cap Value Portfolio's assets were approximately $342 million. As set forth below, the historical performance of Lord Abbett Mid Cap Value Portfolio for the three- and five-year periods ended December 31, 2005 has exceeded that of Mid Cap Value Fund and for the one year period ended December 31, 2005 has been less than that of Mid Cap Value Fund.

[Percent]

	Mid Cap Value Portfolio (Class VC)	Lord Abbett Mid Cap Value Portfolio (Class A)
One Year	8.22	8.05
Three Years	18.75	19.19
Five Years	10.30	10.82

In addition, as set forth below, the management fee and total operating expenses of Lord Abbett Mid Cap Value Portfolio are lower than those of Mid Cap Value Fund.

[Percent]

	Mid Cap Value Fund (Class VC)	Lord Abbett Mid Cap Value Portfolio (Class A)
Management Fee	0.75	0.68
12b–1 Fee		
Other Expenses	0.38	0.08
Total Expenses	1.13	0.76
Waivers		
Net Expenses	1.13	0.76

9. Mercury Global Allocation V.I. Fund—Oppenheimer Global Equity Portfolio

The aggregate amount of assets in the Mercury Global Allocation V.I. Fund as of December 31, 2005 was approximately $711 million. As of December 31, 2005, Oppenheimer Global Equity Portfolio's assets were approximately $275 million. As set forth below, the historical performance of Mercury Global Allocation V.I. Fund for the five-year period ended December 31, 2005 has been greater than that of Oppenheimer Global Equity Portfolio. For the year one- and three-year periods ended December 31, 2005, the performance of Oppenheimer Global Equity Portfolio exceeded that of Mercury Global Allocation V.I. Fund. However, effective May 1, 2005, the Oppenheimer Global Equity Portfolio changed its sub-adviser to OppenheimerFunds, Inc. and the Portfolio also changed its investment objective and principal investment strategies. The Substitution Applicants believe that the historical performance information of Oppenheimer Global Equity Portfolio does not provide an adequate basis to compare performance. The Substitution Applicants believe that the Oppenheimer Global Equity Portfolio will provide superior performance based on the performance history of its comparable retail fund for the one-, three- and five-year periods ended December 31, 2005 (whose expenses are higher than those of the Replacement Fund), which performance has exceeded that of Mercury Global Allocation V.I. Fund except for the five-year period ended December 31, 2005.

[Percent]

	Mercury Global Allocation V.I. Fund (Class I)	Oppenheimer Global Equity Portfolio (Class A)	Oppenheimer Global Equity Portfolio (Retail)
One Year	10.43	16.22	13.83
Three Years	18.42	20.85	24.56
Five Years	7.35	4.46	5.74

In addition, as set forth below, the management fee of Oppenheimer Global Equity Portfolio is lower than that of Mercury Global Allocation V.I. Fund and the total operating expenses of Oppenheimer Global Equity Portfolio slightly exceed those of Mercury Global Allocation V.I. Fund.

[Percent]

	Mercury Global Allocation V.I. Fund (Class III)	Oppenheimer Global Equity Portfolio (Class B)
Management Fee	0.65	0.60
12b–1 Fee	0.25	0.25
Other Expenses	0,12	0.33
Total Expenses	1.02	1.18
Waivers		
Net Expenses	1.02	1.18

10. Oppenheimer Main Street Fund/VA—Lord Abbett Growth and Income Portfolio

The aggregate amount of assets in the Oppenheimer Main Street Fund/VA as of December 31, 2005 was approximately $1.720 billion. As of December 31, 2005, Lord Abbett Growth and Income Portfolio's assets were approximately $3.116 billion. As set forth below, the historical performance of Lord Abbett Growth and Income Portfolio for the three-year period ended December 31, 2005 exceeded that of Oppenheimer Main Street Fund/VA and for the one-year period ended December 31, 2005 was less than that of Oppenheimer Main Street Fund/VA.

[Percent]

	Oppenheimer Main Street Fund/VA Portfolio (Service)	Lord Abbett Growth and Income Portfolio (Class B)
One Year	5.74	3.34
Three Years	13.42	15.04

In addition, as set forth below, the management fee and total operating expenses of Lord Abbett Growth and Income Portfolio are lower than those of Oppenheimer Main Street Fund/VA.

[Percent]

	Oppenheimer Main Street Fund/VA (Service)	Lord Abbett Growth and Income Portfolio (Class B)
Management Fee	0.65	0.50
12b–1 Fee	0.25	0.25 (0.35)
Other Expenses	0.01	0.04
Total Expenses	0.91	0.79
Waivers		
Net Expenses	0.91	0.79

11. Oppenheimer Capital Appreciation Fund/VA—Oppenheimer Capital Appreciation Portfolio

The aggregate amount of assets in the Oppenheimer Capital Appreciation Fund/VA as of December 31, 2005 was approximately $2.034 billion. As of December 31, 2005, Oppenheimer Capital Appreciation Portfolio's assets were approximately $1.167 billion. As set forth below, the historical performance of Oppenheimer Capital Appreciation Portfolio for the one- and three-year periods ended December 31, 2005 has been comparable to that of Oppenheimer Capital Appreciation Fund/VA.

[Percent]

	Oppenheimer Capital Appreciation Fund/VA (Service Shares)	Oppenheimer Capital Appreciation Portfolio (Class B)
One Year	4.86	4.71
Three Years	13.47	12.72

In addition, as set forth below, the management fee of Oppenheimer Capital Appreciation Portfolio is lower than that of Oppenheimer Capital Appreciation Fund/VA and the total operating expenses of Oppenheimer Capital Appreciation Portfolio, with waivers, are less than those of Oppenheimer High Income Fund/VA.

[Percent]

	Oppenheimer Capital Appreciatino Fund/VA (Service Shares)	Oppenheimer Capital Appreciation Portfolio* (Class B)
Management Fee	0.64	0.59
12b–1 Fee	0.25	0.25
Other Expenses	0.02	0.10
Total Expenses	0.91	0.94
Waivers		+0.05
Net Expenses	0.91	0.89

*The management fee has been restated to reflect a decrease in the management fee effective 9/22/05. Prior to that date, the management fee was 0.60%.

+Contractual waiver through 4/30/07, unless extended.

12. Equity and Income Portfolio—MFS Total Return Portfolio

The aggregate amount of assets in the Equity and Income Portfolio as of December 31, 2005 was approximately $407 million. As of December 31, 2005, MFS Total Return Portfolio's assets were approximately $511 million. As set forth below, the historical performance of MFS Total Return Portfolio for the one-year period ended December 31, 2005 has been less than that of Equity and Income Portfolio and was comparable to the performance of Equity and Income Portfolio for the one year ended December 31, 2004. The Substitution Applicants believe that over the long term the performance of MFS Total Return Portfolio will be equal to or exceed the performance of Equity and

Income Portfolio. Equity and Income Portfolio commenced operations on April 30, 2003.

[Percent]

	Equity and Income Portfolio (Class II)	MFS Total Return Portfolio (Class F)*
One Year Ended 12/31/05	7.38	2.92
One Year Ended 12/31/04	11.52	11.03

*Class F shares will first be issued in connection with the substitution. Performance for the period is based on the performance of Class B shares adjusted in include the effect of 0.20% 12b–1 fees for Class F shares instead of 0.25% 12b–1 fees for Class B shares.

In addition, as set forth below, although the management fee of MFS Total Return Portfolio is slightly above that of Equity and Income Portfolio, the combination of the management fee and 12b–1 fee of MFS Total Return Portfolio is less than that of Equity and Income Portfolio. In addition, the total operating expenses of MFS Total Return Portfolio, including and excluding waivers, are less than those of Equity and Income Portfolio.

[Percent]

	Equity and Income Portfolio (Class II)	MFS Total Return Portfolio* (Class F)
Management Fee	0.46	0.57
12b–1 Fee	0.35	0.20
Other Expenses	0.32	0.04
Total Expenses	1.13	0.81
Waivers	+0.30	
Net Expenses	0.83	0.81

*Expense numbers have been adjusted to reflect increase in management fee anticipated to take effect on May 1, 2006.
+Voluntary waiver can be discontinued at any time.

13. Global Franchise Portfolio—Oppenheimer Global Equity Portfolio

The aggregate amount of assets in the Global Franchise Portfolio as of December 31, 2005 was approximately $153 million. As of December 31, 2005, Oppenheimer Global Equity Portfolio's assets were approximately $275 million. For the one year period ended December 31, 2005, the performance of Oppenheimer Global Equity Portfolio exceeded that of Global Franchise Portfolio. However, effective May 1, 2005, the Oppenheimer Global Equity Portfolio changed its sub-adviser to OppenheimerFunds, Inc. and the Portfolio also changed its investment objective and principal investment strategies. The Substitution Applicants believe that the historical performance information of Oppenheimer Global Equity Portfolio does not provide an adequate basis to compare performance. The Substitution Applicants believe that the Oppenheimer Global Equity Portfolio will provide superior performance based on the performance history of its comparable retail fund for the one-year period ended December 31, 2005 (whose expenses are higher than those of the Replacement Fund), which performance has exceeded that of Global Franchise Portfolio. Global Franchise Portfolio commenced operations on April 30, 2003.

[Percent]

	Global Franchise Portfolio (Class II)	Oppenheimer Global Equity Portfolio (Class B)	Oppenheimer Global Equity Portfolio (Retail)
One Year	11.98	15.98	13.83

In addition, as set forth below, the management fee and total operating expenses of Oppenheimer Global Equity Portfolio, including and excluding waivers, are lower than those of Global Franchise Portfolio.

[Percent]

	Global Franchise Portfolio (Class II)	Oppenheimer Global Equity Portfolio (Class B)
Management Fee	0.80	0.60
12b–1 Fee	0.35	0.25
Other Expenses	0.39	0.33
Total Expenses	1.54	1.18
Waivers	*0.34	
Net Expenses	1.20	1.18

*Voluntary waiver which can be discontinued at any time.

14. U.S. Real Estate Portfolio—Neuberger Berman Real Estate Portfolio

The aggregate amount of assets in the U.S. Real Estate Securities Portfolio as of December 31, 2005 was approximately $1.689 billion. As of December 31, 2005 Neuberger Berman Real Estate Portfolio's total assets were approximately $572 million. The Substitution Applicants believe that there is no adequate comparable performance information because Neuberger Berman Real Estate Portfolio commenced operations on May 1, 2004. Consequently, Neuberger Berman Real Estate does not have a significant performance history. The Substitution Applicants believe that Neuberger Berman Real Estate Portfolio, as set forth below, based on the performance history for the one year period ended December 31, 2005 and the performance history of its comparable retail mutual fund for the one- and three-year periods ended December 31, 2005 (whose expenses are higher than those of the Replacement Fund), will have over the long-term, good performance.

[Percent]

	U.S. Real Estate Portfolio (Class 1)	Neuberger Berman Real Estate Portfolio (Class A)	Neuberger Berman Real Estate Portfolio (Retail)
One Year	17.05	13.61	13.08
Three Years	29.97		27.74

In addition, as set forth below, the management fee and total operating expenses of Neuberger Berman Real Estate Portfolio are lower than those of U.S. Real Estate Securities Portfolio.

[Percent]

	U.S. Real Estate Securities Portfolio (Class 1)	Neuberger Berman Real Estate Portfolio (Class A)
Management Fee	0.75	0.67
12b–1 Fee		
Other Expenses	0.28	0.03
Total Expenses	1.03	0.70
Waivers		
Net Expenses	1.03	0.70

15. Van Kampen LIT Emerging Growth Portfolio—Janus Aggressive Growth Portfolio

The aggregate amount of assets in the Van Kampen LIT Emerging Growth Portfolio as of December 31, 2005 was approximately $472 million. As of December 31, 2005, Janus Aggressive Growth Portfolio's assets were approximately $785 million. As set forth below, the historical performance of Janus Aggressive Growth Portfolio for the one- and three-year periods ended December 31, 2005 has exceeded that of Van Kampen LIT Emerging Growth Portfolio. Janus Aggressive Growth Portfolio commenced operations on February 12, 2001. Van Kampen LIT Emerging Growth Portfolio Class I and Class II shares will be substituted by Class A and Class B shares, respectively, of Janus Aggressive Growth Portfolio.

[Percent]

	Van Kampen LIT Emerging Growth Portfolio (Class II)	Janus Aggressive Growth Portfolio (Class B)
One Year	7.64	13.58
Three Years	13.45	17.26

In addition, as set forth below, the management fee is less than that of Van Kampen LIT Emerging Growth Portfolio and the total operating expenses of Janus Aggressive Growth Portfolio are somewhat more than those of Van Kampen LIT Emerging Growth Portfolio.

[Percent]

	Van Kampen LIT Emerging Growth Portfolio		Janus Aggressive Growth Portfolio	
	Class I	Class II	Class A	Class B
Management Fee	0.70	0.70	0.67	0.67
12b–1 Fee		0.25	(0.35)		0.25	(0.35)
Other Expenses	0.07	0.07	0.05	0.05
Total Expenses	0.77	1.02	0.72	0.97
Waivers				

[Percent]

	Van Kampen LIT Emerging Growth Portfolio		Janus Aggressive Growth Portfolio	
	Class I	Class II	Class A	Class B
Net Expenses	0.77	1.02	0.72	0.97

+ Trustees can increase 12b–1 fee to this amount without shareholder approval.

16. Van Kampen LIT Money Market Portfolio—BlackRock Money Market Portfolio

The aggregate amount of assets in the Van Kampen LIT Money Market Portfolio as of December 31, 2005 was approximately $83 million. As of December 31, 2005, BlackRock Money Market Portfolio's assets were approximately $711 million. As set forth below, the historical performance of BlackRock Money Market Portfolio for the one- and three-year periods ended December 31, 2005 has exceeded that of Van Kampen LIT Money Market Portfolio.

[Percent]

	Van Kampen LIT Money Market Portfolio (Class I)	BlackRock Money Market Portfolio (Class A)
One Year	2.43	2.89
Three Years	1.10	1.56

In addition, as set forth below, the management fee and total operating expenses of BlackRock Money Market Portfolio, including and excluding waivers, are lower than those of Van Kampen LIT Money Market Portfolio.

[Percent]

	Van Kampen LIT Money Market Portfolio		BlackRock Money Market Portfolio
	Class I	Class II	Class A
Management Fee	0.45	0.45	0.35%
12b–1 Fee		0.25% * (0.35%)	
Other Expenses	0.20	0.20	0.07
Total Expenses	0.65	0.90	0.42
Waivers	+0.03	+0.03	++0.01
Net Expenses	0.62	0.87	0.41

* Trustees can increase 12b–1 fee to this amount without shareholder approval.
+ Voluntary waiver which may be discontinued at any time.
++ Contractual waiver through April 30, 2007, unless extended.

17. (Janus Aspen Series) Growth and Income Portfolio—T. Rowe Price Large Cap Growth

The aggregate amount of assets in the Growth and Income Portfolio as of December 31, 2004 was approximately $94 million. As of December 31, 2005, T. Rowe Price Large Cap Growth Portfolio's assets were approximately $371 million. As set forth below, the historical performance of T. Rowe Price Large Cap Growth Portfolio for the three- and five-year periods ended December 31, 2005 has exceeded or been comparable to that of Growth and Income Portfolio. For the one year period ended December 31, 2005, the performance of Growth and Income Portfolio exceeded that of T. Rowe Price Large Cap Growth Portfolio. T. Rowe Price Large Cap Growth Portfolio's Class B shares commenced operations on July 20, 2002. Growth and Income Portfolio Institutional shares and Service shares will be substituted by Class A and Class B shares, respectively, of T. Rowe Price Large Cap Growth Portfolio.

[Percent]

	Growth and Income Portfolio (Service)	T. Rowe Price Large Cap Growth Portfolio	
		(Class B)	(Class A)
One Year	12.11	6.33	6.59
Three Years	15.64	*15.11	15.30
Five Years	0.90	*0.92	1.17

* Performance after one year is the performance of Class A shares adjusted to reflect expense increase of 0.25% for 12b–1 fee for Class B shares.

In addition, as set forth below, the management fee of T. Rowe Price Large Cap Growth Portfolio is less than that of Growth and Income Portfolio and the total operating expenses of T. Rowe Price Large Cap Growth Portfolio,

including and excluding waivers, are lower than those of Growth and Income Portfolio.

[Percent]

	Growth and Income Portfolio		T. Rowe Price Large Cap Growth Portfolio	
	(Institutional)	(Service)	(Class A)	(Class B)
Management Fee	0.62	0.62	0.60	0.60
12b–1 Fee		0.25		0.25
Other Expenses	0.12	0.12	0.12	0.12
Total Expenses	0.74	0.99	0.72	0.97
Waivers			*0.01	*0.01
Net Expenses	0.74	0.99	0.71	0.96

* Voluntary waiver which may be discontinued at any time.

18. (Lord Abbett Series Fund) Growth and Income Portfolio—Lord Abbett Growth and Income Portfolio

The aggregate amount of assets in the Growth and Income Portfolio as of December 31, 2005 was approximately $1.593 billion. As of December 31, 2005, Lord Abbett Growth and Income Portfolio's total assets were approximately $3.116 billion. The historical performance of Lord Abbett Growth and Income Portfolio for the one-, three-, five- and ten-year periods ended December 31, 2005 has exceeded that of Growth and Income Portfolio.

[Percent]

	Growth and Income Series (Class VC)	Lord Abbett Growth and Income Portfolio (Class A)
One Year	3.25	3.68
Three Years	15.07	15.34
Five Years	3.11	3.48
Ten Years	10.22	10.30

In addition, as set forth below, the management fee of Lord Abbett Growth and Income Portfolio is the same as that paid by Growth and Income Series and total operating expenses of Lord Abbett Growth and Income Portfolio are lower than those of Growth and Income Series:

[Percent]

	Growth and Income Series (Class VC)	Lord Abbett Growth and Income Portfolio (Class A)
Management Fee	0.50	0.50
12b–1 Fee		
Other Expenses	0.41	0.04
Total Expenses	0.91	0.54
Waivers		
Net Expenses	0.91	0.54

19. Mercury Value Opportunities V.I. Fund—Third Avenue Small Cap Value Portfolio

The aggregate amount of assets in the Mercury Value Opportunities V.I. Fund as of December 31, 2005 was approximately $527 million. As of December 31, 2005, Third Avenue Small Cap Value Portfolio's total assets were approximately $919 million. As set forth below, the historical performance of Third Avenue Small Cap Value Portfolio for the one-year period ended December 31, 2005 exceeded that of Mercury Value Opportunities V.I. Fund. Mercury Value Opportunities V.I. Fund's Class III shares commenced operations on November 18, 2003 and Third Avenue Small Cap Value Portfolio commenced operations on May 1, 2002.

[Percent]

	Mercury Value Opportunities Fund V.I. (Class III)	Third Avenue Small Cap Value Portfolio (Class B)
One Year	9.74	15.48

In addition, as set forth below, the management fee and total operating expenses of Third Avenue Small Cap Value Portfolio are less than those of Mercury Value Opportunities V.I.

[Percent]

	Mercury Value Opportunities Fund V.I. (Class III)	Third Avenue Small Cap Value Portfolio (Class B)
Management Fee	0.75	0.75
12b–1 Fee	0.25	0.25
Other Expenses	0.09	0.05
Total Expenses	1.09	1.05
Waivers	.....	.....
Net Expenses	1.09	1.05

20. AIM V.I. Basic Balanced Fund—MFS Total Return Portfolio

The aggregate amount of assets in the AIM V.I. Balanced Fund as of December 31, 2005 was approximately $96 million. As of December 31, 2005, MFS Total Return Portfolio's assets were approximately $511 million. As set forth below, the historical performance of MFS Total Return Portfolio for the three- and five-year periods ended December 31, 2005 has exceeded that of AIM V.I. Balanced Fund and for the one year period ended December 31, 2005 was less than that of AIM V.I. Balanced Fund.

[Percent]

	AIM V.I. Basic Balanced Fund (Series I)	MFS Total Return Portfolio (Class F)*
One Year	5.29	2.92
Three Years	9.62	10.11
Five Years	−0.66	3.89

*Class F shares will first be issued in connection with the substitution. Performance for the periods is based on the performance of Class A shares adjusted to include the effect of 0.20% 12b–1 fees for Class F shares.

In addition, as set forth below, the combined management fee and 12b–1 fee of MFS Total Return Portfolio are greater than those of AIM V.I. Balanced Fund and total operating expenses of MFS Total Return, including and excluding waivers, are lower than those of AIM V. I. Balanced Fund.

[Percent]

	AIM V.I. Basic Balanced Fund (Series I)	MFS Total Return Portfolio* (Class F)
Management Fee	0.75	0.57
12b–1 Fee	.....	0.20
Other Expenses	0.41	0.04
Total Expenses	1.16	0.81
Waivers	+0.25	.....
Net Expenses	0.91	0.81

*Expense numbers have been adjusted to reflect increase in management fee anticipated to take effect on May 1, 2006.
+Contractual waiver to December 31, 2009.

21. Balanced Portfolio—MFS Total Return Portfolio

The aggregate amount of assets in the Balanced Portfolio as of December 31, 2005 was approximately $2.242 billion. As of December 31, 2005, MFS Total Return Portfolio's assets were approximately $511 million. As set forth below, the historical performance of MFS Total Return Portfolio for the three- and five-year periods ended December 31, 2005 exceeded that of Balanced Portfolio and for the one year ended December 31, 2005 was less than that of Balanced Portfolio. Balanced Portfolio Institutional shares and Service shares will be substituted by Class A and Class F shares, respectively, of MFS Total Return Portfolio.

[Percent]

	Balanced Portfolio (Service)	MFS Total Return Portfolio (Class F)*
One Year	7.66	2.92
Three Years	9.86	*10.11
Five Years	3.11	*3.89

*Class F shares will first be issued in connection with the substitution. Performance for the periods is based on the performance of Class A shares adjusted to include the effect of 0.20% 12b–1 fees for Class F shares instead of 0% 12b–1 fees for Class A shares.

In addition, as set forth below, the management fee and 12b–1 fee of MFS Total Return Portfolio is less than those for the Service shares of Balanced Portfolio and greater than those of the Institutional shares of Balanced Portfolio and MFS Total Return Portfolio's total operating expenses are the same as or less than those of Balanced Portfolio.

[Percent]

	Balanced Portfolio (Institutional)	Balanced Portfolio (Service)	MFS Total Return Portfolio* (Class A)	MFS Total Return Portfolio* (Class F)
Management Fee	0.55	0.55	0.57	0.57
12b–1 Fee		0.25		0.20
Other Expenses	0.02	0.02	0.04	0.04
Total Expenses	0.57	0.82	0.61	0.81
Waivers				
Net Expenses	0.57	0.82	0.61	0.81

*Expense numbers have been adjusted to reflect increase in management fee anticipated to take effect on May 1, 2006.

22. MFS Emerging Growth Series—Janus Aggressive Growth Portfolio

The aggregate amount of assets in the MFS Emerging Growth Series as of December 31, 2005 was approximately $714 million. As of December 31, 2005, Janus Aggressive Growth Portfolio's assets were approximately $785 million. As set forth below, the historical performance of Janus Aggressive Growth Portfolio for the one- and three-year periods ended December 31, 2005 has been greater than that of MFS Emerging Growth Series.

[Percent]

	MFS Emerging Growth Series (Initial Class)	Janus Aggressive Growth Portfolio (Class A)
One Year	9.19	17.11
Three Years	13.84	17.49

In addition, as set forth below, the management fee and total operating expenses of Janus Aggressive Growth Portfolio, are lower than those of MFS Emerging Growth Series.

[Percent]

	MFS Emerging Growth Series (Initial Class)	Janus Aggressive Growth (Class A)
Management Fee	0.75	0.67
12b–1 Fee		
Other Expenses	0.13	0.05
Total Expenses	0.88	0.72
Waivers		
Net Expenses	0.88	0.72

23. MFS Money Market Series—BlackRock Money Market Portfolio

The aggregate amount of assets in the MFS Money Market Series as of December 31, 2005 was approximately $2.2 million. As of December 31, 2005, BlackRock Money Market Portfolio's assets were approximately $711 million. As set forth below, the historical performance of BlackRock Money Market Portfolio for the one-, three- and five-year periods ended December 31, 2005 has exceeded that of MFS Money Market Series.

[Percent]

	MFS Money Market Series (Class A)	BlackRock Money Market Portfolio (Class A)
One Year	2.73	2.89
Three Years	1.37	1.56
Five Years	1.82	2.00

In addition, as set forth below, the management fee and total operating expenses of BlackRock Money Market Portfolio, including and excluding waivers, are lower than those of MFS Money Market Series.

[Percent]

	MFS Money Market Series (Class A)	BlackRock Money Market Portfolio (Class A)
Management Fee	0.50	0.35
12b–1 Fee	.....	.....
Other Expenses	2.33	0.07
Total Expenses	2.83	0.42
Waivers	*2.23	+0.01
Net Expenses	0.60	0.41

*Contractual waiver of expenses to April 30, 2006, unless extended.
+Contractual waiver of expenses to April 30, 2007, unless extended.

24. MFS Strategic Income Series—Salomon Strategic Bond Opportunities Portfolio

The aggregate amount of assets in the MFS Strategic Income Trust Series as of December 31, 2005 was approximately $39 million. As of December 31, 2005, Salomon Strategic Bond Portfolio's assets were approximately $487 million. The historical performance of Salomon Strategic Bond Portfolio has exceeded that of MFS Strategic Income Series for the one-, three-, five- and ten-year periods ended December 31, 2005.

[Percent]

	MFS Strategic Income Series (Initial Class)	Salomon Strategic Bond Opportunities Portfolio (Class A)
Year Ended 12/31/05	1.89	2.83
Three Years Ended 12/31/05	6.61	7.28
Five Years Ended 12/31/05	6.59	7.65
Ten Years Ended 12/31/05	4.56	7.38

In addition, as set forth below, the management fee and total expenses of Salomon Strategic Bond Portfolio, including and excluding waivers, are lower than those of MFS Strategic Income Series.

[Percent]

	MFS Strategic Income Series (Initial Class)	Salomon Strategic Bond Opportunities Portfolio (Class A)
Management Fee	0.75	0.65
12b–1 Fee	.....	.....
Other Expenses	0.50	0.10
Total Expenses	1.25	0.75
Waivers	*0.35	.....
Net Expenses	0.90	0.75

*Contractual waiver of expenses to April 30, 2006, unless extended.

25. MFS Total Return Series—MFS Total Return Portfolio

The aggregate amount of assets in the MFS Total Return Series as of December 31, 2005 was approximately $3.438 billion. As of December 31, 2005, MFS Total Return Portfolio's total assets were approximately $511 million. The historical performance of MFS Total Return Portfolio for the one- and three-year periods ended December 31, 2005 has exceeded that of MFS Total Return Series. For the five- and ten-year periods ended December 31, 2005, the performance of MFS Total Return Series has been less than that of MFS Total Return Portfolio. MFS replaced another investment adviser of the MFS Total Return Portfolio on May 1, 2003.

[Percent]

	MFS Total Return Series (Initial Class)	MFS Total Return Portfolio (Class A)
One Year	2.82	3.12
Three Years	10.01	10.31
Five Years	4.83	4.09
Ten Years	8.96	8.50

In addition, as set forth below, the management fee and total operating expenses of MFS Total Return Portfolio are lower than those of MFS Total Return Series.

[Percent]

	MFS Total Return Series (Initial Class)	MFS Total Return Portfolio (Class A)*
Management Fee	0.75	0.57
12b–1 Fee		
Other Expenses	0.09	0.04
Total Expenses	0.84	0.61
Waivers		
Net Expenses	0.84	0.61

*Expense numbers have been adjusted to reflect increase in management fee anticipated to take effect on May 1, 2006.

26. Oppenheimer Global Securities Fund/VA—Oppenheimer Global Equity Portfolio

The aggregate amount of assets in the Oppenheimer Global Securities Fund/VA as of December 31, 2005 was approximately $3.118 billion. As of December 31, 2005, Oppenheimer Global Equity Portfolio's assets were approximately $275 million. As set forth below, the performance of Oppenheimer Global Equity Portfolio has exceeded that of Oppenheimer Global Securities Fund/VA for the one year period ended December 31, 2005. However, effective May 1, 2005, the Oppenheimer Global Equity Portfolio changed its sub-adviser to OppenheimerFunds, Inc. and the Portfolio also changed its investment objective and principal investment strategies. The Substitution Applicants believe that the historical performance information of Oppenheimer Global Equity Portfolio does not provide an adequate basis to compare performance. The Substitution Applicants believe that the Oppenheimer Global Equity Portfolio will provide superior performance based on the performance history of its comparable retail fund for the one-, three- and five-year periods ended December 31, 2005 (whose expenses are higher than those of the Replacement Fund), which performance has been comparable to that of Oppenheimer Global Securities Fund/VA.

[Percent]

	Oppenheimer Global Securities Fund/VA (Class B)	Oppenheimer Global Equity Portfolio (Class B)	Oppenheimer Global Equity Portfolio (Retail)
One Year	14.06	15.98	13.83
Three Years	24.66		24.56
Five Years	5.57		5.74

In addition, as set forth below, the management fee of Oppenheimer Global Equity Portfolio is lower than that of Oppenheimer Global Securities Fund/VA and the total operating expenses of Oppenheimer Global Equity Portfolio exceed those of Oppenheimer Global Securities Fund/VA.

[Percent]

	Oppenheimer Global Securities Fund/VA (Class B)	Oppenheimer Global Equity Portfolio (Class B)
Management Fee	0.63	0.60
12b–1 Fee	0.25	0.25
Other Expenses	0.04	0.33
Total Expenses	0.92	1.18
Waivers		
Net Expenses	0.92	1.18

27. The Alger American Balanced Portfolio—MFS Total Return Portfolio

The aggregate amount of assets in The Alger American Fund as of December 31, 2005 was approximately $336 million. As of December 31, 2005, MFS Total Return Portfolio's assets were approximately $511 million. As set forth below, the historical performance of MFS Total Return Portfolio for the one year periods ended December 31, 2005 has been less than that of The Alger American Fund and has been comparable to that of The Alger American Fund for the three year period ended December 31, 2005. The Alger American Fund commenced operations on May 1, 2002.

[Percent]

	The Alger American Balanced Portfolio (Class S)	MFS Total Return (Class B)
One Year	8.15	2.85
Three Year	10.22	10.04

In addition, as set forth below, the management fee and total operating expenses of MFS Total Return Portfolio are lower than those of The Alger American Fund.

[Percent]

	The Alger American Balanced Portfolio (Class S)	MFS Total Return Portfolio* (Class B)
Management Fee	0.75	0.57
12b–1 Fee	0.25	0.25
Other Expenses	1.06	0.04
Total Expenses	1.06	0.86
Waivers		
Net Expenses	1.06	0.86

* Expense numbers have been adjusted to reflect increase in management fee anticipated to take effect on May 1, 2006.

28. VIP Growth and Income Portfolio—Lord Abbett Growth and Income Portfolio

The aggregate amount of assets in the VIP Growth and Income Portfolio as of December 31, 2005 was approximately $1.597 billion. As of December 31, 2005, Lord Abbett Growth and Income Portfolio's total assets were approximately $3.116 billion. As set forth below, the historical performance of Lord Abbett Growth and Income Portfolio for the three and five-year periods ended December 31, 2005 has exceeded that of VIP Growth and Income Portfolio and has been less than that of VIP Growth and Income for the one year period ended December 31, 2005.

[Percent]

	VIP Growth and Income Portfolio (Initial Class)	Lord Abbett Growth and Income Portfolio (Class A)
One Year	7.63	3.68
Three Years	12.12	15.34
Five Years	1.41	3.48

In addition, as set forth below, the management fee of Lord Abbett Growth and Income Portfolio is higher than that of VIP Growth and Income Portfolio and total operating expenses of Lord Abbett Growth and Income Portfolio, with waivers, are the same as those of VIP Growth and Income Portfolio.

[Percent]

	VIP Growth and Income Portfolio (Initial Class)	Lord Abbett Growth and Income Portfolio (Class A)
Management Fee	0.47	0.50
12b–1 Fee		
Other Expenses	0.12	0.04
Total Expenses	0.59	0.54
Waivers	*0.05	
Net Expenses	0.54	0.54

* Voluntary waiver which can be terminated at any time.

29. VIP Growth Portfolio—T. Rowe Price Large Cap Growth Portfolio

The aggregate amount of assets in the VIP Growth Portfolio as of December 31, 2005 was approximately $8.701 billion. As of December 31, 2005, T. Rowe Price Large Cap Growth Portfolio's total assets were approximately $321 million. As set forth below, the historical performance of T. Rowe Price Large Cap Growth Portfolio for the one-, three and five-year periods ended December 31, 2005 exceeded that of VIP Growth Portfolio. VIP Growth Portfolio Initial Class and Service Class shares will be substituted by Class A shares of T. Rowe Price Large Cap Growth Portfolio and Service Class 2 shares will be substituted by Class B

shares of T. Rowe Price Large Cap Growth Portfolio.

[Percent]

	VIP Growth Portfolio (Initial Class)	T. Rowe Price Large Cap Growth Portfolio (Class A)
One Year	5.80	6.59
Three Years	13.26	15.30
Five Years	−3.92	1.17

In addition, as set forth below, the management fee and total operating expenses of T. Rowe Price Large Cap Growth Portfolio are greater than those of VIP Growth Portfolio except for the Service Class shares of VIP Growth Portfolio.

[Percent]

	VIP Growth Portfolio (Initial Class)	VIP Growth Portfolio (Service Class 2)	VIP Growth Portfolio (Service Class)	T. Rowe Price Large Cap Growth Portfolio (Class A)	T. Rowe Price Large Cap Growth Portfolio (Class B)
Management Fee	0.57	0.57	0.57	0.60	0.60
12b–1 Fee		0.25	0.10		0.25
Other Expenses	0.10	0.10	0.10	0.12	0.12
Total Expenses	0.67	0.92	0.77	0.72	0.97
Waivers	+0.04	+0.04	+0.04	+0.01	+0.01
Net Expenses	0.63	0.88	0.73	0.71	0.96

* Voluntary waiver which can be discontinued at any time.

30. Lazard Retirement Small Cap Portfolio—Third Avenue Small Cap Value Portfolio

The aggregate amount of assets in the Lazard Retirement Small Cap Portfolio as of December 31, 2005 was approximately $137 million. As of December 31, 2005, Third Avenue Small Cap Value Portfolio's total assets were approximately $912 million. As set forth below, the historical performance of Third Avenue Small Cap Value Portfolio for the one-year period ended December 31, 2005 exceeded that of Lazard Retirement Small Cap Value Portfolio. Third Avenue Small Cap Portfolio commenced operation on May 1, 2002.

[Percent]

	Lazard Retirement Small Cap Portfolio	Third Avenue Small Cap Value Portfolio (Class B)
One Year	3.99	15.48

In addition, as set forth below, the management fee of Third Avenue Small Cap Value Portfolio is the same as that of Lazard Retirement Small Cap Portfolio and the total operating expenses of Third Avenue Small Cap Value Portfolio are less than those of Lazard Retirement Small Cap Portfolio.

[Percent]

	Lazard Retirement Small Cap Portfolio	Third Avenue Small Cap Value Portfolio (Class B)
Management Fee	0.75	0.75
12b–1 Fee	0.25	0.25
Other Expenses	0.22	0.05
Total Expenses	1.22	1.05
Waivers		
Net Expenses	1.22	1.05

[FR Doc. 06–3318 Filed 4–10–06; 8:45 am]
BILLING CODE 8010–01–P

Federal Register

Tuesday,
April 11, 2006

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Proposed Designation of Critical Habitat for the *Cirsium hydrophilum* var. *hydrophilum* (Suisun thistle) and *Cordylanthus mollis* ssp. *mollis* (soft bird's-beak); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU44

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the *Cirsium hydrophilum* var. *hydrophilum* (Suisun thistle) and *Cordylanthus mollis* ssp. *mollis* (soft bird's-beak)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for *Cirsium hydrophilum* var. *hydrophilum* (Suisun thistle) and *Cordylanthus mollis* ssp. *mollis* (soft bird's-beak) pursuant to the Endangered Species Act of 1973, as amended (Act). Approximately 2,119 acres (ac) (857 hectares (ha)) fall within the boundaries of the proposed critical habitat designation for *C. hydrophilum* var. *hydrophilum* in Solano County, California, and approximately 2,313 ac (936 ha) for *C. mollis* ssp. *mollis* in Contra Costa, Napa, and Solano Counties, California.

DATES: We will accept comments from all interested parties until June 12, 2006. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by May 26, 2006.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, California 95825.

2. You may hand-deliver written comments to our Office, at the above address.

3. You may send comments by electronic mail (e-mail) to *SuisunplantsCH@fws.gov*. Please see the Public Comments Solicited section below for file format and other information about electronic filing.

4. You may fax your comments to (916) 414–6713.

5. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, California 95825 (telephone (916) 414–6600).

For more information on submitting or viewing comments, see "Public Comments" under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Arnold Roessler, Listing Branch Chief, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, California 95825, (telephone (916) 414–6600; facsimile (916) 414–6713).

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the subspecies due to designation;

(2) Specific information on the amount and distribution of *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* habitat, and what habitat is essential to the conservation of the subspecies and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities;

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments;

(6) Whether State-, county-, or local government-managed lands that are within the proposed designation should be excluded from the designation; and

(7) The relative benefits of designation or exclusion of any lands for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* in the Suisun Marsh (see Suisun Marsh Management Strategies section for specifics).

(8) Information concerning pollinator species for *C. mollis* spp. *mollis* and whether sufficient information exists to determine if such a feature should be considered a primary constituent element for the subspecies.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit Internet comments to *SuisunplantsCH@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "Attn: Suisun Plants CH" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Sacramento Fish and Wildlife Office at phone number (916) 414–6600. Please note that the Internet address *SuisunplantsCH@fws.gov* will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that the Service may be required to disclose your name and address pursuant to the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's

present system for designating critical habitat has evolved since its original statutory prescription (into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs). The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. As discussed in more detail below in the discussion of exclusions under ESA section 4(b)(2), there are significant limitations on the regulatory effect of designation under ESA section 7(a)(2). In brief, (1) designation provides additional protection to habitat only where there is a Federal nexus; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would in fact take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decision-making would not prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat, but it does not require specific actions to restore or improve habitat.

Currently, only 473 species, or 37 percent of the 1,272 listed species in the U.S. under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,272 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, the section 10 incidental take permit process, and cooperative, nonregulatory efforts with private landowners. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

In considering exclusions of areas proposed for designation, we evaluated the benefits of designation in light of *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service*. In that case, the Ninth Circuit invalidated the Service's regulation defining "destruction or adverse modification of critical habitat." In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This proposed critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas in this final designation. The Service will carefully manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to finalizing to ensure that an adequate analysis has been conducted that is informed by the Director's guidance.

On the other hand, to the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost. In addition, the mere administrative process of designation of critical habitat is expensive, time-consuming, and controversial. The current statutory framework of critical habitat, combined with past judicial interpretations of the statute, make critical habitat the subject of excessive litigation. As a result, critical habitat designations are driven by litigation and courts rather than biology, and made at a time and under a time frame that limits our ability to obtain and evaluate the scientific and other information required to make the designation most meaningful.

In light of these circumstances, the Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with limited ability to provide for public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, and is very expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA). These costs, which are not required for many other conservation actions, directly reduce the funds available for direct and tangible conservation actions.

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. For more information on *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*, refer to the final listing rule published in the **Federal Register** on November 20, 1997 (62 FR 61916).

Tidal marshes in the San Francisco Bay Estuary have been significantly affected by habitat loss, fragmentation, and degradation over the last 200 years. San Pablo Bay and Suisun Bay have seen 70 and 79 percent reductions in tidal marshes, respectively (San Francisco Estuary Institute (SFEI) 1998; Goals Project 1999). A large portion of historic tidal marshes in San Pablo Bay are diked and managed for agricultural production and livestock grazing. In Suisun Bay, most historic tidal marshes are diked and managed for wildlife, especially waterfowl. Suisun Marsh, the largest managed marsh in the estuary, is primarily used to provide wintering feeding habitat for migrating waterfowl (Suisun Ecological Workgroup 2001). These historic reductions in turn have

affected the extent and composition of tidal marsh plant communities. As a result, many native halophytic (salt-tolerant) plants are exceedingly rare in tidal marshes within the estuary (Goals Project 2000).

Cirsium hydrophilum var. *hydrophilum*

The original description of *Cirsium hydrophilum* var. *hydrophilum* by Greene (1892) indicated that the subspecies was "[v]ery common in the brackish marshes of Suisun Bay, California, where it grows within reach of tide water." Later references (Jepson 1901; Munz and Keck 1968) indicate that the subspecies was found in marshes or brackish marshes about Suisun Bay, but these references lacked detailed information on its distribution. Herbarium records at the University of California at Davis (UCD) (2005) from 1863 to 1974 indicate that the subspecies occurred in the Suisun Marsh area. This information suggests that the subspecies probably did not occur outside of the Suisun Bay area in Solano County.

By 1975, *Cirsium hydrophilum* var. *hydrophilum* was thought to have been extirpated from Suisun Bay because the subspecies had not been seen for about 15 years. The subspecies was later rediscovered in 1989 in Suisun Marsh (California Native Plant Society 2001). Populations (groups of plants based on occurrence records or reports) were discovered and described during further field surveys in 1991 and 1992 at Rush Ranch (Solano Land Trust) and Peytonia Slough Ecological Reserve, respectively (California Department of Water Resources (CDWR) 1993 and 1994). The subspecies' current distribution is limited to scattered colonies within relict undiked high tidal marshes (fully tidal, emergent estuarine marshes) at Rush Ranch, the Joice Island portion of Grizzly Island Wildlife Area, and Peytonia Slough Ecological Reserve in Solano County (L. C. Lee and Associates (LCLA) 2003, California Natural Diversity Database (CNDDB) 2005). These marshes occur from the mean high water mark to the marsh'upland ecotone (transition zone) (Goals Project 1999 and 2000).

There are two areas known to currently support *Cirsium hydrophilum* var. *hydrophilum* (CDWR 1996; CNDDB 2005). These areas are the Rush Ranch/Grizzly Island Wildlife Area and the Peytonia Slough Ecological Reserve. Field surveys have found several thousand individual plants at Rush Ranch and much smaller numbers at Grizzly Island Wildlife Area (CNDDB 2005; LCLA 2003; CNDDB 2005). The population at the Peytonia Slough Ecological Reserve declined to a single individual plant observed in 1996 (CDWR 1996).

Cirsium hydrophilum var. *hydrophilum* colonies at Rush Ranch/Grizzly Island Wildlife Area are associated with tidal marsh habitats that are hydrologically connected to the First and Second Mallard Branches, Suisun Slough, and Cutoff Slough (CDWR 1996; LCLA 2003). The population at the Peytonia Slough Ecological Reserve is associated with tidal marsh habitat hydrologically connected to Peytonia Slough.

Cordylanthus mollis ssp. *mollis*

Cordylanthus mollis ssp. *mollis* is endemic to the San Pablo Bay and Suisun Bay area. The subspecies was historically found in high tidal marshes along the Petaluma River and Napa River through the Carquinez Strait to Suisun Bay and the San Joaquin-Sacramento River Delta in Marin, Sonoma, Napa, Solano, Contra Costa, and Sacramento Counties (Gray 1867; Munz and Keck 1959; Chuang and Heckard 1973; Rae 1978; UCD 2005). The subspecies is currently found in widely scattered populations from Point Pinole and Fagan Slough marsh through the Carquinez Strait to Suisun Bay in Napa, Solano, and Contra Costa Counties (Stromberg and Villasenor 1986; Ruygt 1994; CNDDB 2005). C. mollis ssp. mollis has been listed as rare within its range since July 1979 under the Native Plant Protection Act of 1977 and California Endangered Species Act of 1984 (California Department of Fish and Game (CDFG) 2006).

The largest populations of *Cordylanthus mollis* ssp. *mollis* are found in Suisun Marsh (Rush Ranch, the Joice Island portion of Grizzly Island Wildlife Area, and Hill Slough Wildlife Area in Solano County), Fagan Slough Marsh (Fagan Marsh Ecological Reserve in Napa County), Southampton Marsh (Benicia State Recreation Area in Solano County), and the Concord Naval Weapons Station (CNWS) in Contra Costa County (Stromberg and Villasenor 1986; Ruygt 1994; Rejmankova and Grewell 2000; CNDDB 2005). There are eight occurrences considered extirpated (Antioch Bridge; Beldons Landing, Bentley Wharf, Cullinan Ranch, Mare Island, Martinez, Petaluma Marsh, and San Antonio Creek Marsh) in Marin, Sonoma, Napa, Solano, Contra Costa, and Sacramento Counties because of habitat loss or degradation, or the inability of finding the subspecies after extensive and repeated field surveys (Ruygt 1994; CNDDB 2005).

Cordylanthus mollis ssp. *mollis* has a high degree of population size variability from year-to-year at any given location. Periodic field surveys have shown that most extant locations have high densities of plants numbering in the thousands to the tens of thousands within small, localized populations (Stromberg and Villasenor 1986; Ruygt 1994; CNDDB 2005). Other locations consist of widely scattered populations with few individual plants. Some populations may fail to appear entirely for several years and reappear later in the same general area. The reasons for the population fluctuations are not well known.

Suisun Marsh Management Strategies

In evaluating areas to propose as critical habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*, we recognized that Federal, State, and local conservation planning efforts in the Suisun Marsh are ongoing. This proposed designation includes all habitat in the Suisun Marsh for the two subspecies that meets our criteria for identifying the essential features for the two subspecies, including lands that are a part of these planning efforts. We seek public comment about whether the developing Suisun Marsh Habitat Management, Preservation, and Restoration Plan and the previously developed Suisun Marsh Protection Plan would provide an alternative to a critical habitat designation that provides special management for those physical and biological characteristics that are essential to the conservation of the subspecies. The potential result of the plan would be to avoid critical habitat designation because the special management or protection would not be necessary or the benefits of excluding the areas as critical habitat outweigh the benefits of inclusion. One reason the benefits of exclusion could outweigh those of inclusion is that designating a particular area might prevent the implementation of a local plan which would otherwise provide a greater benefit to the species.

It is the Service's goal to identify and support innovative cooperative conservation approaches that have a similar or greater likelihood of providing for the conservation of listed subspecies when compared to traditional regulatory approaches such as designation of critical habitat. In our determination of whether habitat is in need of "special management or protection," the Service will evaluate the Suisun Marsh Habitat Management, Preservation, and Restoration Plan and the previously developed Suisun Marsh Protection Plan to determine whether their implementation would provide a

similar or greater level of conservation benefits to the *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* when compared to a final designation of critical habitat. The two management strategies are outlined below.

The Suisun Marsh Protection Plan and the Suisun Marsh Preservation Act

The Suisun Marsh Protection Plan of 1976 (SMPP) establishes a "primary management area" in Suisun Marsh that encompasses the entire range of *Cirsium hydrophilum* var. *hydrophilum*, and also includes the areas we propose as critical habitat units 2 and 4 for *Cordylanthus mollis* ssp. *mollis* (SFBCDC 2006, 1976). The Plan recommends that areas within the primary management area "should be protected and managed to enhance the quality and diversity of the habitats' (SFBCDC 2006). It further recommends that "[t]he tidal marshes in the primary management area should be preserved" and that "[w]here feasible historic marshes should be returned to wetland status." The SMPP was incorporated into State law by the Suisun Marsh Preservation Act of 1977 (SMPA), which utilizes a State-level permitting process and a county-level protection program to prevent development in the marsh that is inconsistent with the SMPP (SFBCDC 2005).

Suisun Marsh Habitat Management, Preservation, and Restoration Plan

The Suisun Marsh Habitat Management, Preservation, and Restoration Plan (SMHMP) is being developed by the Suisun Marsh Charter Group (Charter Group), a collaborative effort among of Federal, State and local agencies with primary responsibility for actions in the Suisun Marsh. The Charter Group principal agencies are the Service, USBR, CDFG, DWR, Suisun Resource Conservation District, California Bay—Delta Authority, and National Oceanic and Atmospheric Administration's National Marine Fisheries Service. Additional public entities participating in the Charter Group include: U.S. Army Corps of Engineers (USACE), San Francisco Bay Conservation and Development Commission, and San Francisco Bay—Delta Science Consortium. The Service and USBR are participating as National Environmental Policy Act (NEPA) co-lead Federal agencies, and the CDFG is the lead California Environmental Quality Act (CEQA) State agency, for the development of the Programmatic Environmental Impact Statement/Report (PEIS/R). These lead agencies will oversee the environmental review process for the SMHMP.

The Charter Group was formed in 2001 to resolve issues of amending the Suisun Marsh Preservation Agreement (SMPA), obtain a Regional General Permit from the USACE, implement the Suisun Marsh Levee Program, and recover threatened and endangered species. The broader purpose of the Charter Group was to develop and agree on a long-term implementation plan for the Suisun Marsh consistent with, and in the context of, the CALFED Bay—Delta Program (a consortium of State and Federal agencies working cooperatively to improve the quality and reliability of California's water supplies while restoring the Bay—Delta ecosystem). The mission of the CALFED Bay—Delta Program is to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the Bay-Delta System.

The Charter Group has been charged with developing a regional plan that would outline the actions needed in Suisun Marsh to preserve and enhance managed seasonal wetlands, restore tidal marsh habitat, implement a comprehensive levee protection and improvement program, and protect ecosystem and drinking water quality. The proposed SMHMP would be consistent with the goals and objectives of the Bay—Delta Program, and balance them with SMPA, Federal and State Endangered Species Acts, and other management and restoration programs within the Suisun Marsh in a manner responsive to the concerns of all stakeholders, and based upon voluntary participation by private landowners. The proposed SMHMP also would provide for simultaneous protection and enhancement of: (1) The Pacific Flyway and existing wildlife values in managed wetlands; (2) threatened and endangered species; (3) tidal marshes and other ecosystems; and (4) water quality, including, but not limited to, the maintenance and improvement of levees. The SMHMP has seven goals:

- Goal 1, Ecological Processes: Rehabilitate natural processes where feasible in the Suisun Marsh to more fully support, with minimal human intervention, natural aquatic and associated terrestrial biotic communities and habitats, in ways that favor native species of those communities, with a particular interest in waterfowl and sensitive species.
- Goal 2, Habitats: Protect, restore, and enhance habitat types where feasible in the Suisun Marsh for ecological and public values, such as supporting species and biotic communities, ecological processes, recreation, scientific research, and aesthetics.
- Goal 3, Levee System Integrity: Provide long-term protection for multiple Suisun Marsh resources by maintaining and improving the integrity of the Suisun Marsh levee system.
- Goal 4, Non-Native Species: Prevent the establishment of additional non-native species and reduce the negative ecological and economic impact of established non-native species in the Suisun Marsh.
- Goal 5, Water and Sediment Quality: Maintain or improve water and sediment quality conditions to provide good quality water for all beneficial uses and fully support healthy and diverse aquatic ecosystems in the Suisun Marsh; and to eliminate, to the extent possible, toxic impacts to aquatic organisms, wildlife, and people.
- Goal 6, Public Use and Waterfowl Hunting: Maintain the heritage of waterfowl hunting and increase the surrounding communities' awareness of the ecological values of the Suisun Marsh.
- Goal 7, Long-Term Funding, Plan Implementation, and Regulatory Reliability and Efficiency: Develop and implement a plan that: (1) Addresses long-term funding, (2) creates an efficient and reliable regulatory climate, (3) promotes effective management practices, and (4) improves coordination of activities among agencies within and adjacent to the Suisun Marsh.

The Charter Group is committed to a planning process, consistent with the CALFED Record of Decision that includes strong local involvement, is integrated with other programs, uses the best available scientific and commercial information, and is open and transparent. Public scoping has been completed for the PEIS/R. The Service's External Affairs Program is conducting ongoing public outreach through the publication of a newsletter. When the Draft PEIS/R is completed, it will be available for public review and comment. The SMHMP is in the final stages of development, and it is anticipated that the Draft PEIS/R will be available for public review and comment in the fall of 2006 before the final designation of critical habitat. Once the SMHMP has been finalized and the Draft PEIS/R is available to the public, we will reopen the comment period on this proposal to solicit comments. We recognize that the public is not able to comment on specific aspects of the plan without it being available for review, but we would like to solicit public comments as described below.

Public Comments Solicited

In addition to the analysis conducted when assessing potential economic impacts of the *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* critical habitat designation, the Secretary will evaluate other considerations as part of the 4(b)(2) exclusion process. As part of the

Secretary's deliberative process, the Service identifies the benefits of inclusion and exclusion of various areas.

The Service will evaluate whether the regulatory benefits of designation of critical habitat in the Suisun Marsh for the *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* outweigh the conservation benefits of implementation of the SMHMP. In this proposed rule, we are soliciting public comment on the relative merits of a critical habitat designation when compared to implementation of the SMHMP. We are particularly interested in public comment on the following issues:

- What is necessary to ensure the conservation of the Suisun thistle and soft bird's-beak with regard to private lands in the Suisun Marsh;
- Whether areas preserved by the Suisun Marsh Protection Plan or covered under the SMHMP should be designated as critical habitat and the degree to which a critical habitat designation would confer conservation benefits on the *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* when compared to the likely benefits of the alternative SMHMP;
- The degree to which the designation or the SMHMP would educate members of the public such that conservation efforts would be enhanced;
- The degree to which a critical habitat designation or the SMHMP would have a positive, neutral, or negative impact on voluntary conservation efforts on privately owned lands;
- Whether the tidal restoration and habitat protection goals proposed in the upcoming SMHMP will protect the habitat sufficiently; and
- Whether a critical habitat designation of private lands already occupied by the *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* and subject to the regulatory provisions of the Act will provide additional regulatory conservation benefits to accrue on those lands and whether traditional methods of regulation under the Act (for example, section 7 consultation with the USACE) are adequate to provide for the long-term conservation of the *C. hydrophilum* var. *hydrophilum* and *C. mollis* ssp. *mollis* on private lands in the Suisun Marsh.

The Service will evaluate information received on these and other issues when making a decision concerning the final designation of critical habitat. Comments on the SMHMP may be sent to the Field Supervisor of the Sacramento Fish and Wildlife Service (*see* **ADDRESSES** section). Any economic exclusions would be predicated on the results of the economic analysis.

Previous Federal Actions

Cirsium hydrophilum var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* were listed as endangered in the final listing rule published in the **Federal Register** on November 20, 1997 (62 FR 61916). In the final listing rule for the two subspecies, we determined that the designation of critical habitat was not prudent because that the designation would not be beneficial to the conservation of the two subspecies.

On November 17, 2003, the Center for Conservation Biology and others filed a lawsuit in the Northern District of California against the Secretary of the Interior, challenging the not prudent determination of critical habitat for the two subspecies (*Center for Biological Diversity, et al.* v. *Gale Norton, Secretary of the Department of the Interior, et al.*, CV 03–5126–CW). On June 14, 2004, the U.S. District Court Judge signed an Order granting a stipulated settlement agreement between the two parties. The Service agreed to propose critical habitat for the two plant subspecies on or before April 1, 2006, and finalize the designation on or before April 1, 2007. For more information on previous Federal actions concerning *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*, refer to the final listing rule published in the **Federal Register** (62 FR 61916) on November 20, 1997.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. Section 7 is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

To be included in a critical habitat designation, the habitat within the area occupied by the species must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2). Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. An area currently occupied by the species but was not known to be occupied at the time of listing will likely, but not always, be essential to the conservation of the species and, therefore, typically included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require

Service biologists to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act, we used the best scientific data available in determining areas that contain the features that are essential to the conservation of *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*. The following geospatial, tabular data sets were used in determining critical habitat: occurrence data for *C. hydrophilum* var. *hydrophilum* and *C. mollis* ssp. *mollis* (CNDDB 2005); historic and modern habitats of the San Francisco Bay Estuary (SFEI 1998); data gathered for the development of the draft recovery plan (Service 2005); Contra Costa, Napa, and Solano County soil survey data (Natural Resources and Conservation Service (NRCS) 2005c); vegetation mapping and tidal marsh data for Suisun Marsh (Vaghti and Keeler-Wolf 2004a and 2004b); National Wetlands Inventory data for Contra Costa, Napa, and Solano Counties (National Wetlands Inventory (NWI) 2005); black and white 1:24,000 scale digital orthophoto quarter quadrangles (U.S. Geological Survey (USGS) dated June/July 1993); Teale data for California wetlands and hydrography (California Spatial Information Library 2005); color mosaic 1:9,600 scale digital aerial photographs for Suisun Bay (dated June 16, 2003) (CDFG 2005c); and 1:24,000 scale digital raster graphics of USGS topographic quadrangles. Land ownership was determined from geospatial data sets associated with 2003 parcel data from Contra Costa and Napa Counties (SFWO 2005), 2005 parcel data for Suisun Marsh (CDFG 2005a), and boundary data for CDFG lands (CDFG 2005b).

Additional information was provided by Brenda Grewell (ecologist with the U.S. Department of Agriculture (USDA), Agricultural Research Service at the University of California at Davis) and staff from CDFG, California Department of Parks and Recreation (CDPR), East Bay Regional Park District (EBRPD), Solano Land Trust, and the U.S. Department of the Navy (USDN). We also conducted local site visits at Rush Ranch, Hill Slough and Grizzly Island Wildlife Areas, Peytonia Slough Ecological Reserve, Southampton Marsh, Point Pinole Regional Shoreline, and McAvoy Boat Harbor.

We have reviewed available information that pertains to the habitat requirements of *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*. There is limited information on habitat requirements for these subspecies, but the primary informational sources are (1) CNDDB (2005); (2) CDWR (1993, 1994, 1996, 1999, and 2001) correspondence and reports for Suisun Marsh; (3) Baylands Ecosystem Goals Project (1999 and 2000); and (4) information gathered for the development of the draft recovery plan for the subspecies (Service 2005). We reviewed scientific studies and survey reports for *C. hydrophilum* var. *hydrophilum* (LCLA 2003) and *C. mollis* ssp. *mollis* (Stromberg and Villasenor 1986; Ruygt 1994; Rejmankova and Grewell 2000; Grewell *et al.* 2003; Grewell 2004; EBRPD 2005). A variety of other non-peer and peer-reviewed articles were reviewed for background information on wetland ecology and hydrology, plant ecology and biology, and historical accounts of the San Francisco Bay and Joaquin-Sacramento River Delta.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the subspecies, and that may require special management considerations and protection. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Space for Individual and Population Growth and Normal Behavior

The San Francisco Bay Estuary is the largest contiguous tidal marsh system on the Pacific Coast of North America. The estuary undergoes two daily tidal cycles with large differences between successive high and low tidal cycles. The primary source of fresh water entering the estuary is through the San Joaquin–Sacramento River systems (Pestrong 1972; Conomos *et al.* 1985). Saltwater and seasonal freshwater inflows into the estuary affect salinity levels, sediment deposition, tidal flushing, and the vertical extent of marsh vegetation in tidal marshes (Purer 1942; Josselyn 1983).

The depth, duration, and frequency of tidal flows directly affect tidal marsh channel networks and distribution of plant communities. Under natural tidal regimes, channels develop and migrate through erosion and deposition processes (such as channel undercutting, bank slumping, and sedimentation) during daily flood and

ebb flows and seasonal storm events (Pestrong 1965 and 1972; Garofalo 1980). These networks delineate the degree of tidal flooding based on the width, depth, and elevation of existing channels. The intensity of tidal events controls the level of tidal flushing within marshes. Flushing actions as well as seasonal freshwater inflows help to moderate soil and ground water salinity on a spatial and temporal basis (Purer 1942; Sanderson 1998; Sanderson *et al.* 2000 and 2001). These natural processes acting together impose a strong influence on plant germination and growth in tidal marshes (Vine and Snow 1984; DeLaune *et al.* 1987; Pennings and Callaway 1992; Konisky and Burdick 2004).

Significant changes can occur in tidal marshes, above normal seasonal conditions, to affect plant distributions when natural tidal hydrology is artificially modified by construction of tide gates, mosquito abatement ditches, levees, or other water control structures to restrict its full tidal range. These include changes to soil salinity, chemistry, and aeration (for example, leading to soil subsidence and compaction); lowering of water tables; reductions in sedimentation rates and vertical marsh accretion; and increases in organic materials (Mahall and Park 1976; Balling and Resh 1983; Anisfeld and Benoit 1997; Burdick *et al.* 1997; Portnoy and Giblin 1997; Bryant and Chabreck 1998; Kuhn *et al.* 1999; Portnoy 1999; Goals Project 2000; Reed 2002). This is often followed by a change in the vegetational composition from typical native halophytic marsh plants to less salt-tolerant native and non-native plants (Roman *et al.* 1984; Goals Project 2000). These changes generally fail to support rare tidal marsh plants such as *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* (Goals Project 2000) and therefore, only those areas that have been shown to support populations of the two subspecies or shown to support the features identified as essential for the two subspecies have been proposed for designation.

Landscape Ecology of Cirsium hydrophilum var. *hydrophilum*

Most *Cirsium hydrophilum* var. *hydrophilum* occurrences are found along the banks of canals or ditches, within 50 to 100 feet (15.2 to 30.5 meters (m)) of the high water mark of natural tidal channels, and on tidal floodplains within tidal marshes (CDWR 1993; LCLA 2003; CNDDB 2005). Occurrences in these areas may result from tidal inundations lowering soil and ground water salinity (tidal flushing) producing a less stressful environment for plant establishment (Balling and Resh 1983; Sanderson 1998). The subspecies is also most often found in regularly flooded and permanently saturated habitats (LCLA 2003; NWI 2005). Few occurrences are located in seasonally flooded or saturated habitats (LCLA 2003). The subspecies does not appear to thrive in diked wetlands or along narrow fringe high tidal marshes on the outboard side of levees (CDWR 1994; Goals Project 2000). These areas were not considered to be capable of sustaining or supporting populations of the subspecies and have not been included in the proposed designation.

Common native plant associates of *Cirsium hydrophilum* var. *hydrophilum* include *Argentina egedii* ssp. *egedii* (Pacific silverweed), *Atriplex prostrate* (triangle orache), *Cicuta maculate* var. *bolanderi* (spotted water hemlock), *Distichlis spicata* (inland saltgrass), *Euthamia occidentalis* (western goldentop), *Grindelia stricta* (Oregon gumweed), *Jaumea carnosa* (gray marsh jaumea), *Juncus balticus* (Baltic rush), *Salicornia virginica* (Virginia glasswort), *Schoenoplectus pungens* var. *pungens* (common threesquare), and *Senecio hydrophilus* (water ragwort). Common non-native plant associates include *Apium graveolens* (wild celery), *Lepidium latifolium* (broadleaved peppergrass), and *Rumex crispus* (curly dock) (CDWR 1994; LCLA 2003; plant names referenced from NRCS 2005b). *Lepidium latifolium* is of special concern since it forms large monotypic patches that displace native marsh vegetation (Renz 2000). LCLA (2003) observed that the five most dominate associates at Rush Ranch, based on canopy coverage in sample plots, were *Argentina egedii* ssp. *egedii*, *Schoenoplectus pungens* var. *pungens*, *Juncus balticus*, *Lepidium latifolium*, and *Grindelia stricta*.

Landscape Ecology of Cordylanthus mollis ssp. *mollis*

Most extant occurrences of *Cordylanthus mollis* ssp. *mollis* are located in high tidal marshes that receive full tidal inundations (SFEI 1998; CNDDB 2005). Narrow fringe high tidal marshes on the outboard side of levees do not appear to support the subspecies (CDWR 1994; Goals Project 2000). Fully tidal marshes at Hill Slough Marsh, Rush Ranch, the Joice Island portion of Grizzly Island Wildlife Area, Southampton Marsh, Fagan Slough Marsh, McAvoy Boat Harbor, and Point Pinole Shoreline account for approximately 80 percent of the total mapped occurrences from CNDDB (2005). Non-specific occurrences include data sources with imprecise location information. These data are mapped as circles of varying radii based on data reliability (Bittman 2001). There were nine non-specific *C. mollis* ssp. *mollis* occurrences (Antioch Bridge, Bentley Wharf, Cullinan Ranch, Cutting Wharf, Mare Island, Martinez, McAvoy Boat Harbor, Petaluma Marsh, and San Antonio Creek Marsh) that were mapped with radii of 0.1 to 1 mile (0.16 to 1.6 kilometers) (CNDDB 2005).

Specific occurrences of *Cordylanthus mollis* ssp. *mollis* in muted high tidal marshes (marshes with reduced tidal range due to physical impediments (Goals Project 1999, page 79)) are found on the CNWS and a small area adjacent to the CNWS just north of the General Chemical plant along the Contra Costa shoreline. They account for approximately 6 percent of all specific occurrences.

Diked and managed marshes account for approximately 14 percent of all specific *Cordylanthus mollis* ssp. *mollis* occurrences. These marshes are located in the eastern portion of Suisun Marsh and around the perimeter of high tidal areas at Hill Slough and Fagan Slough marshes. The occurrence of *C. mollis* ssp. *mollis* populations in diked and managed marshes may likely be a result of dormant seed bank(s) and associated marsh conditions that still promote their establishment. However, future land use and management activities in these marshes may rapidly alter marsh conditions to further restrict or exclude the subspecies from the local plant community (Goals Project 1999 and 2000).

Populations of *Cordylanthus mollis* ssp. *mollis* typically occur above mean high water to the marsh-upland ecotone (Ruygt 1994; CDWR 1999; Goals Project 1999). Most subspecies occurrences are found in regularly flooded and permanently saturated habitats (NWI 2005). Current populations are most often found in mixed halophytic plant communities with an average canopy height equal to or less than 20.5 inches (in) (52 centimeters (cm)) (Grewell 2003). Tidal events are important for regulating tidal marsh plant communities and may be a critical factor in regulating the hemiparasitic life cycle of the subspecies (Ruygt 1994; Grewell *et al.* 2003).

Cordylanthus mollis ssp. *mollis* establishes fragile parasitic root connections to their host plants by means of a specialized structure called a haustorium (Chuang and Heckard 1971; Grewell *et al.* 2003). These connections produce an extensive network of intertwined roots that provide the subspecies with part of its

water and nutritional requirements to augment its growth. *C. mollis* ssp. *mollis* does not appear to have a specific host plant preference (Grewell 2004). Seedlings will attach to a wide range of host plants, but not all plants are suitable hosts. Non-native winter annuals such as *Hainardia cylindrical* (barbgrass) and *Polypogon monspeliensis* (annual rabbitsfoot grass) or native winter annuals such as *Juncus bufonius* (toad rush) are not suitable hosts since they typically die before *C. mollis* ssp. *mollis* can flower and produce seeds (Grewell 2003 and 2004). Known suitable hosts include *Distichlis spicata* (salt grass), *Salicornia virginica* (pickleweed), and *Jaumea carnosa* (marsh jaumea) (Grewell 2003 and 2004). Seedlings suffer increased mortality when they germinate near unsuitable hosts or in habitats with a low availability of suitable hosts (Grewell 2004).

Common native plant associates of *Cordylanthus mollis* ssp. *mollis* include *Atriplex prostrate, Cuscuta salina* (saltmarsh dodder), *Distichlis spicata, Jaumea carnosa, Limonium californicum* (California sealavender), *Plantago maritima* (goose tongue), *Salicornia virginica, Symphyotrichum expansum* (southwestern annual saltmarsh aster), and *Triglochin maritimum* (seaside arrowgrass). A common non-native plant associate is *Polygonum arenastrum* (oval-leaf knotweed) (Ruygt 1994; Grewell 2003; plant names referenced from NRCS 2005b). *Cuscuta salina* is the most common plant associate of *C. mollis* ssp. *mollis* throughout its range (Grewell 2003).

Soils

Soil survey data (NRCS 2005c) for Contra Costa, Napa, and Solano Counties are delineated by soil map units (series). A soil map unit represents an area dominated by one or several types of soils (NRCS 1995). Each map unit is named based on its taxonomic classification of the dominant soil(s). Boundaries between soil types are determined by field surveys and soil models, but may not be fixed, since individual soils merge into one another as their properties gradually change over the landscape. The degree of soil genesis is driven by natural and anthropogenic processes on a landscape level that may further alter soil properties over time (Buol *et al.* 1980).

Occurrences of *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* used for soil area estimates only include populations that have a specific polygon mapping precision (CNDDB 2005). Approximately 92.4 percent (98.3 ac/39.8 ha) of *C. hydrophilum* var. *hydrophilum* occurrences are found on hydric soil series that are slightly to moderately saline within the first 3 feet (ft)(0.9 meters (m)) of soil depth (USDA 1993, page 194; NRCS (2005a, 2005c, and 2005d)). *C. mollis* ssp. *mollis* occurrences are found on approximately 91.1 percent (480.7 ac/194.5 ha) of hydric soil series that are slightly to moderately saline within the first 3 ft (0.9 m) of soil depth (USDA 1993, page 194; NRCS (2005a , 2005c, and 2005d)).

It is not known whether the respective soil series associated with occurrences of *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* are due to limited seed dispersal, colonization potential, plant competition, changes in tidal marsh regimes, specific edaphic requirements, or other potential factors (Ruygt 1994; LCLA 2003; Service 2005). Additional studies are needed to determine how soils affect the distribution of these subspecies in tidal marshes.

Reproduction in Cirsium hydrophilum var. *hydrophilum*

Cirsium hydrophilum var. *hydrophilum* is a perennial plant that dies after flowering and bearing seeds. Its vegetative period is usually 1 year, but if small vegetative plant size or unfavorable environmental conditions delay flowering, a plant may grow back from its central root crown after the winter, and thereby live for more than a year. Flowering occurs throughout the summer during most years and continues through the production of ripe seed heads (Service 2005).

Pollination ecology of *Cirsium hydrophilum* var. *hydrophilum* has not been studied to identify specific flower pollinators. Field observations at Rush Ranch indicate that several bee species may be important in pollinating the subspecies (LCLA 2003; Service 2005). The most common species observed gathering pollen at the ranch was the yellow-faced bumble bee (*Bombus vosnesenskii*) (LCLA 2003).

The reproductive output of *Cirsium hydrophilum* var. *hydrophilum* has not been quantified for individual plants. Results from sample plot data at Rush Ranch indicated that 21 percent of the plants were reproductive flowering adults and the rest were either first or second year non-flowering individuals (LCLA 2003). Flowering plants may produce hundreds of seed heads. Seed heads observed in July of 2000 had three to five ripe seeds per head, but many of them contained aborted seeds or were found with insect larvae engaged in active seed predation (Service 2005). Plant-eating insects can significantly limit seed production and plant demography as seen in several other *Cirsium* species (Louda and Potvin 1995; Palmisano and Fox 1997; Louda and O'Brien 2002; Rand and Louda 2004; Louda *et al.* 2005; Rose *et al.* 2005).

Information on short and long distance seed dispersal for *Cirsium hydrophilum* var. *hydrophilum* is lacking. The subspecies usually has a plumed pappus (tufted appendage) attached to each mature seed to aid in wind dispersal; however, the plumed pappus may sometimes detach from the relatively thick-walled, heavy seeds before it disperses (Service 2005). Studies on other species in the same family have shown that most plumed seeds are wind dispersed only a few meters (Sheldon and Burrows 1973; McEvoy and Cox 1987; Klinkhamer *et al.* 1988; Wallace *et al.* 2005). The extent of horizontal seed dispersal is affected in part by local topography and surrounding vegetation (Sheldon and Burrows 1973; McEvoy and Cox 1987; Wallace *et al.* 2005). Streams and tidal flows have been shown to be important dispersal mechanisms in *Cirsium vinaceum* (Sacramento Mountain thistle) and certain halophytic plants (Koutstaal *et al.* 1987; Huiskes *et al.* 1995; Craddock and Huenneke 1997).

The presence of numerous small, discrete colonies of *Cirsium hydrophilum* var. *hydrophilum* as seen by LCLA (2003) at Rush Ranch suggests that the subspecies may have relatively local breeding micro-habitats resulting in limited seed dispersal. However, the relatively tall stature of this subspecies, as compared to other associated tidal marsh plants, and flat topography of the surrounding marsh could potentially allow for long distance seed dispersal. It is unlikely that seeds would be dispersed by attachment to animal fur or feathers since they have a smooth, glossy seed coat (Service 2005).

Specific conditions for germination and growth of *Cirsium hydrophilum* var. *hydrophilum* are not known, but field observations suggest they are associated with small gaps or sparsely vegetated areas. Dense cover of marsh plants in wet years may restrict the establishment of the subspecies (CDWR 1996 and 1999).

Reproduction in Cordylanthus mollis ssp. mollis

Cordylanthus mollis ssp. *mollis*, an annual, regenerates from a persistent, dormant seed bank. The longevity of seed banks is unknown, but some populations fail to emerge for several years and then reappear, suggesting

long-term viability of dormant seeds (Service 2005). The peak seed germination period occurs during the most frequent tidal inundations in areas of bare soil (CDWR 1994; Ruygt 1994). Seedling growth rapidly increases by mid-March when tidal inundations reach an annual low. Flowering generally reaches a peak in mid-summer and declines by late August. The number of flowers produced per plant varies greatly and appears to be dependent on plant height and degree of branching (Ruygt 1994).

Cordylanthus mollis ssp. *mollis* is probably dependent on insects for successful pollination and reproduction. Ruygt (1994) observed three bee species that were visitors to various *C. mollis* ssp. *mollis* populations in Napa and Solano Counties. Bumble bees (*Bombus californicus*) were the most frequent visitors seen foraging among flowers. The low number of potential pollinators at some locations suggests that the subspecies may rely to some degree on self-pollination to fertilize flowers within larger populations (Ruygt 1994). During a pollinator exclusion experiment, Ruygt (1994) observed that several plants were able to produce seeds through self-fertilization, but the viability of these seeds were not tested or compared to those for non-experimental plants. Grewell *et al.* (2003) observed five bee genera and one bee fly acting as potential pollinators at a recently reintroduced population of *C. mollis* ssp. *mollis* at Rush Ranch and a natural population at Hill Slough Marsh.

Seed production in *Cordylanthus mollis* ssp. *mollis* varies greatly among individual plants. Mature plants are multi-branched with each branch producing numerous seed capsules. Sampled capsules from three populations (Ruygt 1994) contained from 8 to 39 seeds (averaging 23.5 seeds per capsule). Based on this data, the estimated average seed production at Hill Slough Marsh was 495 seeds per plant (Ruygt 1994). Stromberg and Villasenor (1986) observed capsules that contained between 15 to 40 seeds per capsule at several *C. mollis* ssp. *mollis* populations. Grewell (2004) observed up to 32,000 seeds per plant under ideal growing conditions. However, seed production can be significantly influenced by flower, fruit, and seed predation from lepidopteran larvae (Ruygt 1994; Grewell *et al.* 2003).

Limited information exists on seed dispersal mechanisms for *Cordylanthus mollis* ssp. *mollis*. Seeds may disperse short distances from parent plants by tidal inundations or animals (Grewell *et al.* 2003), but successful long distance dispersal by these or other events have not been documented. Stromberg and Villasenor (1986) observed that most of the mature seed capsules remained closed on parent plants. They believed that the majority of the seeds were probably released from seed capsules after mature plants fell to the ground and decayed. This would likely result in seeds germinating directly beneath parent plants. This seed dispersal mechanism may partly explain the reason for the high densities of plants often seen in some populations.

The deep reticulated seed coat (Chuang and Heckard 1972) of *Cordylanthus mollis* ssp. *mollis* can trap microscopic pockets of air that allow seeds to float in saline and fresh water (Ruygt 1994). This feature may enable seeds to disperse during tidal events and establish local seed banks. Several authors found that tidal events can be important agents in seed dispersal for a variety of tidal saltwater and freshwater marsh plants (Koutstaal *et al.* 1987; Huiskes *et al.* 1995; Griffith and Forseth 2002; Wolters and Bakker 2002; Neff and Baldwin 2005). *C. mollis* ssp. *mollis* seeds may persist in dormant seed banks for years, but information on the dynamics of these seed banks is limited and requires more study (Grewell *et al.* 2003). Population expansion is dependent on viable seeds dispersing to appropriate habitats, germinating, and establishing early parasitic connections to the roots of suitable tidal marsh host plants.

The specific PCEs required for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* are derived from the biological needs of the two plants as described above and in the Background section of this proposal.

Primary Constituent Elements for Cirsium hydrophilum var. *hydrophilum and Cordylanthus mollis* ssp. *mollis*

Pursuant to our regulations, we are required to identify the known physical and biological features (primary constituent elements (PCEs)) essential to the conservation of *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*. All of the areas we are proposing as critical habitat are occupied by the subspecies, except that one unit (Hill Slough Marsh) proposed for both subspecies is currently occupied only by *C. mollis* ssp. *mollis*. Efforts are underway to restore *C. hydrophilum* var. *hydrophilum* to that area. All of the proposed critical habitat areas are within the subspecies' historic geographic range, and contain physical and biological features essential to the conservation of the subspecies.

Primary Constituent Elements: The PCEs for *C. hydrophilum* var. *hydrophilum*, based on its known occurrences in Suisun Marsh, are:

(1) Tidally influenced marsh areas (intertidal emergent estuarine marshes) bounded on the seaward edge by the mean high water line and on the landward edge by a marsh-upland ecotone; and containing channel networks influenced by freshwater and saltwater hydrology and exhibiting full natural tidal inundations to allow for channel development and migration through erosional and depositional processes (such as channel undercutting, bank slumping, and sedimentation) during daily flood and ebb flows and seasonal storm events.

(2) Areas associated with PCE 1 that are: (a) Between the bank and high water mark of natural tidal channels; (b) along the banks of tidally influenced canals or ditches; or (c) within tidally influenced floodplains that contain hydric soils that are slightly to moderately saline (4 to 16 decisiemens/meter (dS/m)) within the first 3 ft (0.9 m) of soil depth.

Primary Constituent Elements: The PCEs for *Cordylanthus mollis* ssp. *mollis*, based on its known occurrences, are:

(1) Tidally influenced marsh areas (intertidal emergent estuarine marshes) bounded on the seaward edge by the mean high water line and on the landward edge by a marsh-upland ecotone; and containing channel networks influenced by freshwater and saltwater hydrology and exhibiting full natural tidal inundations to allow for channel development and migration through erosional and depositional processes (such as channel undercutting, bank slumping, and sedimentation) during daily flood and ebb flows and seasonal storm events.

(2) Areas associated with PCE 1 that are within tidally influenced marsh floodplains that contain hydric soils that are slightly to moderately saline (4 to 16 dS/m) within the first 3 ft (0.9 m) of soil depth.

(3) Tidal marsh habitats within PCE 1 and PCE 2 that have native halophytic plant communities with an average canopy height equal to or less than 20.5 in (52 cm);

(4) Areas within PCE 1 and PCE 2 that provide for a sufficient number of suitable host plants, including but not limited to *Distichlis spicata, Salicornia virginica*, and *Jaumea carnosa*. These host plants provide the subspecies with water and nutritional requirements to augment its growth.

This proposed designation is designed for the conservation of PCEs necessary

to support the life history functions that were the basis for the proposal. Because not all life history functions require all the PCEs, not all proposed critical habitat will contain all the PCEs.

Each of the areas proposed in this rule have been determined to contain sufficient PCEs to provide for one or more of the life history functions of the two subspecies. In some cases, the PCEs exist as a result of ongoing Federal actions. As a result, ongoing Federal actions at the time of designation will be included in the baseline in any consultation conducted subsequent to this designation.

Criteria Used To Identify Critical Habitat

We are proposing to designate critical habitat on lands that we have determined were occupied at the time of listing and contain the features essential to the conservation of *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*. We are also proposing to designate one unit of unoccupied habitat (Hill Slough Marsh) for *C. hydrophilum* var. *hydrophilum* that we have determined is essential to the conservation of that subspecies. This same area is also proposed as critical habitat for *C. mollis* ssp. *mollis* and is occupied by that subspecies (both now and at the time of listing).

Criteria for Cirsium hydrophilum var. *hydrophilum*

The tidally influenced habitat required for *Cirsium hydrophilum* var. *hydrophilum* survival has been greatly reduced. Of the estimated 71,000 ac (29,000 ha) of tidal marsh habitat originally within the Suisun Marsh, only about 9,300 ac (3,800 ha) remained as tidal marsh in 1989 (Dedrick 1989). Most of this area is backed by steep levees, allowing for little or no tidally influenced transitional wetland habitat required for the subspecies as identified in the PCE section above. The distribution of *C. hydrophilum* var. *hydrophilum* has also been greatly reduced. In 1975, the plant was deemed to be extirpated due to a 15-year absence from known locations within the Suisun Marsh. Extensive survey work in 1993 identified two populations in the Suisun Marsh area and identified the Hill Slough area as containing the habitat features essential for the conservation of the subspecies (Brenda Grewell, pers comm. 1993).

The population size of *C. hydrophilum* var. *hydrophilum* varies greatly from year to year. At the time of listing, the subspecies was known from two small areas totaling a few thousand plants occupying an area of less than one acre. Survey work done since the time of listing has identified an additional population within the same general area as the two at the time of listing. These three populations continue to be threatened by the same factors discussed in the listing determination: Habitat loss, fragmentation, disruption to the hydrologic regime, invasive competition from non-native plants, chronic and acute pollution from point and non-point sources, insect or pest outbreaks, and extended drought. Due to their small size, the populations are also subject to increased risk of extirpation from random anthropogenic or natural events.

We have determined that, due to the limited availability of habitat for the subspecies, the limited distribution and small population size of the subspecies, and the subspecies' poor dispersal capabilities, the long-term conservation of this plant is dependent upon the protection of habitat supporting all three existing populations, including surrounding areas that may contain dormant seed banks and that support the PCEs of the subspecies. For the same reasons, the conservation of the subspecies also depends on the establishment of at least one additional population in appropriate habitat. Hill Slough Marsh is not known to be occupied by the subspecies, either now or at the time of listing, but based on the area's size and because it supports all the PCEs of the plant, it is the area best suited for reintroduction. The area is also the subject of ongoing restoration and planning efforts conducted under the auspices of the Suisun Protection Plan (SFBCDC 2006). Accordingly, we have determined that the area of Hill Slough Marsh proposed below as Unit 1 for *Cirsium hydrophilum* var. *hydrophilum* is essential to the conservation of the subspecies.

Criteria for Cordylanthus mollis ssp. *mollis*

Only extant occurrences of *Cordylanthus mollis* ssp. *mollis* located in fully tidal marshes were selected because these areas contain the features essential to the conservation of the subspecies and can contribute best to the subspecies' recovery. These widely scattered populations are dependent on tidal events and native halophytic plant communities to complete the subspecies' life cycle. Extant occurrences in diked, managed, and muted tidal marshes were not proposed for designation, because these areas fail to support the tidal hydrology and native plant communities that the subspecies needs for long term persistence. Populations outside the designation may still be important for recovery of the subspecies, and are still protected under the Act, but their habitat is not considered essential to recovery.

The inclusion of known plant locations interspersed with patches of surrounding habitat reflects the dynamic nature of tidal marshes (Nichols *et al.* 1986; Adam 2002) and life cycle of these subspecies.

Mapping

Geospatial data sets were used within ArcGIS 8.3/ArcMap (Environmental Systems Research Institute, Redlands, CA) and analyzed to define the areas that best contain the features that are essential to the conservation of *Cirsium hydrophilum* var. *hydrophilum and Cordylanthus mollis* ssp. *mollis*. Intertidal, emergent estuarine marshes (undiked high tidal marshes) were selected from the data sets based on tidal channel networks, hydrology, and marsh elevation (refer to PCEs). We are not including undiked high tidal marshes that do not contain the PCEs or were not essential for the conservation of the subspecies because either the area is highly degraded and may not be restorable; or the area is small, highly fragmented, or isolated and may provide little or no long-term conservation value.

The occurrence of saline soils were determined from county soil surveys (NRCS 2005c). Marsh habitats and soil salinity in high tidal marshes will also be continually changing due to the seasonal variability of environmental conditions within these areas.

Based on the above data analysis, the boundaries of proposed critical habitat units were digitized at a map scale from 1:750 to 1:1,500 from digital photographic and wetland-tidal marsh polygon data sets (see Methods section). All lands within these delineated boundaries are considered critical habitat. Water bodies and conveyances (such as tidal sloughs, channels, ditches, canals, and ponds) were not removed from the interior of critical habitat units. These features are essential for the conservation of the subspecies based on hydrologic processes, despite the fact that these plants do not normally grow within the banks of such channels and ponds.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing and that contain the PCEs may require special management considerations or

protections. Most of the known occurrences of *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* are threatened by (1) tidal wetland conversions to diked, managed, or muted tidal marshes; (2) changes to channel water salinity and tidal regimes; (3) mosquito abatement activities; (4) marsh invasions by non-native plants; (5) plant-eating insects; (6) urban, industrial, and agricultural encroachment; (7) impacts from livestock overgrazing ; (8) feral pigs (*Sus scrofa*); and (9) impacts from unauthorized foot and off-road vehicle traffic. These combined threats result in the loss and fragmentation of suitable habitat for *C. hydrophilum* var. *hydrophilum* and *C. mollis* ssp. *mollis*, which could significantly affect their long-term survival. Individually, these threats may require special management as addressed under the critical habitat unit descriptions below.

Proposed Critical Habitat Designation

We are proposing three units as critical habitat for the *Cirsium hydrophilum* var hydrophilum and five units for *Cordylanthus mollis* ssp. *mollis*. Table 1 below identifies the approximate area exempt from proposed critical habitat for *C. mollis* ssp. *mollis* pursuant to section 4(a)(3) of the Act.

TABLE 1.—APPROXIMATE AREA EXEMPT FROM PROPOSED CRITICAL HABITAT FOR *Cordylanthus mollis* SSP. *mollis* PURSUANT TO SECTION 4(A)(3) OF THE ACT

Location (unit)	Lands containing features essential		Area exempt from critical habitat designation	
Concord Naval Weapons Station (Middle Point Marsh and western portion of Hastings Marsh)	402 ac	163 ha	402 ac	163 ha

Cirsium Hydrophilum var Hydrophilum

The three proposed units for *Cirsium hydrophilum* var *hydrophilum* are in Solano County, California. The critical habitat units described below contain the PCEs of the subspecies, and may require special management. The units proposed as critical habitat are listed in Table 2.

TABLE 2.—CRITICAL HABITAT UNITS PROPOSED FOR CIRSIUM *Hydrophilum* VAR. *Hydrophilum*

[Area estimates reflect all land within critical habitat boundaries, acres (hectares)]

Critical habitat unit	State	Land trust	Private	Total
Unit 1: Hill Slough Marsh	440 (178)	0 (0)	85 (35)	525 (213)
Unit 2: Peytonia Slough Marsh:				
Subunit 2A	0 (0)	0 (0)	120 (49)	120 (49)
Subunit 2B	243 (98)	0 (0)	50 (20)	293 (118)
Unit 3: Rush Ranch/Grizzly Island Wildlife Area	231 (93)	950 (384)	0 (0)	1,181 (477)
Total	914 (369)	950 (384)	255 (104)	2,119 (857)

Common threats that may require special management in all three units include (1) alternations to channel water salinity and tidal regimes from the operation of the Suisun Marsh Salinity Control Gates that could affect the depth, duration, and frequency of tidal events and the degree of salinity in the channel water column; (2) mosquito abatement activities (ditching, dredging, and chemical spray operations), which may damage the plants directly by trampling and soil disturbance, and indirectly by altering hydrologic processes and by providing relatively dry ground for additional foot and vehicular traffic; (3) rooting, wallowing, trampling, and grazing impacts from livestock and feral pigs that could result in damage or loss to *C. hydrophilum* var. *hydrophilum* colonies or soil disturbance and compaction leading to a disruption in natural marsh ecosystem processes; (4) increases in the proliferation of non-native invasive plants from human-induced soil disturbances leading to the invasives outcompeting the *C. hydrophilum*. var. *hydrophilum*; and (5) control or removal of non-native invasive plants, especially *Lepidium latifolium*, which, if not carefully managed, can damage *C. hydrophilum* var. *hydrophilum* populations through the injudicious application of herbicides; by direct trampling; or through the accidental transport of invasive plant seeds to new areas. An additional threat that may require special management in Units 1 and 2 includes urban or residential encroachment from Suisun City to the north that could increase stormwater and wastewater runoff into these units.

We present brief descriptions of all units and the reasons why they contain features that are essential for the conservation of *Cirsium hydrophilum* var. *hydrophilum*, below. Hydric soils and soil salinity described under unit descriptions were based on NRCS (2005a, 2005c, and 2005d) and USDA (1993, page 194) soil data.

Unit 1: Hill Slough Marsh

Unit 1 consists of approximately 525 ac (213 ha) located north of Potrero Hills between Grizzly Island Road and Highway 12. As discussed in the Criteria for *Cirsium hydrophylum* var. *hydrophilum* section above, this unit is currently unoccupied and was unoccupied at the time of listing, but it is essential to the conservation of the subspecies because it is the single best area for establishment of an additional population. It contains all the necessary PCEs and is the subject of on-going restoration and planning efforts within the Suisun Marsh. The unit consists of approximately 440 ac (178 ha) of State-owned land (Hill Slough Wildlife Area), which is managed by the CDFG, and 85 ac (35 ha) of privately owned land. The unit receives tidal inundations (PCE 1) irregularly (not daily) (NWI 2005) from Hill Slough and a flood control channel along the western unit boundary (PCE 2). Natural tidal channel networks are developed within the unit. Approximately 98.4 percent of the soils in the unit are classified as hydric soils that are slightly to moderately saline within the first 3 feet (0.9 m) of soil depth (PCE 2). The unit contains the

PCEs for the subspecies to allow for germination, reproduction, and development.

Unit 2: Peytonia Slough Marsh

Unit 2 consists of approximately 413 ac (167 ha) located adjacent to Cordelia Road to the west, Suisun Slough to the east, Peytonia Slough to the south, and Suisun City to the north. The unit consists of approximately 243 ac (98 ha) of State-owned land (Peytonia Slough Ecological Reserve), which is managed by the CDFG, and 170 ac (69 ha) of privately owned high tidal marsh. The unit receives tidal inundations on a regular-to-irregular basis (NWI 2005) from Peytonia Slough (PCE 1); however, the unit is hydrologically bisected into subunits 2A and 2B, north to south, by an elevated railroad line, but is tidally connected at its southern boundary by Peytonia Slough. Natural tidal channel networks exist within the unit. The eastern portion of the unit along Suisun Slough is partially diked but is tidally influenced through a channel branching off from Peytonia Slough (PCE 2). Approximately 99.8 percent of the soils in the unit are classified as hydric soils that are moderately saline within the first 3 feet (0.9 m) of soil depth (PCE 2). The unit contains the PCEs for the subspecies to allow for germination, reproduction, and development of a seed bank. *Cirsium hydrophilum* var. *hydrophilum* occupied the unit at the time of listing as identified in the final listing rule (62 FR 61916).

Unit 3: Rush Ranch/Grizzly Island Wildlife Area

Unit 3 consists of approximately 1,181 ac (477 ha) located adjacent to Suisun Slough to the west, Cutoff and Montezuma Sloughs to the south, and Potrero Hills to the North. This unit consists of 231 ac (93 ha) of State-owned land (the Joice Island portion of Grizzly Island Wildlife Area), which is managed by the CDFG, and 950 ac (384 ha) of land owned by the Solano Land Trust (local non-profit public land trust). The unit receives regular tidal inundations at least once daily (NWI 2005) (PCE 1) from the above-mentioned tidal sloughs. Natural tidal channel networks exist within the unit (PCE 2). Approximately 94.6 percent of the soils in the unit are classified as hydric soils that are slightly to moderately saline within the first 3 feet (0.9 m) of soil depth (PCE 2). The unit contains the PCEs for the subspecies to allow for germination, reproduction, and development of a seed bank. Another threat not identified above that may require special management includes the presence of *Rhinocyllus conicus* (a non-native biological control weevil) or other plant-eating insects that could reduce the reproductive potential of *Cirsium hydrophilum* var. *hydrophilum*. *Cirsium hydrophilum* var. *hydrophilum* occupied the unit at the time of listing as identified in the final listing rule (62 FR 61916).

Cordylanthus mollis ssp. *mollis*

We are proposing five units as critical habitat for *Cordylanthus mollis* ssp. *mollis* in Contra Costa, Napa, and Solano Counties, California. The critical habitat areas described below constitute areas that contain the PCEs and that may require special management. The units proposed as critical habitat are listed in Table 3. Contra Costa, Napa, and Solano Counties have approximately 22 ac (9 ha), 408 ac (165 ha), and 1,884 ac (763 ha) of proposed critical habitat, respectively.

Common threats that may require special management in all five units include (1) mosquito abatement activities (ditching, dredging, and chemical spray operations), which may damage the plants directly by trampling and soil disturbance, and indirectly by altering hydrologic processes and by providing relatively dry ground for additional foot and vehicular traffic; (2) general foot and off-road vehicle traffic through *C. mollis* ssp. *mollis* populations that could result in their damage and loss in impacted areas; (3) increases in the proliferation of non-native invasive plants from human-induced soil disturbances leading to the invasives outcompeting the *C. mollis* ssp. *mollis*; (4) control or removal of non-native invasive plants, especially *Lepidium latifolium*, which, if not carefully managed, can damage *C. mollis* ssp. *mollis* populations through the injudicious application of herbicides; by direct trampling; or through the accidental transport of invasive plant seeds to new areas; and (5) presence of *Lipographis fenestrella* (a moth) larvae that could reduce the reproductive potential of *C. mollis* ssp. *mollis* through flower, fruit, and seed predation.

Common threats that may require special management in Units 2 and 4 in Suisun Marsh include (1) alternations to channel water salinity and tidal regimes from the operation of the Suisun Marsh Salinity Control Gates that could affect the depth, duration, and frequency of tidal events and the degree of salinity in the channel water column; and (2) rooting, wallowing, trampling, and grazing impacts from livestock and feral pigs that could result in damage or loss to *C. mollis* ssp. *mollis* populations or soil disturbance and compaction leading to a disruption in natural marsh ecosystem processes. A common threat that may require special management in Units 3 and 5 is contamination from bay oil spills that could directly impact *C. mollis* ssp. *mollis* populations and seed banks.

We present brief descriptions of all units and the reasons why they are essential for the conservation of *Cordylanthus mollis* ssp. mollis below. Hydric soils and soil salinity described under unit descriptions were based on NRCS (2005a, 2005c, and 2005d) and USDA (1993, page 194) soil data.

TABLE 3.—CRITICAL HABITAT UNITS PROPOSED FOR *Cordylanthus mollis* SSP. *mollis*

[Area estimates reflect all land within critical habitat boundaries, acres (hectares)]

Critical habitat unit	State	County/City	Land trust	Private	Total
Unit 1: Fagan Slough Marsh	320 (130)	15 (6)	0 (0)	72 (29)	407 (165)
Unit 2: Hill Slough Marsh	440 (178)	0 (0)	0 (0)	85 (35)	525 (213)
Unit 3: Point Pinole Shoreline	9 (4)	13 (5)	0 (0)	0 (0)	22 (9)
Unit 4: Rush Ranch/Grizzly Island Wildlife Area	231 (93)	0 (0)	950 (384)	0 (0)	1,181 (477)
Unit 5: Southampton Marsh	178 (72)	0 (0)	0 (0)	0 (0)	178 (72)
Total	1,178 (477)	28 (11)	950 (384)	157 (64)	2,313 (936)

Unit 1: Fagan Slough Marsh (Napa County)

Unit 1 consists of approximately 407 ac (165 ha) located adjacent to the Napa River to the west, Napa County Airport to the east, Fagan Slough to the south, and Steamboat Slough to the north. This unit consists of 320 ac (130 ha) of State-owned land (Fagan Slough Ecological Reserve), which is managed by the CDFG, 6 ac (2 ha) of County-owned land, 9 ac (4 ha) of land owned by the City of Napa, and 72 ac (29 ha) of privately owned land. The unit receives tidal inundations regularly (NWI 2005) from the above-mentioned tidal sloughs and the Napa River (PCE 1, PCE 2). Natural tidal channel networks are developed within the unit. Approximately 98 percent of the soils in the unit are classified as hydric soils that are slightly saline within the first 3 feet (0.9 m) of soil depth (PCE 2). This unit contains native plant communities of appropriate height and sufficient host plants to provide the subspecies with the environmental and nutritional requirements needed for its survival (PCE 3, PCE 4). The unit contains the PCEs for the subspecies to allow for germination, reproduction, and development of a seed bank. *Cordylanthus mollis* ssp. *mollis* occupied the unit at the time of listing as identified in the final listing rule (62 FR 61916).

Unit 2: Hill Slough Marsh (Solano County)

Unit 2 for *Cordylanthus mollis* ssp. *mollis* consists of approximately 525 ac (213 ha) located north of Potrero Hills between Grizzly Island Road and Highway 12. The unit consists of approximately 440 ac (178 ha) of State-owned land (Hill Slough Wildlife Area), which is managed by the CDFG, and 85 ac (35 ha) of privately owned land. The unit receives tidal inundations irregularly (not daily) (NWI 2005) from Hill Slough and a flood control channel along the western unit boundary (PCE 1, PCE 2). Natural tidal channel networks are developed within the unit. Approximately 98.4 percent of the soils in the unit are classified as hydric soils that are slightly to moderately saline within the first 3 feet (0.9 m) of soil depth (PCE 2). This unit contains native plant communities of appropriate height and sufficient host plants to provide the subspecies with the environmental and nutritional requirements needed for its survival (PCE 3, PCE 4). The unit contains the PCEs for the subspecies to allow for germination, reproduction, and development of a seed bank. *C. mollis* ssp. *mollis* occupied the unit at the time of listing as identified in the final listing rule (62 FR 61916).

Unit 3: Point Pinole Shoreline (Contra Costa County)

Unit 3 consists of approximately 22 ac (9 ha) located along the Contra Costa shoreline in San Pablo Bay just east of Point Pinole. This unit consists of 13 ac (5 ha) of County-owned land (Point Pinole Regional Shoreline Park), which is managed by the EBRPD, and 9 ac (4 ha) of State-owned land. The unit receives tidal inundations on a regular basis (NWI 2005) from natural and artificial (dredged) tidal channels within the unit (PCE 1, PCE 2). Approximately 23.8 percent of the soils in the unit are classified as hydric soils that are moderately saline within the first 3 feet (0.9 m) of soil depth (PCE 2). This unit contains native plant communities of appropriate height and sufficient host plants to provide the subspecies with the environmental and nutritional requirements needed for its survival (PCE 3, PCE 4). The unit contains the PCEs for the subspecies to allow for germination, reproduction, and development of a seed bank. Another threat in this unit that may require special management is industrial or commercial encroachment from the south that could increase stormwater and wastewater runoff into the unit. *Cordylanthus mollis* ssp. *mollis* occupied the unit at the time of listing as identified in the final listing rule (62 FR 61916).

Unit 4: Rush Ranch/Grizzly Island Wildlife Area (Solano County)

Unit 4 for *Cordylanthus mollis* ssp. *mollis* consists of approximately 1,181 ac (477 ha) located adjacent to Suisun Slough to the west, Cutoff and Montezuma Sloughs to the south, and Potrero Hills to the North. This unit consists of 231 ac (93 ha) of State-owned land (Joice Island portion of the Grizzly Island Wildlife Area), which is managed by the CDFG, and 950 ac (384 ha) of land owned and managed by the Solano Land Trust (local non-profit public land trust). The unit receives tidal inundations regularly (at least once daily) (NWI 2005) from the above-mentioned tidal sloughs (PCE 1, PCE 2). Natural tidal channel networks are developed within the unit. Approximately 94.6 percent of the soils in the unit are classified as hydric soils that are slightly to moderately saline within the first 3 feet (0.9 m) of soil depth (PCE 2). This unit contains native plant communities of appropriate height and sufficient host plants to provide the subspecies with the environmental and nutritional requirements needed for its survival (PCE 3, PCE 4). The unit contains the PCEs for the subspecies to allow for germination, reproduction, and development of a seed bank. *C. mollis* ssp. *mollis* occupied the unit at the time of listing as identified in the final listing rule (62 FR 61916).

Unit 5: Southampton Marsh (Solano County)

Unit 5 consists of approximately 178 ac (72 ha) of State-owned land managed by CDPR as a wetland natural preserve (CDPR 1991). The unit is located in the Benicia State Recreational Area along Interstate Highway 780 and just northwest of the City of Benicia. The unit receives tidal inundations on a regular-to-irregular basis (NWI 2005) from natural and artificial (dredged) tidal channels within the unit (PCE 1, PCE 2). Approximately 76.5 percent of the soils in the unit are classified as hydric soils that are moderately saline within the first 3 feet (0.9 m) of soil depth (PCE 2). This unit contains native plant communities of appropriate height and sufficient host plants to provide the subspecies with the environmental and nutritional requirements needed for its survival (PCE 3, PCE 4). Approximately 22 ac (9 ha) of bay fill is located in the northwestern section of the unit adjacent to the paved park roadway. This area is associated with ongoing marsh restoration efforts by the CDPR. The unit contains the PCEs for the subspecies to allow for germination, reproduction, and development of a seed bank. Another threat in this unit that may require special management is urban or residential encroachment from the north that could increase stormwater and wastewater runoff into the unit. *Cordylanthus mollis* ssp. *mollis* occupied the unit at the time of listing as identified in the final listing rule (62 FR 61916).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." However, recent decisions by the 5th and 9th Circuit

Court of Appeals have invalidated this definition. Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only. However, once a proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedure is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action as a result of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the proposed species or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report; while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that may affect, but are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. "Reasonable and prudent alternatives" are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid jeopardy to the listed species or destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect *Cirsium hydrophilum* var. *hydrophilum* or *Cordylanthus mollis* ssp. *mollis* or their designated critical habitat will require section 7 consultation under the Act. Activities on State, tribal, local or private lands requiring a Federal permit (such as a permit from the Corps under section 404 of the Clean Water Act or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations. In instances where emergency levee repair or maintenance activities are required and may affect *C. hydrophilum* var. *hydrophilum* or *C. mollis* ssp. *mollis* or their proposed critical habitat, we have notified the affected agencies and flood control districts that those emergency repair and maintenance activities would constitute an emergency consultation as identified under the Federal Code of Regulations (50 CFR 402.05). As a result, such emergency repair and maintenance activities may proceed prior to consulting with the Service.

Application of the Jeopardy and Adverse Modification Standards for Actions involving Effects to Cirsium hydrophilum var. hydrophilum or Cordylanthus mollis ssp. mollis and their Critical Habitat

Jeopardy Standard

Prior to and following designation of critical habitat, the Service has applied an analytical framework for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* jeopardy analyses that relies heavily on the importance of core area populations to the survival and recovery of *C. hydrophilum* var. *hydrophilum* or *C. mollis* ssp. *mollis* or both. The section 7(a)(2) analysis is focused not only on

these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of *Cirsium hydrophilum* var. *hydrophilum* and/or *Cordylanthus mollis* ssp. *mollis* in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Adverse Modification Standard

The analytical framework described in the Director's December 9, 2004, memorandum is used to complete section 7(a)(2) analyses for Federal actions affecting *Cirsium hydrophilum* var. *hydrophilum* or *Cordylanthus mollis* ssp. *mollis* critical habitat. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species. Generally, the conservation role of *C. hydrophilum* var. *hydrophilum* and *C. mollis* ssp. *mollis* critical habitat units is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the species.

Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for *Cirsium hydrophilum* var. *hydrophilum* and/or *Cordylanthus mollis* ssp. *mollis* is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for *C. hydrophilum* var. *hydrophilum* or *C. mollis* ssp. *mollis* or both include, but are not limited to:

(1) Actions that would degrade natural tidal hydrology in undiked high tidal marshes supporting *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* populations. Such actions could include, but are not limited to: The construction of new levees, tide gates, mosquito abatement ditches, flash board water control structures, or other marsh impoundment and drainage structures; urban flood control and channelization projects; and human-induced changes to natural saltwater and freshwater inflows into undiked high tidal marshes. These actions could limit the geomorphic processes associated with natural tidal channel networks; alter soil and water chemistry affecting the composition of tidal marsh plant communities; and reduce vertical marsh accretion affecting the range of tidal inundations, especially in relation to local sea level rise.

(2) Actions that would degrade or destroy *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* habitat. Such actions could include, but are not limited to, domestic and feral livestock impacts; unauthorized foot and off-road vehicle traffic; and agricultural, urban, and commercial developments. These actions could alter marsh ecosystem form and function by isolating and fragmenting tidal marsh habitat leading to the further isolation of *C. hydrophilum* var. *hydrophilum* and *C. mollis* ssp. *mollis* populations; introduce or encourage the spread and establishment of non-native invasive plants; increase human-induced erosion and sedimentation rates; boost trail development and usage that may impact species populations; and lower water quality because of an increase in stormwater and wastewater runoff.

(3) Actions that would remove or destroy *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* plants. Such actions could include, but are not limited to: Excavating, grading, plowing, mowing, burning, grazing, farming, or chemical spraying; unauthorized foot and off-road vehicle traffic, and the spread of non-native invasion plants in occupied, undiked high tidal marshes.

(4) Actions completed by the U.S. Army Corps of Engineers (for example, under section 404 of the Clean Water Act of 1977 and under section 10 of the Rivers and Harbor Act of 1899), Environmental Protection Agency, and other Federal, State, or local regulatory agencies that would reduce the quantity and quality of undiked high tidal marsh habitat supporting *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* populations. Such actions could include, but are not limited to: The construction of new levees, agricultural irrigation systems, boat ramps and docks, wharfs, marinas, bank revetments, permanent mooring structures, aids to navigation, and dredge and fill activities; roadway and highway projects (such as road widening and new road construction); unauthorized discharge of non-point source pollutants; stream and tidal channel alternations; and other water-dependent projects or activities. These actions could impact supporting habitat by lowering tidal marsh water quality, decreasing saltwater and freshwater inflows, and causing direct loss of tidal marshes through fill and removal activities.

All proposed critical habitat units, as described above, are within the geographic range of *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*, respectively, or were occupied by the subspecies at the time of listing except for Unit 1 for *C. hydrophilum* var. *hydrophilum*, which is considered unoccupied by that subspecies. The same area is also proposed as Unit 2 for *C. mollis* ssp. *mollis*, however, and it is occupied by that subspecies. We consider all of the units included in this proposed designation to contain the features essential to the conservation of these subspecies.

All of the units proposed as critical habitat, as well as areas that may be excluded or not included, contain features essential to the conservation of *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*. Federal agencies already consult with us on activities in areas currently occupied by *C. hydrophilum* var. *hydrophilum* and *C. mollis* ssp. *mollis*, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of *C. hydrophilum* var. *hydrophilum* or *C. mollis* ssp. *mollis* or both.

Application of Section 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act

There are multiple ways to provide management for species' habitat. Statutory and regulatory frameworks that exist at a local level can provide such protection and management, as can lack of pressure for change, such as areas too remote for anthropogenic disturbance. Finally, State, local, or private management plans as well as management under Federal agencies jurisdictions can provide protection and management to avoid the need for designation of critical habitat. When we consider a plan to determine its adequacy in protecting habitat, we consider whether the plan, as a whole

will provide the same level of protection that designation of critical habitat would provide. The plan need not lead to exactly the same result as a designation in every individual application, as long as the protection it provides is equivalent, overall. In making this determination, we examine whether the plan provides management, protection, or enhancement of the PCEs that is at least equivalent to that provided by a critical habitat designation, and whether there is a reasonable expectation that the management, protection, or enhancement actions will continue into the foreseeable future. Each review is particular to the species and the plan, and some plans may be adequate for some species and inadequate for others.

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if [s]he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless [s]he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Secretary is afforded broad discretion and the Congressional record is clear that in making a determination under the section the Secretary has discretion as to which factors and how much weight will be given to any factor.

Under section 4(b)(2), in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, determine whether the benefits of exclusion outweigh the benefits of inclusion. If an exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species. In the following sections, we address a number of general issues that are relevant to the exclusions we considered.

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resource Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes an assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management, fish and wildlife habitat enhancement or modification, wetland protection, enhancement, and restoration where necessary to support fish and wildlife and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the ESA to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the ESA (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

We consult with the military on the development and implementation of INRMPs for installations with listed species. INRMPs developed by military installations located within the range of the proposed critical habitat designation for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* were analyzed for exemption under the authority of 4(a)(3) of the Act.

Concord Naval Weapons Station

Approximately 402 ac (163 ha) of habitat *Cordylanthus mollis* ssp. *mollis* occurring in habitats within or adjacent to the USDN, Naval Weapons Station, Seal Beach Detachment, Concord in Contra Costa County, California (referred to as the Concord Naval Weapons Station (CNWS) in the proposed rule) is exempted from this proposed critical habitat designation. The USDN has prepared and implemented an INRMP at the CNWS as of March 2002 (USDN 2002). The Inland and Tidal Areas are the primary land areas at the CNWS covered under the INRMP. In addition to the INRMP, the Navy has entered into a Memorandum of Understanding (MOU) (USDN 2002 Appendix D) in 1984 with the Service to establish a wetland preserve in the Tidal Area (East, Hastings, Middle Point, North Area K, and Pier Marshes) and all areas in the outlying six islands (Freeman, Middle Ground, Roe, Ryder, Seal, and Snag Islands). Under the MOU, the USDN, in cooperation with the Service, will (1) prepare and implement a management plan for the preserve to promote the recovery and preservation of threatened and endangered species and wetland resources; (2) prepare additional plans for the management of these subspecies in consonance with the management plan for the preserve, (3) conduct studies and surveys within funding and personnel availability on fish and wildlife resources in the preserve; (4) give priority to the protection and management of the preserve; and (5) prevent, as much as possible, any military activity that could adversely impact or otherwise be detrimental to the wetland resources in the preserve.

All *Cordylanthus mollis* ssp. *mollis* populations at the CNWS are restricted to the Tidal Area. Tidal Area management objectives under the INRMP for the species include (1) restricting access to tidal marshes to reduce potential human-induced impacts, except for the purpose of approved research; (2) maintaining tidal marshes in accordance with the 1984 MOU; (3) completing botanical surveys; (4) monitoring populations and population trends to determine effectiveness of natural resources management goals; and (5) reviewing proposed military activities and development to ensure the conservation of the subspecies. The USDN signed an Indefinite Use Permit in 1999 (USDN 2002 Appendix C) with the U.S. Department of the Army for use of the Tidal Area. The INRMP will help Army personnel continue the implementation of established management strategies designed to conserve the natural resources in the Tidal Area. Therefore, we are exempting critical habitat for *Cordylanthus mollis* ssp. *mollis* on this installation pursuant to section 4(a)(3) of the Act.

Conservation Partnerships on Non-Federal Lands

Most federally listed species in the United States will not recover without the cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (National Wilderness Institute 1995) and at least 80 percent of all endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002). Stein *et al.* (1995) found that only about 12 percent of listed species were

found almost exclusively on Federal lands (90–100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998, Crouse *et al.* 2002, James 2002). Building partnerships and promoting voluntary cooperation of landowners is essential to understanding the status of species on non-Federal lands and is necessary to implement recovery actions such as reintroducing listed species, habitat restoration, and habitat protection.

Many non-Federal landowners derive satisfaction in contributing to endangered species recovery. The Service promotes these private-sector efforts through the "4C's" philosophy—conservation through communication, consultation, and cooperation. This philosophy is evident in Service programs such as Habitat Conservation Plans (HCPs), Safe Harbors, Candidate Conservation Agreements with Assurances (CCAAs), and cooperative conservation challenge cost-share grants. Many private landowners, however, are wary of the possible consequences of encouraging endangered species to their property, and there is mounting evidence that some regulatory actions by the Federal government, while well-intentioned and required by law, can under certain circumstances have unintended negative consequences for the conservation of species on private lands (Wilcove *et al.* 1996, Bean 2002, Conner and Mathews 2002, James 2002, Koch 2002, Brook *et al.* 2003). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability, resulting in anti-conservation incentives because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999, Brook *et al.* 2003).

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation (triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7 of the Act) can sometimes be counterproductive to its intended purpose on non-Federal lands. According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999, Bean 2002, Brook *et al.* 2003). The magnitude of this negative outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, control of invasive species) are necessary for species conservation (Bean 2002).

The Service believes that the judicious use of excluding specific areas of non-Federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than designation of critical habitat alone. For example, less than 17 percent of Hawaii is federally owned, but the state is home to more than 24 percent of all federally listed species, most of which will not recover without State and private landowner cooperation. On the island of Lanai, Castle and Cooke Resorts, LLC, which owns 99 percent of the island, entered into a conservation agreement with the Service. The conservation agreement provides conservation benefits to target species through management actions that remove threats (such as axis deer, mouflon sheep, rats, invasive non-native plants) from the Lanaihale and East Lanai Regions. Specific management actions include fire control measures, nursery propagation of native flora (including the target species) and planting of such flora. These actions will significantly improve the habitat for all currently occurring species. Due to the low likelihood of a Federal nexus on the island, we believe that the benefits of excluding the lands covered by the MOA exceeded the benefits of including them. As stated in the final critical habitat rule for endangered plants on the Island of Lanai:

> On Lanai, simply preventing "harmful activities" will not slow the extinction of listed plant species. Where consistent with the discretion provided by the Act, the Service believes it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation. While the impact of providing these incentives may be modest in economic terms, they can be significant in terms of conservation benefits that can stem from the cooperation of the landowner. The continued participation of Castle and Cooke Resorts, LLC, in the existing Lanai Forest and Watershed Partnership and other voluntary conservation agreements will greatly enhance the Service's ability to further the recovery of these endangered plants.

Secretary Norton's "4C's" philosophy—conservation through communication, consultation, and cooperation—is the foundation for developing the tools of conservation. These tools include conservation grants, funding for Partners for Fish and Wildlife Program, the Coastal Program, and cooperative-conservation challenge cost-share grants. Our Private Stewardship Grant program and Landowner Incentive Program provide assistance to private land owners in their voluntary efforts to protect threatened, imperiled, and endangered species, including the development and implementation of HCPs.

Conservation agreements with non-Federal landowners (such as HCPs, contractual conservation agreements, easements, and stakeholder-negotiated State regulations) enhance species conservation by extending species protections beyond those available through section 7 consultations. In the past decade we have encouraged non-Federal landowners to enter into conservation agreements, based on a view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through coercive methods (61 FR 63854; December 2, 1996).

We recognize that conservation efforts are underway that may allow us to exclude some areas. Should information become available during the public comment period on management plans or strategies that would provide benefit to the species, we will analyze the information and make a determination of the appropriateness of such an exclusion in our final designation.

General Principles of Section 7 Consultations Used in the 4(b)(2) Balancing Process

The most direct, and potentially largest, regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation pursuant to section 7 of the Act to ensure that they are not likely to destroy or adversely modify critical habitat. There are two limitations to this regulatory effect. First, it only applies where there is a Federal nexus—if there is no Federal nexus, designation itself does not restrict actions that destroy or adversely modify critical habitat. Second, it only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure those areas that contain the physical and biological

features essential to the conservation of the species or unoccupied areas that are essential to the conservation of the species are not eroded. Critical habitat designation alone, however, does not require specific steps toward recovery.

Once consultation under section 7 of the Act is triggered, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the listed species or its critical habitat. However, if the Service determines through informal consultation that adverse impacts are likely to occur, then formal consultation would be initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat, with separate analyses being made under both the jeopardy and the adverse modification standards. For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not contain any mandatory reasonable and prudent measures or terms and conditions. Mandatory reasonable and prudent alternatives to the proposed Federal action would only be issued when the biological opinion results in a jeopardy or adverse modification conclusion.

We also note that for 30 years prior to the Ninth Circuit Court's decision in *Gifford Pinchot*, the Service equated the jeopardy standard with the standard for destruction or adverse modification of critical habitat. The Court ruled that the Service could no longer equate the two standards and that adverse modification evaluations require consideration of impacts on the recovery of species. Thus, under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species. However, we believe the conservation achieved through implementing HCPs or other habitat management plans is typically greater than would be achieved through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7 consultations only commit Federal agencies to prevent adverse modification to critical habitat caused by the particular project, and they are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Thus, any HCP or management plan that considers enhancement or recovery as the management standard will always provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat in that it provides the framework for the consultation process.

Educational Benefits of Critical Habitat

A benefit of including lands in critical habitat is that the designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*. In general the educational benefit of a critical habitat designation always exists, although in some cases it may be redundant with other educational effects. For example, HCPs have significant public input and may largely duplicate the educational benefit of a critical habitat designation. This benefit is closely related to a second, more indirect benefit: that designation of critical habitat would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

However, we believe that there would be little additional informational benefit gained from the designation of critical habitat for the exclusions we are proposing in this rule because these areas are included in this proposed rule as having habitat containing the features essential to the conservation of the species. Consequently, we believe that the informational benefits are already provided even though these areas are being proposed for exclusion from the critical habitat designation. Additionally, the purpose normally served by the designation of informing State agencies and local governments about areas that would benefit from protection and enhancement of habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* is already well established among State and local governments, and Federal agencies in those areas that we are proposing to exclude from critical habitat in this rule on the basis of other existing habitat management protections.

Economic Analysis

An analysis of the economic impacts of proposing critical habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.fws.gov/sacramento/*, or by contacting the Sacramento Fish and Wildlife Office directly (see **ADDRESSES** section).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order (E.O.) 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as

the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with E.O. 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific area as critical habitat. This economic analysis also will be used to determine compliance with E.O. 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and E.O. 12630.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the section on Section 7 Consultation. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments. The draft economic analysis can be obtained from the internet Web site at *http://www.fws.gov/sacramento/* or by contacting the Sacramento Fish and Wildlife Office directly (see **ADDRESSES** section).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation for an additional timeframe. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Executive Order 13211

On May 18, 2001, the President issued an E.O. (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* is not a significant regulatory action under E.O. 12866, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal

funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because only 1.2 percent (27.9 ac/11.4 ha) of the total proposed critical habitat designation for *Cordylanthus mollis* ssp. *mollis* is owned by small government entities and none for *Cirsium hydrophilum* var. *hydrophilum*. These entities include Napa County and the City of Napa, California. As such, Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Federalism

In accordance with E.O. 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the subspecies are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the subspecies are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Endangered Species Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands occupied at the time of listing that contain the features essential for the conservation of *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis*. Therefore, designation of critical habitat for *C. hydrophilum* var. *hydrophilum* and *C. mollis* ssp. *mollis* has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Author(s)

The primary author of this package is the Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, Portland, Oregon, and staff from the Sacramento (CA) Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h), revise the entries for *Cirsium hydrophilum* var. *hydrophilum* (Suisun thistle) and *Cordylanthus mollis* ssp. *mollis* (soft bird's-beak) under "FLOWERING PLANTS" to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	*
Cirsium hydrophilum var. *hydrophilum.*	Suisun thistle	U.S.A. (CA)	Asteraceae	E	627	17.96(a)	NA
*	*	*	*	*	*	*	*
Cordylanthus mollis var. ssp. *mollis.*	Soft bird's-beak	U.S.A. (CA)	Scrophulariaceae	E	627	17.96(a)	NA.
*	*	*	*	*	*	*	*

* * * * *

3. Amend § 17.96(a), by adding an entry for *Cirsium hydrophilum* var. *hydrophilum* (Suisun thistle) in alphabetical order under family Asteraceae and an entry for *Cordylanthus mollis* ssp. *mollis* (soft bird's-beak) in alphabetical order under family Scrophulariaceae to read as follows:

§ 17.96 Critical habitat plants.

(a) Flowering plants.

* * * * *

Family Asteraceae: *Cirsium hydrophilum* var. *hydrophilum* (Suisun thistle)

(1) Critical habitat units are depicted for Solano County, California, on the maps below.

(2) The primary constituent elements (PCEs) of critical habitat for Cirsium hydrophilum var. hydrophilum are the habitat components that provide:

(i) Tidally influenced marsh areas (intertidal emergent estuarine marshes) bounded on the seaward edge by the mean high water line and on the landward edge by a marsh-upland ecotone; and containing channel networks influenced by freshwater and saltwater hydrology and exhibiting full natural tidal inundations to allow for channel development and migration through erosional and depositional processes (such as channel undercutting, bank slumping, and sedimentation) during daily flood and ebb flows and seasonal storm events.

(ii) Areas associated with PCE 1 that are between the bank and high water mark of natural tidal channels, along the banks of tidally influenced canals or ditches, or within tidally influenced floodplains that contain hydric soils that are slightly to moderately saline (4 to 16 decisiemens/meter (dS/m)) within the first 3 ft (0.9 m) of soil depth.

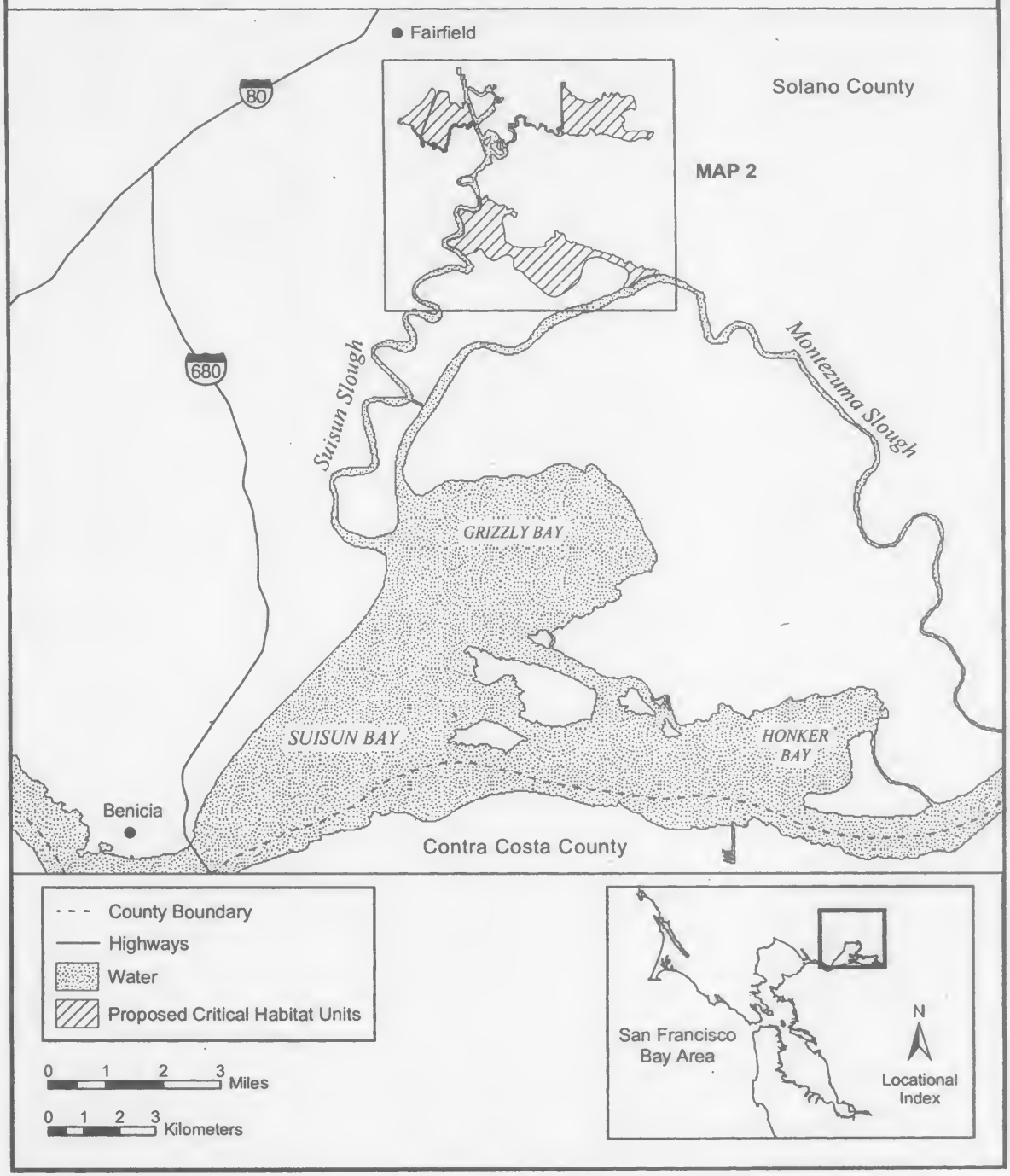
(3) Critical habitat does not include man-made structures and the land they occupy, existing on the effective date of this rule and not containing one or more of the PCEs, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(4) Data layers defining Solano County map units were created on a base map using CDWR color mosaic 1:9,600 scale digital aerial photographs for Suisun Bay captured June 16, 2003 (CDFG 2005c). Critical habitat units were then mapped using Universal Transverse Mercator (UTM) zone 10, North American Datum (NAD) 1983 coordinates.

(5) Note: Map 1 (Index map for *Cirsium hydrophilum* var. *hydrophilum*) follows:

BILLING CODE 4310–55–P

Map 1. Index Map of Proposed Critical Habitat Units for Cirsium hydrophilum var. hydrophilum



BILLING CODE 4310–55–C

(6) Unit 1 for *Cirsium hydrophilum* var. *hydrophilum:* Hill Slough Marsh, Solano County, California.

(i) Unit 1: Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 586821, 4231248; 586825, 4231260; 586834, 4231272; 586848, 4231278; 586868, 4231280; 586930, 4231305; 586934, 4231417; 586934, 4231457; 586933, 4231517; 586936, 4231569; 586931, 4231638; 586933, 4231730; 586930, 4231824; 586927, 4231988; 586932, 4232511; 586935, 4232541; 587032, 4232539; 587031, 4232513; 587025, 4232474; 587022, 4232447; 587028, 4232423; 587045, 4232382; 587207, 4232226; 587186, 4232194; 587189, 4232174; 587211, 4232155; 587232, 4232152; 587246, 4232165; 587275, 4232169; 587294, 4232159; 587307, 4232136; 587314, 4232107; 587310, 4232094; 587350, 4232087; 587391, 4232079; 587427, 4232061; 587470, 4232043; 587490, 4232041; 587513, 4232049; 587544, 4232041; 587602, 4232017; 587641, 4231995; 587689, 4231981; 587738, 4231977; 587763, 4231981; 587776, 4231987; 587790, 4231996; 587803, 4232008; 587814, 4232019; 587826, 4232031; 587844, 4232043; 587859, 4232051; 587882, 4232067; 587897, 4232078; 587933, 4232080; 587944, 4232075; 587951, 4232066; 587957, 4232059; 587985, 4232048; 588000, 4232042; 588016, 4232041; 588028, 4232043; 588041, 4232044; 588050, 4232058; 588051, 4232075; 588048, 4232095; 588055, 4232133; 588083, 4232223; 588094, 4232243; 588105, 4232252; 588114, 4232256; 588124, 4232254; 588136, 4232249; 588141, 4232237; 588137, 4232225; 588132, 4232212; 588149, 4232197; 588157, 4232186; 588162, 4232179; 588182, 4232158; 588195, 4232146; 588218, 4232130; 588228, 4232126; 588241, 4232122; 588245, 4232122; 588255, 4232141; 588259, 4232149; 588270, 4232160; 588277, 4232165; 588284, 4232175; 588287, 4232187; 588287, 4232197; 588290, 4232212; 588295, 4232222; 588306, 4232225; 588311, 4232235; 588316, 4232250; 588324, 4232254; 588334, 4232254; 588340, 4232249; 588339, 4232240; 588333, 4232226; 588333, 4232216; 588336, 4232206; 588345, 4232198; 588353, 4232189; 588360, 4232187; 588379, 4232192; 588390, 4232198; 588452, 4232235; 588471, 4232243; 588492, 4232242; 588511, 4232234; 588530, 4232208; 588547, 4232165; 588556, 4232147; 588566, 4232134; 588574, 4232126; 588583, 4232120; 588601, 4232110; 588612, 4232108; 588611, 4232115; 588610, 4232136; 588651, 4232135; 588671, 4232140; 588699, 4232155; 588721, 4232161; 588740, 4232164; 588767, 4232164; 588782, 4232165; 588804, 4232167; 588849, 4232173; 588861, 4232168; 588872, 4232160; 588883, 4232160; 588895, 4232156; 588905, 4232149; 588912, 4232139; 588942, 4232080; 588952, 4232058; 588960, 4232026; 588977, 4231960; 588981, 4231923; 589001, 4231852; 589003, 4231845; 589000, 4231842; 588992, 4231841; 588981, 4231837; 588977, 4231835; 588974, 4231830; 588978, 4231820; 588984, 4231809; 588977, 4231793; 588953, 4231768; 588939, 4231787; 588924, 4231794; 588893, 4231818; 588880, 4231823; 588863, 4231824; 588851, 4231825; 588836, 4231820; 588792, 4231774; 588775, 4231776; 588755, 4231773; 588721, 4231762; 588681, 4231743; 588675, 4231734; 588658, 4231722; 588638, 4231713; 588608, 4231699; 588595, 4231652; 588586, 4231603; 588608, 4231581; 588641, 4231569; 588656, 4231552; 588668, 4231537; 588677, 4231521; 588681, 4231502; 588676, 4231467; 588666, 4231440; 588657, 4231437; 588636, 4231428; 588608, 4231424; 588601, 4231422; 588598, 4231419; 588602, 4231403; 588611, 4231373; 588614, 4231342; 588624, 4231331; 588638, 4231321; 588641, 4231314; 588645, 4231281; 588656, 4231238; 588701, 4231195; 588736, 4231180; 588803, 4231181; 588814, 4231181; 588824, 4231184; 588831, 4231190; 588882, 4231194; 589011, 4231195; 589145, 4231191; 589186, 4231192; 589193, 4231199; 589203, 4231197; 589210, 4231196; 589217, 4231201; 589230, 4231205; 589240, 4231206; 589250, 4231196; 589261, 4231192; 589310, 4231190; 589309, 4231065; 589323, 4231065; 589325, 4231164; 589331, 4231171; 589351, 4231176; 589380, 4231174; 589408, 4231167; 589424, 4231166; 589433, 4231174; 589444, 4231178; 589460, 4231176; 589475, 4231167; 589481, 4231152; 589485, 4231143; 589432, 4231067; 589400, 4231023; 589353, 4230961; 589338, 4230944; 589333, 4230940; 589328, 4230941; 589323, 4230944; 589320, 4230949; 589322, 4231051; 589308, 4231051; 589309, 4230996; 589305, 4230988; 589291, 4230981; 589215, 4230998; 589155, 4231004; 589115, 4230996; 589050, 4230984; 588997, 4230950; 588946, 4230926; 588913, 4230919; 588884, 4230915; 588844, 4230911; 588806, 4230912; 588782, 4230916; 588738, 4230927; 588719, 4230936; 588685, 4230942; 588651, 4230957; 588590, 4230978; 588547, 4230994; 588435, 4231007; 588395, 4231011; 588361, 4231016; 588338, 4231022; 588297, 4231039; 588261, 4231055; 588226, 4231074; 588198, 4231091; 588178, 4231101; 588158, 4231102; 588135, 4231100; 588111, 4231098; 588063, 4231103; 588046, 4231107; 588028, 4231119; 587998, 4231130; 587978, 4231131; 587961, 4231124; 587948, 4231111; 587849, 4231089; 587852, 4231100; 587855, 4231118; 587851, 4231133; 587846, 4231150; 587842, 4231164; 587836, 4231167; 587823, 4231172; 587810, 4231175; 587796, 4231182; 587785, 4231200; 587777, 4231220; 587753, 4231255; 587742, 4231264; 587720, 4231266; 587707, 4231261; 587698, 4231249; 587696, 4231235; 587691, 4231183; 587646, 4231135; 587593, 4231083; 587561, 4231076; 587537, 4231070; 587516, 4231072; 587504, 4231078; 587490, 4231079; 587452, 4231086; 587416, 4231075; 587349, 4231070; 587323, 4231070; 587310, 4231073; 587266, 4231097; 587248, 4231099; 587223, 4231093; 587177, 4231085; 587134, 4231087; 587114, 4231097; 587090, 4231120; 587062, 4231140; 587037, 4231141; 587003, 4231126; 586984, 4231120; 586963, 4231121; 586948, 4231123; 586939, 4231125; 586932, 4231138; 586944, 4231161; 586943, 4231180; 586935, 4231197; 586919, 4231215; 586896, 4231226; 586882, 4231229; 586868, 4231222; 586848, 4231217; 586830, 4231226; 586823, 4231235; 586821, 4231248.

(ii) Note: Unit 1 for *Cirsium hydrophilum* var. *hydrophilum* is depicted on Map 2—see paragraph 8(ii).

(7) Unit 2 (Subunits 2A and 2B) for *Cirsium hydrophilum* var. *hydrophilum:* Peytonia Slough Marsh, Solano County, California.

(i) Subunit 2A: Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 582704, 4231361; 582681, 4231360; 582655, 4231364; 582636, 4231367; 582606, 4231377; 582583, 4231379; 582557, 4231382; 582549, 4231387; 582545, 4231395; 582540, 4231408; 582536, 4231420; 582532, 4231426; 582524, 4231430; 582515, 4231434; 582504, 4231436; 582488, 4231439; 582480, 4231438; 582473, 4231436; 582472, 4231433; 582471, 4231429; 582469, 4231414; 582469, 4231396; 582470, 4231385; 582468, 4231383; 582465, 4231382; 582434, 4231390; 582400, 4231403; 582364, 4231411; 582344, 4231413; 582331, 4231414; 582345, 4231454; 582366, 4231508; 582370, 4231512; 582378, 4231515; 582393, 4231534; 582400, 4231547; 582407, 4231550; 582443, 4231547; 582476, 4231550; 582495, 4231552; 582503, 4231557; 582510, 4231563; 582528, 4231582; 582539, 4231595; 582551, 4231603; 582583, 4231619; 582626, 4231641;

582670, 4231672; 582692, 4231693; 582782, 4231782; 582830, 4231815; 582844, 4231832; 582850, 4231841; 582855, 4231856; 582856, 4231870; 582862, 4231878; 582878, 4231888; 582939, 4231915; 582970, 4231937; 583129, 4232108; 583148, 4232140; 583164, 4232175; 583284, 4232365; 583293, 4232377; 583305, 4232384; 583319, 4232387; 583333, 4232386; 583349, 4232377; 583371, 4232350; 583391, 4232315; 583398, 4232298; 583402, 4232278; 583404, 4232254; 583404, 4232238; 583403, 4232218; 583401, 4232207; 583396, 4232181; 583349, 4232056; 583284, 4231895; 583291, 4231882; 583260, 4231794; 583195, 4231625; 583173, 4231570; 583066, 4231313; 582967, 4231059; 582953, 4231087; 582938, 4231101; 582922, 4231109; 582908, 4231115; 582886, 4231113; 582875, 4231116; 582864, 4231127; 582861, 4231138; 582861, 4231163; 582854, 4231183; 582842, 4231196; 582775, 4231252; 582763, 4231266; 582754, 4231280; 582752, 4231290; 582753, 4231306; 582760, 4231335; 582742, 4231364; 582724, 4231366; 582704, 4231361.

(ii) Subunit 2B: Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 582974, 4231032; 583313, 4231870; 583328, 4231873; 583501, 4232317; 583572, 4232314; 583572, 4232304; 583575, 4232298; 583581, 4232291; 583588, 4232283; 583594, 4232281; 583599, 4232282; 583602, 4232287; 583608, 4232288; 583613, 4232289; 583611, 4232294; 583615, 4232298; 583621, 4232298; 583633, 4232298; 583634, 4232285; 583636, 4232281; 583639, 4232279; 583719, 4232277; 583745, 4232276; 583752, 4232274; 583758, 4232270; 583763, 4232259; 583768, 4232228; 583790, 4232052; 583794, 4232022; 583798, 4231999; 583810, 4231967; 583813, 4231963; 583826, 4231961; 583842, 4231966; 583861, 4231967; 583873, 4231968; 583882, 4231968; 583890, 4231951; 583916, 4231951; 583917, 4231956; 583920, 4231963; 583922, 4231966; 583932, 4231966; 583940, 4231966; 583945, 4231962; 583953, 4231963; 583959, 4231964; 583966, 4231966; 583972, 4231966; 583980, 4231963; 583983, 4231954; 583987, 4231948; 583992, 4231944; 584003, 4231930; 584019, 4231925; 584026, 4231922; 584043, 4231902; 584051, 4231884; 584060, 4231865; 584067, 4231857; 584077, 4231852; 584098, 4231844; 584116, 4231846; 584126, 4231853; 584136, 4231855; 584149, 4231850; 584167, 4231823; 584200, 4231828; 584154, 4231969; 584272, 4232006; 584290, 4231979; 584302, 4231954; 584308, 4231939; 584314, 4231931; 584325, 4231891; 584336, 4231848; 584353, 4231790; 584378, 4231720; 584393, 4231676; 584445, 4231535; 584495, 4231395; 584493, 4231381; 584491, 4231370; 584490, 4231355; 584485; 4231355; 584479, 4231364; 584467, 4231397; 584455, 4231415; 584443, 4231434; 584419, 4231448; 584397, 4231452; 584378, 4231451; 584353, 4231436; 584343, 4231424; 584335, 4231411; 584328, 4231370; 584325, 4231330; 584323, 4231324; 584318, 4231320; 584309, 4231325; 584289, 4231349; 584255, 4231391; 584237, 4231400; 584210, 4231408; 584187, 4231407; 584171, 4231400; 584159, 4231388; 584134, 4231356; 584117, 4231338; 584093, 4231337; 584022, 4231359; 584000, 4231375; 583963, 4231397; 583937, 4231404; 583913, 4231403; 583891, 4231392; 583873, 4231376; 583864, 4231360; 583853, 4231340; 583840, 4231324; 583817, 4231311; 583790, 4231287; 583775, 4231256; 583770, 4231231; 583767, 4231196; 583762, 4231135; 583758, 4231094; 583749, 4231057; 583736, 4231025; 583724, 4230989; 583720, 4230973; 583722, 4230922; 583715, 4230893; 583691; 4230862; 583671, 4230835; 583664, 4230816; 583662, 4230799; 583666, 4230760; 583665, 4230715; 583659, 4230699; 583646, 4230684; 583633, 4230677; 583618, 4230669; 583598, 4230667; 583582, 4230669; 583567, 4230679; 583562, 4230689; 583555, 4230715; 583535, 4230746; 583528, 4230764; 583511, 4230771; 583486, 4230779; 583460, 4230779; 583443, 4230778; 583424, 4230770; 583390, 4230748; 583365, 4230737; 583345, 4230734; 583332, 4230734; 583323, 4230740; 583319, 4230750; 583322, 4230768; 583336, 4230780; 583366, 4230796; 583384, 4230808; 583396, 4230820; 583406, 4230832; 583410, 4230849; 583408, 4230860; 583401, 4230873; 583383, 4230886; 583362, 4230895; 583338, 4230898; 583324, 4230893; 583291, 4230866; 583258, 4230849; 583244, 4230847; 583225, 4230868; 583214, 4230879; 583193, 4230892; 583158, 4230903; 583131, 4230908; 583106, 4230923; 583079, 4230935; 583061, 4230937; 583043, 4230935; 583030, 4230925; 583025, 4230912; 583023, 4230900; 583026, 4230886; 583035, 4230866; 583041, 4230845; 583036, 4230832; 583027, 4230826; 583015, 4230828; 582999, 4230847; 582989, 4230866; 582985, 4230874; 582984, 4230886; 582984, 4230912; 582984, 4230912; 582986, 4230920; 582989, 4230932; 582996, 4230944; 583003, 4230955; 583019, 4230971; 583025, 4230977; 583030, 4230983; 583033, 4230999; 583029, 4231014; 583017, 4231029; 583003, 4231033; 582982, 4231032; 582974, 4231032.

(iii) Note: Unit 2 (Subunits 2A and 2B) for *Cirsium hydrophilum* var. *hydrophilum* is depicted on Map 2—see paragraph 8(ii).

(8) Unit 3 for *Cirsium hydrophilum* var. *hydrophilum:* Rush Ranch/Grizzly Island Wildlife Area, Solano County, California.

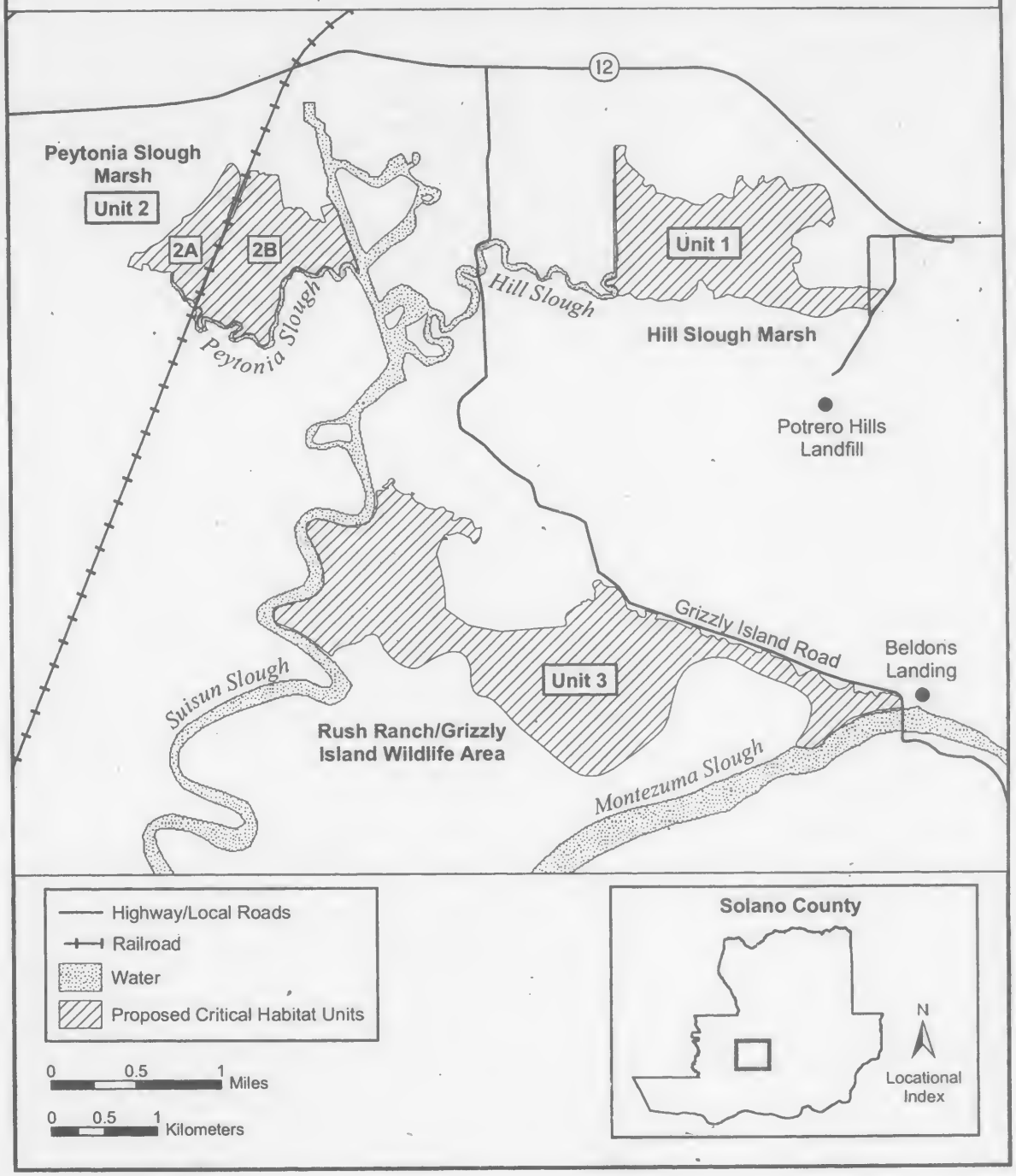
(i) Unit 3: Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 583673, 4228103; 583675, 4228133; 583687, 4228156; 583700, 4228170; 583824, 4228206; 583898, 4228219; 583938, 4228221; 583961, 4228228; 583973, 4228240; 584002, 4228252; 584019, 4228251; 584032, 4228262; 584052, 4228268; 584062, 4228278; 584134, 4228347; 584153, 4228375; 584154, 4228398; 584147, 4228405; 584132, 4228407; 584146, 4228473; 584150, 4228514; 584135, 4228552; 584137, 4228573; 584128, 4228593; 584118, 4228631; 584109, 4228660; 584097, 4228672; 584085, 4228696; 584083, 4228711; 584067, 4228730; 584041, 4228786; 584038, 4228800; 584001, 4228862; 583993, 4228899; 583990, 4228918; 583995, 4228944; 583991, 4228950; 583994, 4228962; 584008, 4228976; 584020, 4228979; 584062, 4229001; 584095, 4229004; 584138, 4229000; 584179, 4228989; 584255, 4228968; 584276, 4228967; 584312, 4228956; 584341, 4228946; 584372, 4228940; 584420, 4228939; 584521, 4228954; 584553, 4228947; 584568, 4228965; 584588, 4228974; 584599, 4228997; 584621, 4229013; 584638, 4229054; 584656, 4229083; 584651, 4229091; 584656, 4229119; 584665, 4229146; 584663, 4229177; 584660, 4229211; 584653, 4229240; 584661, 4229251; 584655, 4229260; 584660, 4229271; 584678, 4229276; 584700, 4229277; 584707, 4229273; 584728, 4229274; 584737, 4229282; 584738, 4229292; 584748, 4229290; 584764, 4229294; 584768, 4229301; 584759, 4229305; 584718, 4229301; 584714, 4229313; 584755, 4229341; 584761, 4229345; 584765, 4229352; 584775, 4229376; 584792, 4229388; 584807, 4229388; 584821, 4229381; 584827, 4229366; 584827, 4229352; 584810, 4229333; 584806, 4229329; 584807, 4229325; 584815, 4229320; 584834, 4229291; 584862, 4229269; 584904, 4229244; 584937, 4229237; 584955, 4229235; 584968, 4229239; 584980, 4229233; 584986, 4229223; 584999, 4229211; 585004, 4229191; 585016, 4229175; 585024, 4229167; 585032, 4229163; 585050, 4229158; 585078, 4229144; 585125, 4229112; 585167, 4229099; 585191, 4229094; 585219, 4229094;

585243, 4229102; 585257, 4229113; 585270, 4229116; 585281, 4229116; 585291, 4229113; 585306, 4229090; 585319, 4229076; 585345, 4229068; 585365, 4229067; 585378, 4229061; 585382, 4229055; 585382, 4229047; 585380, 4229039; 585373, 4229029; 585366, 4229013; 585363, 4228998; 585367, 4228988; 585376, 4228983; 585410, 4228987; 585422, 4228998; 585438, 4229008; 585479, 4229011; 585515, 4229006; 585535, 4229002; 585554, 4226984; 585567, 4228949; 585573, 4228933; 585585, 4228913; 585600, 4228907; 585612, 4228908; 585625, 4228912; 585647, 4228920; 585642, 4228890; 585642, 4228873; 585622, 4228807; 585613, 4228795; 585591, 4228769; 585579, 4228766; 585571, 4228769; 585549, 4228793; 585542, 4228817; 585530, 4228822; 585505, 4228833; 585480, 4228849; 585438, 4228864; 585414, 4228871; 585400, 4228865; 585331, 4228844; 585323, 4228852; 585309, 4228850; 585299, 4228849; 585294, 4228846; 585293, 4228841; 585287, 4228835; 585305, 4228820; 585311, 4228824; 585324, 4228804; 585281, 4228807; 585274, 4228801; 585266, 4228782; 585250, 4228748; 585220, 4228671; 585264, 4228486; 585280, 4228425; 585290, 4228350; 585298, 4228147; 585299, 4228142; 585303, 4228138; 585507, 4227990; 585520, 4227986; 585588, 4227972; 585730, 4227946; 585813, 4227928; 585835, 4227927; 586151, 4227951; 586270, 4227960; 586286, 4227964; 586378, 4227971; 586420, 4227977; 586429, 4227988; 586438, 4227998; 586434, 4228018; 586430, 4228035; 586429, 4228066; 586442, 4228101; 586479, 4228127; 586518, 4228154; 586552, 4228173; 586584, 4228180; 586576, 4228199; 586602, 4228212; 586618, 4228207; 586625, 4228212; 586633, 4228227; 586642, 4228230; 586652, 4228229; 586669, 4228218; 586676, 4228213; 586690, 4228219; 586702, 4228228; 586705, 4228243; 586706, 4228267; 586706, 4228288; 586713, 4228308; 586695, 4228350; 586687, 4228381; 586692, 4228392; 586702, 4228402; 586712, 4228407; 586721, 4228406; 586732, 4228413; 586742, 4228414; 586750, 4228413; 586760, 4228409; 586774, 4228386; 586789, 4228366; 586847, 4228346; 586872, 4228350; 586897, 4228347; 586944, 4228304; 586989, 4228208; 586997, 4228176; 587006, 4228147; 587023, 4228133; 587062, 4228118; 587080, 4228122; 587097, 4228118; 587111, 4228087; 587126, 4228069; 587149, 4228056; 587172, 4228056; 587183, 4228065; 587188, 4228079; 587188, 4228094; 587177, 4228122; 587287, 4228085; 587295, 4228072; 587292, 4228064; 587278, 4228055; 587273, 4228038; 587316, 4228041; 587389, 4228027; 587460, 4228016; 587548, 4227976; 587617, 4227944; 587620, 4227957; 587626, 4227967; 587643, 4227967; 587658, 4227960; 587677, 4227954; 587682, 4227945; 587691, 4227939; 587699, 4227933; 587696, 4227905; 587771, 4227862; 587779, 4227871; 587790, 4227881; 587802, 4227886; 587821, 4227882; 587834, 4227875; 587845, 4227859; 587855, 4227849; 587863, 4227839; 587874, 4227841; 587883, 4227845; 587890, 4227853; 587901, 4227860; 587921, 4227856; 587935, 4227850; 587945, 4227839; 587955, 4227833; 587959, 4227820; 587984, 4227809; 588004, 4227799; 588059, 4227806; 588083, 4227797; 588229, 4227730; 588244, 4227721; 588264, 4227721; 588274, 4227718; 588276, 4227731; 588280, 4227749; 588359, 4227718; 588361, 4227693; 588515, 4227643; 588538, 4227632; 588552, 4227619; 588564, 4227604; 588596, 4227554; 588617, 4227507; 588627, 4227498; 588652, 4227502; 588703, 4227534; 588761, 4227555; 588822, 4227530; 588823, 4227505; 588830, 4227492; 588847, 4227475; 588913, 4227418; 588942, 4227396; 588976, 4227373; 589001, 4227370; 589030, 4227376; 589067, 4227391; 589084, 4227403; 589095, 4227419; 589112, 4227426; 589141, 4227416; 589143, 4227392; 589143, 4227340; 589148, 4227335; 589160, 4227337; 589190, 4227350; 589217, 4227341; 589249, 4227323; 589278, 4227331; 589294, 4227348; 589307, 4227349; 589320, 4227341; 589338, 4227311; 589359, 4227301; 589371, 4227303; 589387, 4227334; 589436, 4227339; 589447, 4227329; 589463, 4227327; 589478, 4227331; 589495, 4227329; 589502, 4227319; 589527, 4227309; 589568, 4227297; 589578, 4227294; 589585, 4227275; 589596, 4227236; 589597, 4227189; 589500, 4227183; 589348, 4227165; 589325, 4227155; 589274, 4227145; 589146, 4227108; 589084, 4227075; 588999, 4226997; 588865, 4226906; 588763, 4226822; 588737, 4226808; 588715, 4226811; 588640, 4226826; 588599, 4226831; 588596, 4226841; 588599, 4226860; 588606, 4226870; 588635, 4226918; 588692, 4227005; 588722, 4227076; 588740, 4227152; 588741, 4227188; 588739, 4227225; 588725, 4227262; 588711, 4227287; 588690, 4227313; 588645, 4227348; 588593, 4227381; 588495, 4227429; 588398, 4227461; 588264, 4227514; 588195, 4227547; 588127, 4227585; 588016, 4227644; 587974, 4227661; 587934, 4227670; 587885, 4227676; 587807, 4227674; 587752, 4227664; 587701, 4227650; 587632, 4227621; 587591, 4227595; 587533, 4227537; 587487, 4227456; 587467, 4227410; 587430, 4227281; 587385, 4227098; 587355, 4227029; 587326, 4226985; 587263, 4226919; 587112, 4226798; 586999, 4226714; 586868, 4226625; 586771, 4226575; 586734, 4226563; 586696, 4226556; 586646, 4226554; 586595, 4226558; 586548, 4226571; 586476, 4226611; 586342, 4226720; 586160, 4226880; 586014, 4226997; 585931, 4227078; 585835, 4227185; 585790, 4227234; 585743, 4227274; 585708, 4227298; 585673, 4227309; 585647, 4227312; 585613, 4227321; 585596, 4227329; 585579, 4227340; 585558, 4227365; 585541, 4227403; 585534, 4227449; 585536, 4227504; 585534, 4227570; 585516, 4227631; 585496, 4227674; 585475, 4227703; 585451, 4227721; 585428, 4227732; 585380, 4227737; 585320, 4227730; 585228, 4227698; 585161, 4227662; 585064, 4227603; 585034, 4227589; 585004, 4227581; 584964, 4227585; 584913, 4227597; 584870, 4227620; 584816, 4227660; 584777, 4227693; 584737, 4227738; 584713, 4227772; 584699, 4227799; 584675, 4227858; 584655, 4227890; 584624, 4227903; 584597, 4227902; 584568, 4227897; 584539, 4227888; 584525, 4227871; 584497, 4227842; 584462, 4227827; 584433, 4227814; 584415, 4227814; 584332, 4227794; 584289, 4227774; 584262, 4227754; 584247, 4227740; 584239, 4227722; 584223, 4227701; 584214, 4227700; 584196, 4227724; 584138, 4227768; 584106, 4227792; 584104, 4227804; 584090, 4227810; 584083, 4227808; 584056, 4227836; 583982, 4227893; 583937, 4227918; 583911, 4227932; 583814, 4227974; 583713, 4228012; 583691, 4228033; 583680, 4228053; 583675, 4228063; 583676, 4228074; 583673, 4228103.

(ii) Note: Unit 3 for *Cirsium hydrophilum* var. *hydrophilum* is depicted on Map 2, which follows: [insert Map 2: Units 1, 2, and 3 for Cirsium hydrophilum var. hydrophilum]

BILLING CODE 4310–55–P

Map 2. Proposed Critical Habitat Units 1, 2, and 3 for Cirsium hydrophilum var. hydrophilum



BILLING CODE 4310–55–C

* * * * *

Family Scrophulariaceae:
***Cordylanthus mollis* ssp. *mollis* (soft bird's-beak)**

(1) Critical habitat units are depicted for Contra Costa, Napa, and Solano Counties, California, on the maps below.

(2) The PCEs of critical habitat for *Cordylanthus mollis* ssp. *mollis* are the habitat components that provide:

(i) Tidally influenced marsh areas (intertidal emergent estuarine marshes) bounded on the seaward edge by the mean high water line and on the landward edge by a marsh-upland ecotone; and containing channel networks influenced by freshwater and saltwater hydrology and exhibiting full natural tidal inundations to allow for channel development and migration through erosional and depositional processes (such as channel undercutting, bank slumping, and sedimentation) during daily flood and ebb flows and seasonal storm events.

(ii) Areas associated with PCE 1 that are within tidally influenced marsh floodplains that contain hydric soils that are slightly to moderately saline (4 to 16 dS/m) within the first 3 ft (0.9 m) of soil depth.

(iii) Tidal marsh habitats within PCE 1 and PCE 2 that have native halophytic plant communities with an average canopy height equal to or less than 20.5 in (52 cm);

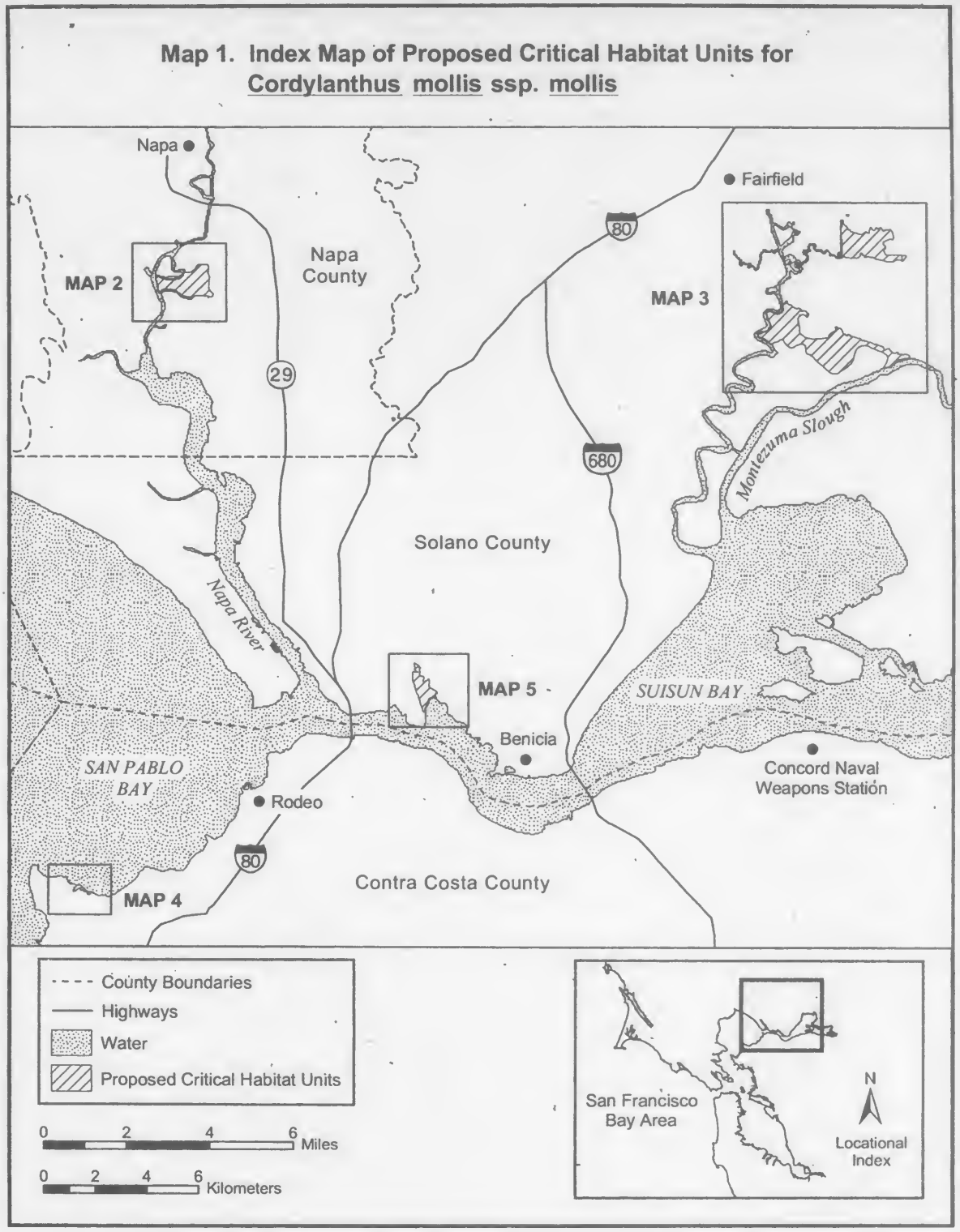
(iv) Areas within PCE 1 and PCE 2 that provide for a sufficient number of suitable host plants, including but not limited to *Distichlis spicata* (salt grass), *Salicornia virginica* (pickleweed), and *Jaumea carnosa* (marsh jaumea). These host plants provide the subspecies with part of its water and nutritional requirements to augment its growth.

(3) Critical habitat does not include man-made structures existing on the effective date of this rule and not containing one or more of the PCEs, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(4) Data layers defining Contra Costa, Napa, and Solano Counties map units were created on a base map using California Spatial Information Library black and white 1:24,000 scale digital orthophoto quarter quadrangles captured June/July 1993. Critical habitat units were then mapped using UTM zone 10, NAD 1983 coordinates.

(5) Note: Map 1 (Index map for *Cordylanthus mollis* ssp. *mollis*) follows:

BILLING CODE 4310–55–P



Map 1. Index Map of Proposed Critical Habitat Units for Cordylanthus mollis ssp. mollis

BILLING CODE 4310–55–C

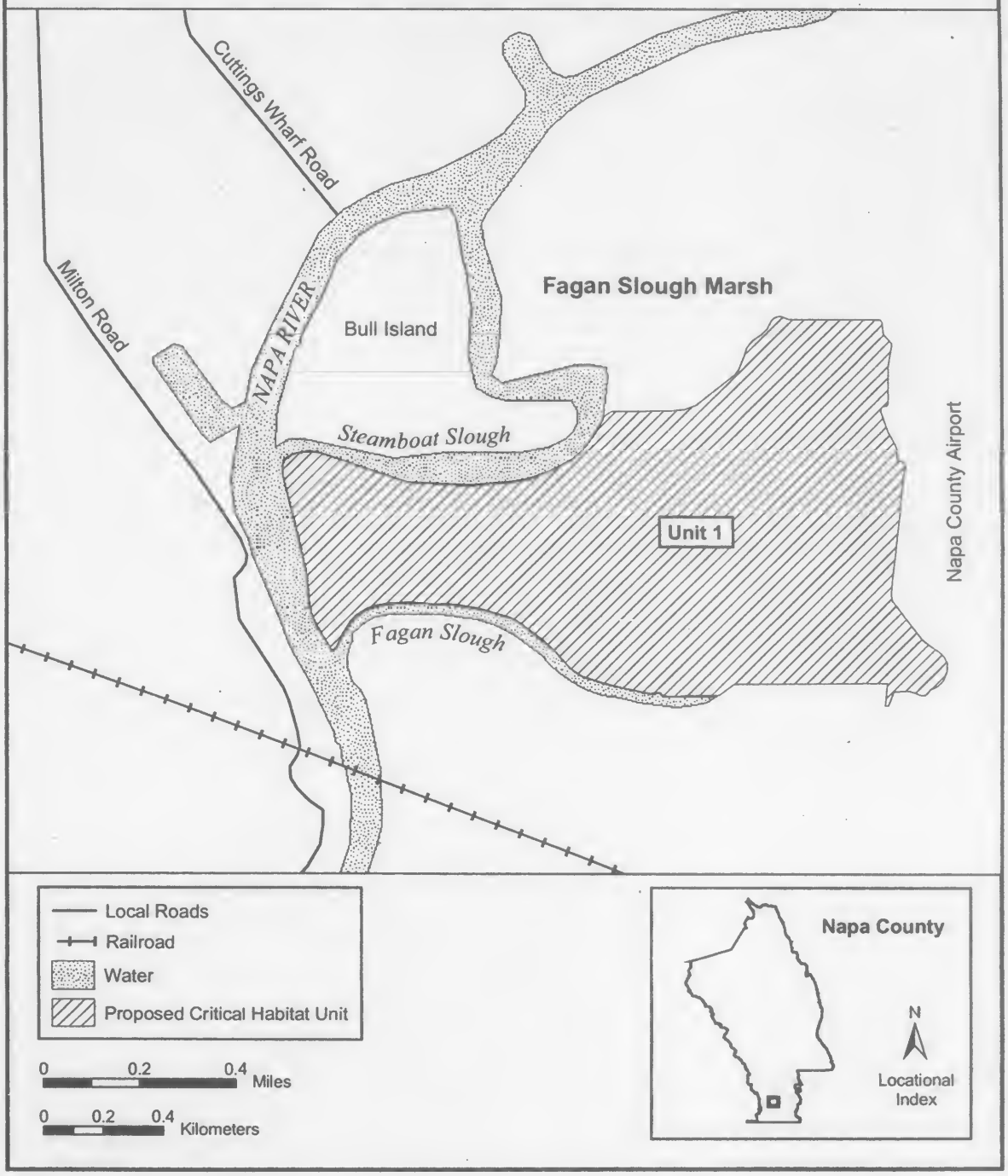
(6) Unit 1 for *Cordylanthus mollis* ssp. *mollis*: Fagan Slough Marsh, Napa County, California.

(i) Unit 1: Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 560527, 4229777; 560514, 4229819; 560510, 4229907; 560429, 4230254; 560427, 4230287; 560433, 4230304; 560444, 4230315; 560460, 4230326; 560489, 4230333; 560520, 4230338; 560559, 4230331; 560843, 4230233; 561055, 4230223; 561205, 4230236; 561248, 4230243; 561327, 4230272; 561399, 4230310; 561428, 4230335; 561457, 4230372; 561478, 4230406; 561509, 4230456; 561532, 4230472; 561572, 4230471; 561733, 4230474; 561774, 4230477; 561815, 4230493; 561945, 4230599; 561957, 4230617; 561974, 4230659; 561983, 4230685; 561992, 4230698; 562005, 4230714; 562032, 4230732; 562052, 4230752; 562068, 4230781; 562078, 4230790; 562088, 4230794; 562099, 4230795; 562128, 4230785; 562421, 4230785; 562435, 4230783; 562441, 4230774; 562445, 4230734; 562470, 4230705; 562474, 4230698; 562459, 4230624; 562461, 4230515; 562459, 4230498; 562456, 4230491; 562445, 4230491; 562437, 4230485; 562434, 4230476; 562438, 4230466; 562459, 4230405; 562483, 4230364; 562489, 4230349; 562494, 4230305; 562506, 4230305; 562513, 4230299; 562517, 4230294; 562520, 4230288; 562517, 4230273; 562512, 4230247; 562497, 4230093; 562473, 4229897; 562470, 4229856; 562471, 4229834; 562576, 4229699; 562606, 4229676; 562633, 4229658; 562648, 4229643; 562659, 4229620; 562658, 4229595; 562651, 4229578; 562645, 4229564; 562633, 4229550; 562623, 4229542; 562602, 4229534; 562594, 4229521; 562586, 4229513; 562571, 4229514; 562551, 4229522; 562529, 4229528; 562479, 4229526; 562459, 4229476; 562449, 4229477; 562457, 4229555; 561938, 4229551; 561890, 4229513; 561863, 4229512; 561781, 4229512; 561749, 4229509; 561700, 4229511; 561690, 4229523; 561660, 4229519; 561571, 4229537; 561493, 4229557; 561431, 4229576; 561387, 4229606; 561349, 4229650; 561294, 4229701; 561222, 4229756; 561191, 4229773; 561146, 4229787; 561084, 4229805; 561062, 4229809; 561017, 4229816; 560977, 4229820; 560937, 4229818; 560902, 4229821; 560859, 4229825; 560783, 4229823; 560736, 4229813; 560708, 4229804; 560675, 4229781; 560654, 4229760; 560624, 4229712; 560609, 4229670; 560599, 4229664; 560590, 4229664; 560587, 4229675; 560567, 4229705; 560541, 4229741; 560527, 4229777.

(ii) **Note:** Unit 1 for *Cordylanthus mollis* ssp. *mollis* is depicted on Map 2, which follows:

BILLING CODE 4310–55–P

Map 2. Proposed Critical Habitat Unit 1 for Cordylanthus mollis ssp. mollis



BILLING CODE 4310–55–P

(7) Unit 2 for *Cordylanthus mollis* ssp. *mollis:* Hill Slough Marsh, Solano County, California.

(i) Unit 2: Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 586821, 4231248; 586825, 4231260; 586834, 4231272; 586848, 4231278; 586868, 4231280; 586930, 4231305; 586934, 4231417; 586934, 4231457; 586933, 4231517; 586936, 4231569; 586931, 4231638; 586933, 4231730; 586930, 4231824; 586927, 4231988; 586932, 4232511; 586935, 4232541; 587032, 4232539; 587031, 4232513; 587025, 4232474; 587022, 4232447; 587028, 4232423; 587045, 4232382; 587207, 4232226; 587186, 4232194; 587189, 4232174; 587211, 4232155; 587232, 4232152; 587246, 4232165; 587275, 4232169; 587294, 4232159; 587307, 4232136; 587314, 4232107; 587310, 4232094; 587350, 4232087; 587391, 4232079; 587427, 4232061; 587470, 4232043; 587490, 4232041; 587513, 4232049; 587544, 4232041; 587602, 4232017; 587641, 4231995; 587689, 4231981; 587738, 4231977; 587763, 4231981; 587776, 4231987; 587790, 4231996; 587803, 4232008; 587814, 4232019; 587826, 4232031; 587844, 4232043; 587859, 4232051; 587882, 4232067; 587897, 4232078; 587933, 4232080; 587944, 4232075; 587951, 4232066; 587957, 4232059; 587985, 4232048; 588000, 4232042; 588016, 4232041; 588028, 4232043; 588041, 4232044; 588050, 4232058; 588051, 4232075; 588048, 4232095; 588055, 4232133; 588083, 4232223; 588094, 4232243; 588105, 4232252; 588114, 4232256; 588124, 4232254; 588136, 4232249; 588141, 4232237; 588137, 4232225; 588132, 4232212; 588149, 4232197; 588157, 4232186; 588162, 4232179; 588182, 4232158; 588195, 4232146; 588218, 4232130; 588228, 4232126; 588241, 4232122; 588245, 4232122; 588255, 4232141; 588259, 4232149; 588270, 4232160; 588277, 4232165; 588284, 4232175; 588287, 4232187; 588287, 4232197; 588290, 4232212; 588295, 4232222; 588306, 4232225; 588311, 4232235; 588316, 4232250; 588324, 4232254; 588334, 4232254; 588340, 4232249; 588339, 4232240; 588333, 4232226; 588333, 4232216; 588336, 4232206; 588345, 4232198; 588353, 4232189; 588360, 4232187; 588379, 4232192; 588390, 4232198; 588452, 4232235; 588471, 4232243; 588492, 4232242; 588511, 4232234; 588530, 4232208; 588547, 4232165; 588556, 4232147; 588566, 4232134; 588574, 4232126; 588583, 4232120; 588601, 4232110; 588612, 4232108; 588611, 4232115; 588610, 4232136; 588651, 4232135; 588671, 4232140; 588699, 4232155; 588721, 4232161; 588740, 4232164; 588767, 4232164; 588782, 4232165; 588804, 4232167; 588849, 4232173; 588861, 4232168; 588872, 4232160; 588883, 4232160; 588895, 4232156; 588905, 4232149; 588912, 4232139; 588942, 4232080; 588952, 4232058; 588960, 4232026; 588977, 4231960; 588981, 4231923; 589001, 4231852; 589003, 4231845; 589000, 4231842; 588992, 4231841; 588981, 4231837; 588977, 4231835; 588974, 4231830; 588978, 4231820; 588984, 4231809; 588977, 4231793; 588953, 4231768; 588939, 4231787; 588924, 4231794; 588893, 4231818; 588880, 4231823; 588863, 4231824; 588851, 4231825; 588836, 4231820; 588792, 4231774; 588775, 4231776; 588755, 4231773; 588721, 4231762; 588681, 4231743; 588675, 4231734; 588658, 4231722; 588638, 4231713; 588608, 4231699; 588595, 4231652; 588586, 4231603; 588608, 4231581; 588641, 4231569; 588656, 4231552; 588668, 4231537; 588677, 4231521; 588681, 4231502; 588676, 4231467; 588666, 4231440; 588657, 4231437; 588636, 4231428; 588608, 4231424; 588601, 4231422; 588598, 4231419; 588602, 4231403; 588611, 4231373; 588614, 4231342; 588624, 4231331; 588638, 4231321; 588641, 4231314; 588645, 4231281; 588656, 4231238; 588701, 4231195; 588736, 4231180; 588803, 4231181; 588814, 4231181; 588824, 4231184; 588831, 4231190; 588882, 4231194; 589011, 4231195; 589145, 4231191; 589186, 4231192; 589193, 4231199; 589203, 4231197; 589210, 4231196; 589217, 4231201; 589230, 4231205; 589240, 4231206; 589250, 4231196; 589261, 4231192; 589310, 4231190; 589309, 4231065; 589323, 4231065; 589325, 4231164; 589331, 4231171; 589351, 4231176; 589380, 4231174; 589408, 4231167; 589424, 4231166; 589433, 4231174; 589444, 4231178; 589460, 4231176; 589475, 4231167; 589481, 4231152; 589485, 4231143; 589432, 4231067; 589400, 4231023; 589353, 4230961; 589338, 4230944; 589333, 4230940; 589328, 4230941; 589323, 4230944; 589320, 4230949; 589322, 4231051; 589308, 4231051; 589309, 4230996; 589305, 4230988; 589291, 4230981; 589215, 4230998; 589155, 4231004; 589115, 4230996; 589050, 4230984; 588997, 4230950; 588946, 4230926; 588913, 4230919; 588884, 4230915; 588844, 4230911; 588806, 4230912; 588782, 4230916; 588738, 4230927; 588719, 4230936; 588685, 4230942; 588651, 4230957; 588590, 4230978; 588547, 4230994; 588435, 4231007; 588395, 4231011; 588361, 4231016; 588338, 4231022; 588297, 4231039; 588261, 4231055; 588226, 4231074; 588198, 4231091; 588178, 4231101; 588158, 4231102; 588135, 4231100; 588111, 4231098; 588063, 4231103; 588046, 4231107; 588028, 4231119; 587998, 4231130; 587978, 4231131; 587961, 4231124; 587948, 4231111; 587849, 4231089; 587852, 4231100; 587855, 4231118; 587851, 4231133; 587846, 4231150; 587842, 4231164; 587836, 4231167; 587823, 4231172; 587810, 4231175; 587796, 4231182; 587785, 4231200; 587777, 4231220; 587753, 4231255; 587742, 4231264; 587720, 4231266; 587707, 4231261; 587698, 4231249; 587696, 4231235; 587691, 4231183; 587646, 4231135; 587593, 4231083; 587561, 4231076; 587537, 4231070; 587516, 4231072; 587504, 4231078; 587490, 4231079; 587452, 4231086; 587416, 4231075; 587349, 4231070; 587323, 4231070; 587310, 4231073; 587266, 4231097; 587248, 4231099; 587223, 4231093; 587177, 4231085; 587134, 4231087; 587114, 4231097; 587090, 4231120; 587062, 4231140; 587037, 4231141; 587003, 4231126; 586984, 4231120; 586963, 4231121; 586948, 4231123; 586939, 4231125; 586932, 4231138; 586944, 4231161; 586943, 4231180; 586935, 4231197; 586919, 4231215; 586896, 4231226; 586882, 4231229; 586868, 4231222; 586848, 4231217; 586830, 4231226; 586823, 4231235; 586821, 4231248.

(ii) Note: Unit 2 for *Cordylanthus mollis* ssp. *mollis* is depicted on Map 3—see paragraph 8(ii) below:

(8) Unit 4 for *Cordylanthus mollis* ssp. *mollis:* Rush Ranch/Grizzly Island Wildlife Area, Solano County, California.

(i) Unit 4: Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 583673, 4228103; 583675, 4228133; 583687, 4228156; 583700, 4228170; 583824, 4228206; 583898, 4228219; 583938, 4228221; 583961, 4228228; 583973, 4228240; 584002, 4228252; 584019, 4228251; 584032, 4228262; 584052, 4228268; 584062, 4228278; 584134, 4228347; 584153, 4228375; 584154, 4228398; 584147, 4228405; 584132, 4228407; 584146, 4228473; 584150, 4228514; 584135, 4228552; 584137, 4228573; 584128, 4228593; 584118, 4228631; 584109, 4228660; 584097, 4228672; 584085, 4228696; 584083, 4228711; 584067, 4228730; 584041, 4228786; 584038, 4228800; 584001, 4228862; 583993, 4228899; 583990, 4228918; 583995, 4228944; 583991, 4228950; 583994, 4228962; 584008, 4228976; 584020, 4228979; 584062, 4229001; 584095, 4229004; 584138, 4229000; 584179, 4228989; 584255, 4228968; 584276, 4228967; 584312, 4228956;

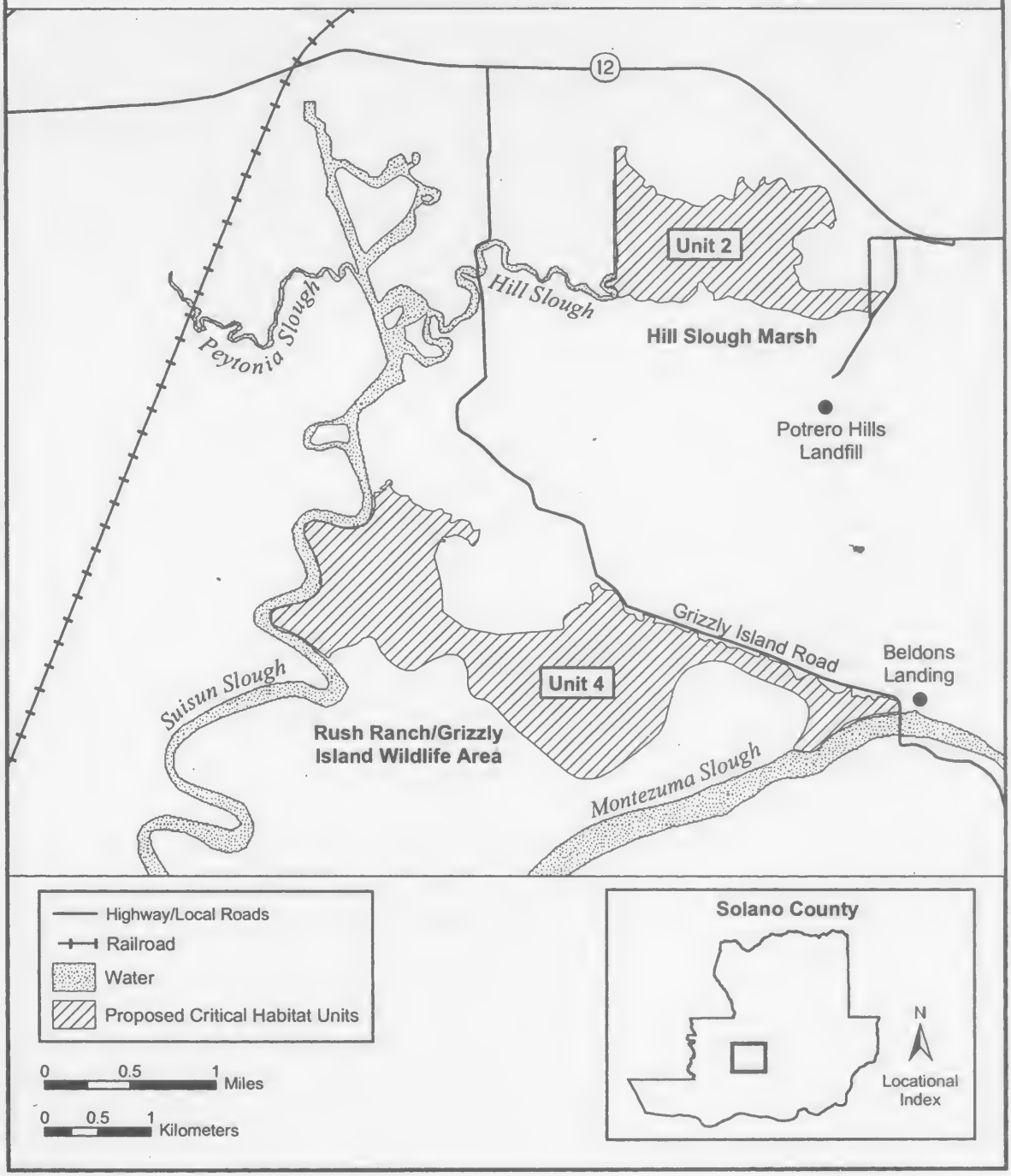
584341, 4228946; 584372, 4228940;
584420, 4228939; 584521, 4228954;
584553, 4228947; 584568, 4228965;
584588, 4228974; 584599, 4228997;
584621, 4229013; 584638, 4229054;
584656, 4229083; 584651, 4229091;
584656, 4229119; 584665, 4229146;
584663, 4229177; 584660, 4229211;
584653, 4229240; 584661, 4229251;
584655, 4229260; 584660, 4229271;
584678, 4229276; 584700, 4229277;
584707, 4229273; 584728, 4229274;
584737, 4229282; 584738, 4229292;
584748, 4229290; 584764, 4229294;
584768, 4229301; 584759, 4229305;
584718, 4229301; 584714, 4229313;
584755, 4229341; 584761, 4229345;
584765, 4229352; 584775, 4229376;
584792, 4229388; 584807, 4229388;
584821, 4229381; 584827, 4229366;
584827, 4229352; 584810, 4229333;
584806, 4229329; 584807, 4229325;
584815, 4229320; 584834, 4229291;
584862, 4229269; 584904, 4229244;
584937, 4229237; 584955, 4229235;
584968, 4229239; 584980, 4229233;
584986, 4229223; 584999, 4229211;
585004, 4229191; 585016, 4229175;
585024, 4229167; 585032, 4229163;
585050, 4229158; 585078, 4229144;
585125, 4229112; 585167, 4229099;
585191, 4229094; 585219, 4229094;
585243, 4229102; 585257, 4229113;
585270, 4229116; 585281, 4229116;
585291, 4229113; 585306, 4229090;
585319, 4229076; 585345, 4229068;
585365, 4229067; 585378, 4229061;
585382, 4229055; 585382, 4229047;
585380, 4229039; 585373, 4229029;
585366, 4229013; 585363, 4228998;
585367, 4228988; 585376, 4228983;
585410, 4228987; 585422, 4228998;
585438, 4229008; 585479, 4229011;
585515, 4229006; 585535, 4229002;
585554, 4228984; 585567, 4228949;
585573, 4228933; 585585, 4228913;
585600, 4228907; 585612, 4228908;
585625, 4228912; 585647, 4228920;
585642, 4228890; 585642, 4228873;
585622, 4228807; 585613, 4228795;
585591, 4228769; 585579, 4228766;
585571, 4228769; 585549, 4228793;
585542, 4228817; 585530, 4228822;
585505, 4228833; 585480, 4228849;
585438, 4228864; 585414, 4228871;
585400, 4228865; 585331, 4228844;
585323, 4228852; 585309, 4228850;
585299, 4228849; 585294, 4228846;
585293, 4228841; 585287, 4228835;
585305, 4228820; 585311, 4228824;
585324, 4228804; 585281, 4228807;
585274, 4228801; 585266, 4228782;
585250, 4228748; 585220, 4228671;
585264, 4228486; 585280, 4228425;
585290, 4228350; 585298, 4228147;
585299, 4228142; 585303, 4228138;
585507, 4227990; 585520, 4227986;
585588, 4227972; 585730, 4227946;
585813, 4227928; 585835, 4227927;
586151, 4227951; 586270, 4227960;
586286, 4227964; 586378, 4227971;
586420, 4227977; 586429, 4227988;
586438, 4227998; 586434, 4228018;
586430, 4228035; 586429, 4228066;
586442, 4228101; 586479, 4228127;
586518, 4228154; 586552, 4228173;
586584, 4228180; 586576, 4228199;
586602, 4228212; 586618, 4228207;
586625, 4228212; 586633, 4228227;
586642, 4228230; 586652, 4228229;
586669, 4228218; 586676, 4228213;
586690, 4228219; 586702, 4228228;
586705, 4228243; 586706, 4228267;
586706, 4228288; 586713, 4228308;
586695, 4228350; 586687, 4228381;
586692, 4228392; 586702, 4228402;
586712, 4228407; 586721, 4228406;
586732, 4228413; 586742, 4228414;
586750, 4228413; 586760, 4228409;
586774, 4228386; 586789, 4228366;
586847, 4228346; 586872, 4228350;
586897, 4228347; 586944, 4228304;
586989, 4228208; 586997, 4228176;
587006, 4228147; 587023, 4228133;
587062, 4228118; 587080, 4228122;
587097, 4228118; 587111, 4228087;
587126, 4228069; 587149, 4228056;
587172, 4228056; 587183, 4228065;
587188, 4228079; 587188, 4228094;
587177, 4228122; 587287, 4228085;
587295, 4228072; 587292, 4228064;
587278, 4228055; 587273, 4228038;
587316, 4228041; 587389, 4228027;
587460, 4228016; 587548, 4227976;
587617, 4227944; 587620, 4227957;
587626, 4227967; 587643, 4227967;
587658, 4227960; 587677, 4227954;
587682, 4227945; 587691, 4227939;
587699, 4227933; 587696, 4227905;
587771, 4227862; 587779, 4227871;
587790, 4227881; 587802, 4227886;
587821, 4227882; 587834, 4227875;
587845, 4227859; 587855, 4227849;
587863, 4227839; 587874, 4227841;
587883, 4227845; 587890, 4227853;
587901, 4227860; 587921, 4227856;
587935, 4227850; 587945, 4227839;
587955, 4227833; 587959, 4227820;
587984, 4227809; 588004, 4227799;
588059, 4227806; 588083, 4227797;
588229, 4227730; 588244, 4227721;
588264, 4227721; 588274, 4227718;
588276, 4227731; 588280, 4227749;
588359, 4227718; 588361, 4227693;
588515, 4227643; 588538, 4227632;
588552, 4227619; 588564, 4227604;
588596, 4227554; 588617, 4227507;
588627, 4227498; 588652, 4227502;
588703, 4227534; 588761, 4227555;
588822, 4227530; 588823, 4227505;
588830, 4227492; 588847, 4227475;
588913, 4227418; 588942, 4227396;
588976, 4227373; 589001, 4227370;
589030, 4227376; 589067, 4227391;
589084, 4227403; 589095, 4227419;
589112, 4227426; 589141, 4227416;
589143, 4227392; 589143, 4227340;
589148, 4227335; 589160, 4227337;
589190, 4227350; 589217, 4227341;
589249, 4227323; 589278, 4227331;
589294, 4227348; 589307, 4227349;
589320, 4227341; 589338, 4227311;
589359, 4227301; 589371, 4227303;
589387, 4227334; 589436, 4227339;
589447, 4227329; 589463, 4227327;
589478, 4227331; 589495, 4227329;
589502, 4227319; 589527, 4227309;
589568, 4227297; 589578, 4227294;
589585, 4227275; 589596, 4227236;
589597, 4227189; 589500, 4227183;
589348, 4227165; 589325, 4227155;
589274, 4227145; 589146, 4227108;
589084, 4227075; 588999, 4226997;
588865, 4226906; 588763, 4226822;
588737, 4226808; 588715, 4226811;
588640, 4226826; 588599, 4226831;
588596, 4226841; 588599, 4226860;
588606, 4226870; 588635, 4226918;
588692, 4227005; 588722, 4227076;
588740, 4227152; 588741, 4227188;
588739, 4227225; 588725, 4227262;
588711, 4227287; 588690, 4227313;
588645, 4227348; 588593, 4227381;
588495, 4227429; 588398, 4227461;
588264, 4227514; 588195, 4227547;
588127, 4227585; 588016, 4227644;
587974, 4227661; 587934, 4227670;
587885, 4227676; 587807, 4227674;
587752, 4227664; 587701, 4227650;
587632, 4227621; 587591, 4227595;
587533, 4227537; 587487, 4227456;
587467, 4227410; 587430, 4227281;
587385, 4227098; 587355, 4227029;
587326, 4226985; 587263, 4226919;
587112, 4226798; 586999, 4226714;
586868, 4226625; 586771, 4226575;
586734, 4226563; 586696, 4226556;
586646, 4226554; 586595, 4226558;
586548, 4226571; 586476, 4226611;
586342, 4226720; 586160, 4226880;
586014, 4226997; 585931, 4227078;
585835, 4227185; 585790, 4227234;
585743, 4227274; 585708, 4227298;
585673, 4227309; 585647, 4227312;
585613, 4227321; 585596, 4227329;
585579, 4227340; 585558, 4227365;
585541, 4227403; 585534, 4227449;
585536, 4227504; 585534, 4227570;
585516, 4227631; 585496, 4227674;
585475, 4227703; 585451, 4227721;
585428, 4227732; 585380, 4227737;
585320, 4227730; 585228, 4227698;
585161, 4227662; 585064, 4227603;
585034, 4227589; 585004, 4227581;
584964, 4227585; 584913, 4227597;
584870, 4227620; 584816, 4227660;
584777, 4227693; 584737, 4227738;
584713, 4227772; 584699, 4227799;
584675, 4227858; 584655, 4227890;
584624, 4227903; 584597, 4227902;
584568, 4227897; 584539, 4227888;
584525, 4227871; 584497, 4227842;
584462, 4227827; 584433, 4227814;
584415, 4227814; 584332, 4227794;

584289, 4227774; 584262, 4227754; 584247, 4227740; 584239, 4227722; 584223, 4227701; 584214, 4227700; 584196, 4227724; 584138, 4227768; 584106, 4227792; 584104, 4227804; 584090, 4227810; 584083, 4227808; 584056, 4227836; 583982, 4227893; 583937, 4227918; 583911, 4227932; 583814, 4227974; 583713, 4228012; 583691, 4228033; 583680, 4228053; 583675, 4228063; 583676, 4228074; 583673, 4228103.

(ii) Note: Unit 4 for *Cordylanthus mollis* ssp. *mollis* is depicted on Map 3, which follows:

BILLING CODE 4310–55–P

Map 3. Proposed Critical Habitat Units 2 and 4 for Cordylanthus mollis ssp. mollis



BILLING CODE 4310–55–C

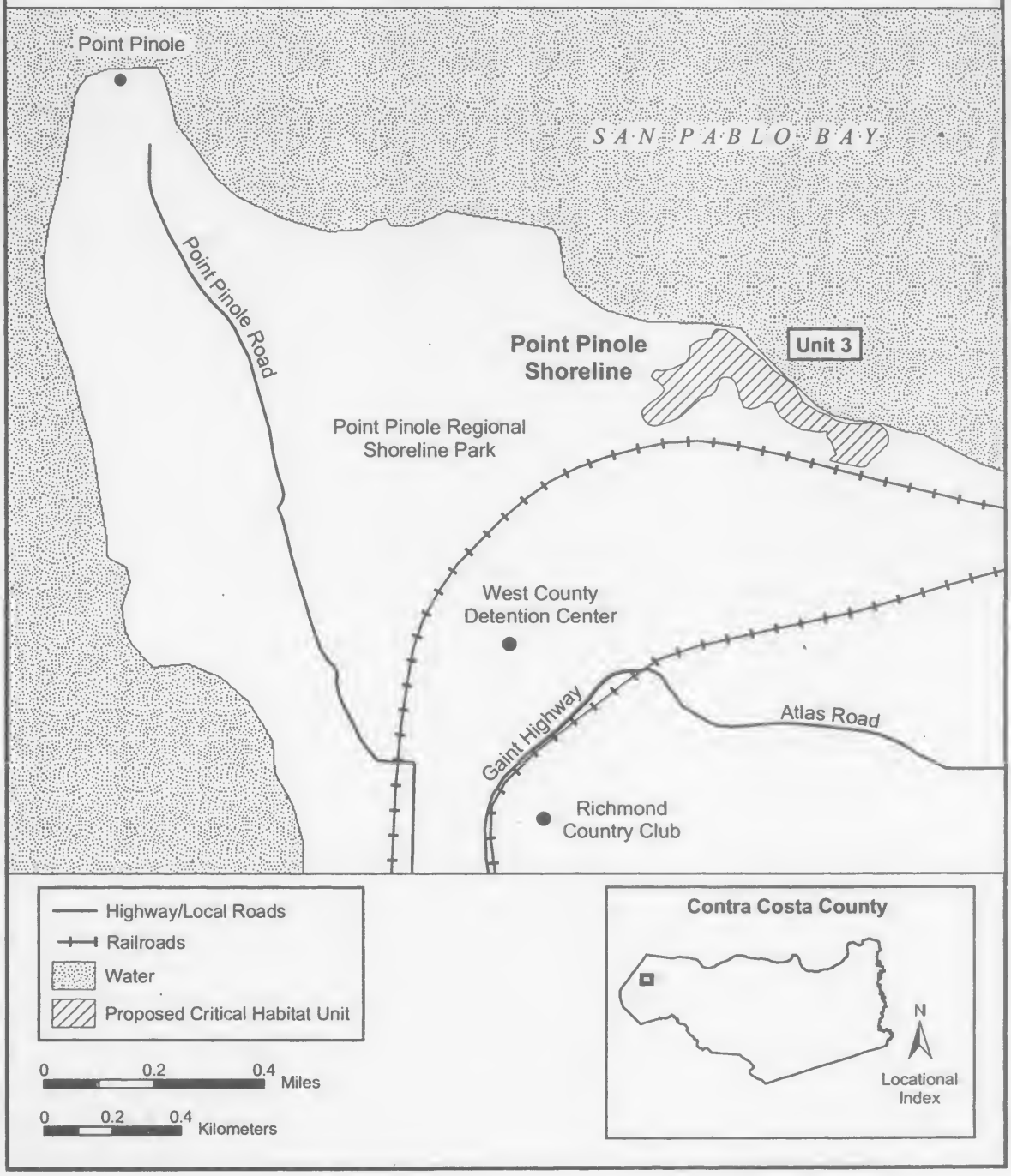
(9) Unit 3 for *Cordylanthus mollis* ssp. *mollis:* Point Pinole Shoreline, Contra Costa County, California.

(i) Unit 3: Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 557436, 4206461; 557427, 4206437; 557413, 4206422; 557385, 4206413; 557364, 4206395; 557341, 4206372; 557318, 4206353; 557292, 4206342; 557263, 4206332; 557245, 4206330; 557231, 4206333; 557222, 4206340; 557214, 4206351; 557211, 4206366; 557212, 4206378; 557222, 4206387; 557236, 4206399; 557253, 4206411; 557270, 4206425; 557275, 4206438; 557270, 4206450; 557257, 4206461; 557248, 4206467; 557239, 4206475; 557240, 4206484; 557247, 4206491; 557253, 4206495; 557269, 4206493; 557299, 4206500; 557315, 4206507; 557329, 4206513; 557339, 4206520; 557349, 4206536; 557351, 4206554; 557353, 4206566; 557367, 4206578; 557378, 4206582; 557403, 4206588; 557415, 4206590; 557418, 4206604; 557428, 4206616; 557456, 4206614; 557468, 4206606; 557526, 4206560; 557567, 4206529; 557584, 4206508; 557600, 4206493; 557623, 4206479; 557638, 4206464; 557646, 4206461; 557653, 4206457; 557666, 4206439; 557685, 4206401; 557720, 4206378; 557732, 4206370; 557744, 4206366; 557754, 4206363; 557766, 4206356; 557777, 4206347; 557806, 4206339; 557844, 4206335; 557875, 4206339; 557891, 4206338; 557909, 4206332; 557922, 4206322; 557929, 4206311; 557932, 4206302; 557933, 4206290; 557931, 4206279; 557912, 4206258; 557881, 4206230; 557868, 4206212; 557855, 4206209; 557767, 4206228; 557761, 4206230; 557763, 4206233; 557769, 4206238; 557781, 4206246; 557765, 4206285; 557754, 4206299; 557753, 4206314; 557731, 4206312; 557678, 4206320; 557643, 4206337; 557616, 4206357; 557608, 4206372; 557602, 4206385; 557601, 4206396; 557588, 4206403; 557569, 4206399; 557550, 4206385; 557528, 4206380; 557508, 4206385; 557502, 4206406; 557496, 4206413; 557493, 4206428; 557489, 4206444; 557482, 4206462; 557474, 4206472; 557465, 4206474; 557457, 4206476; 557445, 4206474; 557440, 4206469; 557436, 4206461.

(ii) Note: Unit 3 for *Cordylanthus mollis* ssp. *mollis* is depicted on Map 4, which follows:

BILLING CODE 4310–55–P

Map 4. Proposed Critical Habitat Unit 3 for Cordylanthus mollis ssp. mollis



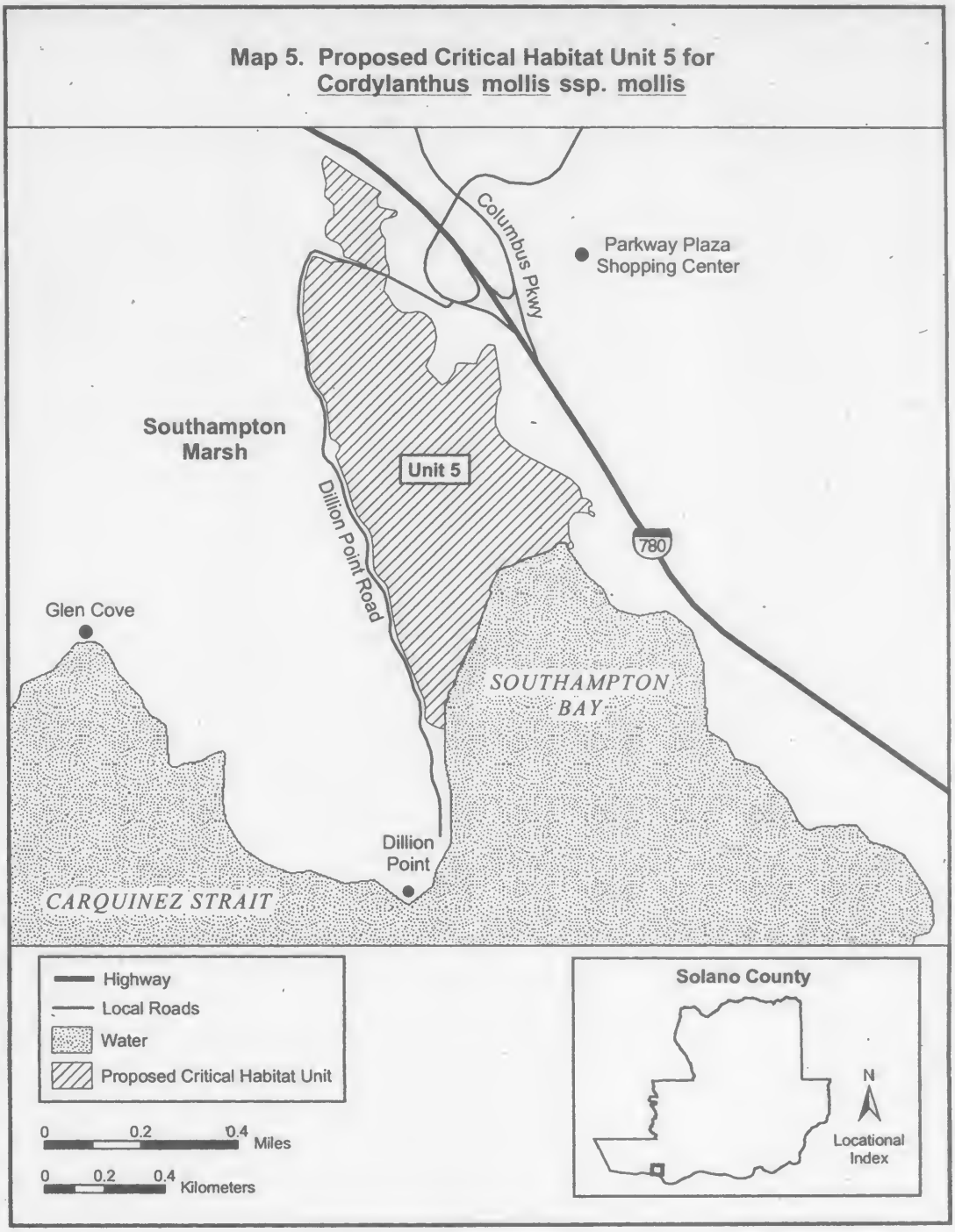
BILLING CODE 4310–55–C

(10) Unit 5 for *Cordylanthus mollis* ssp. *mollis*: Southampton Marsh, Solano County, California.

(i) Unit 5: Land bounded by the following UTM zone 10, NAD 1983 coordinates (E, N): 570411, 4215261; 570504, 4215198; 570595, 4215141; 570581, 4215120; 570582, 4215104; 570590, 4215091; 570627, 4215082; 570640, 4215081; 570646, 4215078; 570647, 4215073; 570643, 4215063; 570625, 4215056; 570606, 4215052; 570594, 4215040; 570589, 4215024; 570593, 4215004; 570607, 4214983; 570606, 4214949; 570607, 4214919; 570616, 4214898; 570620, 4214869; 570611, 4214859; 570601, 4214815; 570607, 4214803; 570615, 4214795; 570628, 4214771; 570639, 4214756; 570659, 4214739; 570689, 4214737; 570706, 4214742; 570722, 4214741; 570739, 4214732; 570758, 4214716; 570770, 4214688; 570774, 4214652; 570766, 4214613; 570749, 4214580; 570739, 4214558; 570750, 4214539; 570771, 4214516; 570792, 4214494; 570810, 4214506; 570834, 4214540; 570836, 4214555; 570842, 4214566; 570849, 4214569; 570906, 4214566; 570910, 4214575; 570926, 4214610; 570946, 4214630; 570967, 4214627; 570974, 4214587; 570978, 4214555; 570987, 4214480; 570975, 4214453; 570968, 4214400; 570970, 4214360; 570986, 4214324; 571019, 4214293; 571061, 4214263; 571147, 4214219; 571179, 4214204; 571221, 4214180; 571247, 4214152; 571256, 4214116; 571270, 4214116; 571282, 4214109; 571288, 4214101; 571289, 4214091; 571279, 4214088; 571278, 4214076; 571294, 4214069; 571298, 4214063; 571294, 4214053; 571275, 4214066; 571257, 4214069; 571234, 4214068; 571222, 4214057; 571211, 4214038; 571211, 4214017; 571212, 4213995; 571215, 4213978; 571225, 4213964; 571227, 4213952; 571219, 4213945; 571208, 4213950; 571210, 4213958; 571200, 4213968; 571177, 4213969; 571164, 4213957; 571155, 4213946; 571125, 4213929; 571109, 4213924; 571077, 4213918; 571043, 4213905; 571031, 4213893; 570999, 4213886; 570979, 4213875; 570948, 4213819; 570950, 4213808; 570950, 4213796; 570947, 4213785; 570936, 4213770; 570936, 4213754; 570930, 4213737; 570925, 4213733; 570911, 4213693; 570907, 4213668; 570899, 4213652; 570884, 4213627; 570873, 4213602; 570859, 4213560; 570838, 4213534; 570834, 4213513; 570826, 4213498; 570826, 4213488; 570820, 4213479; 570809, 4213467; 570806, 4213447; 570796, 4213433; 570795, 4213417; 570799, 4213408; 570796, 4213390; 570798, 4213376; 570796, 4213343; 570780, 4213346; 570766, 4213351; 570752, 4213357; 570739, 4213365; 570730, 4213379; 570732, 4213416; 570725, 4213446; 570641, 4213647; 570629, 4213707; 570611, 4213810; 570606, 4213823; 570598, 4213834; 570578, 4213854; 570565, 4213875; 570562, 4213891; 570561, 4213954; 570558, 4213979; 570555, 4213993; 570550, 4214006; 570539, 4214020; 570528, 4214031; 570510, 4214056; 570495, 4214091; 570475, 4214160; 570469, 4214178; 570436, 4214258; 570445, 4214272; 570450, 4214281; 570449, 4214297; 570438, 4214308; 570422, 4214316; 570416, 4214331; 570415, 4214358; 570407, 4214435; 570395, 4214459; 570380, 4214478; 570372, 4214489; 570360, 4214514; 570353, 4214529; 570349, 4214563; 570344, 4214626; 570335, 4214670; 570329, 4214728; 570331, 4214760; 570336, 4214843; 570350, 4214894; 570364, 4214925; 570373, 4214927; 570394, 4214921; 570423, 4214905; 570437, 4214908; 570451, 4214910; 570490, 4214903; 570540, 4214884; 570544, 4214897; 570469, 4214926; 570465, 4214952; 570458, 4214965; 570446, 4214973; 570425, 4214981; 570410, 4214992; 570407, 4215005; 570408, 4215025; 570420, 4215050; 570434, 4215056; 570436, 4215072; 570434, 4215100; 570406, 4215127; 570407, 4215143; 570412, 4215166; 570408, 4215189; 570401, 4215216; 570400, 4215236; 570402, 4215249; 570411, 4215261.

(ii) Note: Unit 5 for *Cordylanthus mollis* ssp. *mollis* is depicted on Map 5, which follows:

BILLING CODE 4310–55–P



* * * * *

Dated: March 31, 2006.

Matt Hogan,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–3343 Filed 4–10–06; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
April 11, 2006

Part IV

Department of Housing and Urban Development

Supplement to the Fiscal Year (FY) 2006 SuperNOFA for HUD's Discretionary Programs: NOFAs for the HOPE VI Revitalization Grants Program and HOPE VI Main Street Grants Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5053–N–01; FR–5059–N–01]

Supplement to the Fiscal Year (FY) 2006 SuperNOFA for HUD's Discretionary Programs: NOFAs for the HOPE VI Revitalization Grants Program and HOPE VI Main Street Grants Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of HUD's Fiscal Year (FY) 2006 Notice of Funding Availability (SuperNOFA) for HUD's Discretionary Programs: HOPE VI Revitalization Grants Program and HOPE VI Main Street Grants Program.

SUMMARY: On March 8, 2006, HUD published its FY2006 SuperNOFA for HUD's Discretionary Programs, which contained 39 funding opportunities. Today's publication supplements the SuperNOFA by adding funding opportunities for the HOPE VI Main Street and HOPE VI Revitalization programs. Since these NOFAs are part of the SuperNOFA, the NOFAs published today are governed by the information and instructions found in the Notice of Funding Availability Policy Requirements and General Section (General Section) to the SuperNOFA that HUD published on January 20, 2006, and the Introduction published on March 8, 2006.

DATES: The key dates that apply to the HOPE VI Main Street and HOPE VI Revitalization programs are found in the individual program NOFAs published today and which are part of this notice.

FOR FURTHER INFORMATION CONTACT: The individual program NOFAs will identify the applicable agency contacts for each program. Questions regarding today's Introduction, the General Section of January 20, 2006, or the Introduction of March 8, 2006, should be directed to the NOFA Information Center between the hours of 10 a.m. and 6:30 p.m. Eastern Time at (800) HUD–8929. Hearing-impaired persons may call 800–HUD–2209. Questions regarding specific program requirements should be directed to the agency contacts identified in each program NOFA.

SUPPLEMENTARY INFORMATION: Today's publication follows the publication of the General Section of the FY2006 SuperNOFA on January 20, 2006 (71 FR 3382), and the SuperNOFA for HUD's Discretionary Programs on March 8, 2006 (71 FR 11712), and presents two funding opportunities that supplement HUD's FY2006 SuperNOFA. Specifically, through today's publication, HUD is making available approximately $76.9 million in assistance through the FY2006 HOPE VI Main Street and the FY2006 HOPE VI Revitalization Grants programs. Today's publication is in addition to the $2.2 billion previously made available through the FY2006 SuperNOFA.

As is HUD's practice in publishing the SuperNOFA, the NOFAs published today provide the statutory and regulatory requirements, threshold requirements, and rating factors applicable to funding being made available today (through the HOPE VI Revitalization and HOPE VI Main Street NOFAs). Notwithstanding, applicants for the two HOPE VI NOFAs must also refer to the January 20, 2006, General Section of the FY2006 SuperNOFA for important application information and requirements, including submission requirements, which have changed this year.

In FY2006, HUD intends to continue to require its applicants to submit their applications electronically through *http://www.grants.gov*. If applicants have questions concerning the registration process, registration renewal, assigning a new Authorized Organization Representative, or have a question about a NOFA requirement, please contact HUD staff identified in the program NOFAs that are part of this notice. HUD staff cannot help you write your application, but can clarify requirements that are contained in this Notice and HUD's registration materials.

New applicants should note that they are required to complete a five-step registration process in order to submit their applications electronically. The registration process is outlined in HUD's Notice of Opportunity to Register Early for Electronic Submission of Grant Applications for Funding Opportunities, published in the **Federal Register** on December 9, 2006 (70 FR 73332), and the brochure entitled, "STEP BY STEP: Your Guide to Registering for Grant Opportunities," located at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm*. HUD also has a new brochure titled, "Finding and Applying for Grant Opportunities," dated February 2006, which walks you through the process of finding and applying for grant opportunities. This brochure also contains Registration Tips that will help applicants who successfully submitted a grant application last year to determine if their registration is active and if they are ready to submit a grant application to *http://www.grants.gov*.

The March 8, 2006, FY2006 SuperNOFA publication included a clarification of the Logic Model discussed in Section VI.C. entitled "Reporting" of the January 20, 2006, General Section (see 71 FR 3398). Although the Logic Model is to be completed by applicants, the Return on Investment (ROI) Statement referenced in the discussion of the Logic Model applies only to grantees, i.e., applicants selected for funding under the NOFAs. Applicants are *not* to complete the ROI statement. Additionally, for FY2006, the ROI statement is a new concept for the Logic Model. HUD is considering this new concept and will issue a separate notice within the next few weeks of today's announcement, to further address the ROI concept.

Applications and Instructions are posted to *http://www.grants.gov* as soon as HUD finalizes them. HUD encourages applicants to subscribe to the Grants.gov free notification service. By doing so, applicants will receive an e-mail notification as soon as items are posted to the Web site. The address to subscribe to this service is *http://www.grants.gov/search/email.do*. By joining the notification service, if a modification is made to the NOFA, applicants will receive an e-mail notification that a change has been made.

HUD reiterates its hope that applicants benefit from the steps HUD has taken to provide early information to them on the funding process and requirements for the FY2006 SuperNOFA.

Dated: April 3, 2006.

Roy A. Bernardi,

Deputy Secretary.

BILLING CODE 4210–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUPPLEMENT TO THE FISCAL YEAR 2006 SUPERNOFA FOR HUD'S DISCRETIONARY PROGRAMS:

NOFAS FOR THE

HOPE VI REVITALIZATION GRANTS PROGRAM AND

HOPE VI MAIN STREET GRANTS PROGRAM

Overview Information

A. *Federal Agency Name.* Department of Housing and Urban Development, Office of Public and Indian Housing.

B. *Funding Opportunity Title.* Revitalization of Severely Distressed Public Housing HOPE VI Revitalization Grants Fiscal Year 2006.

C. *Announcement Type.* Initial announcement.

D. *Funding Opportunity Number.* The **Federal Register** number for this NOFA is: FR–5053–N–01. The OMB approval number for this program is: 2577–0208.

E. *Catalog of Federal Domestic Assistance (CFDA) Number.* The CFDA number for this NOFA is 14–866, "Demolition and Revitalization of Severely Distressed Public Housing (HOPE VI)."

F. *Dates.*

1. Application Submission Date: The application deadline date is July 10, 2006. Electronic applications must be received and validated by Grants.gov by the deadline date. See the HUD's Super Notice of Funding Availability (SuperNOFA) General Section (71 FR 3382), published in the **Federal Register** on January 20, 2006 for application submission and timely receipt requirements.

2. Estimated Grant Award Date: The estimated award date will be approximately September 15, 2006.

G. *Optional, Additional Overview Content Information.*

1. *Available Funds.* This NOFA announces the availability of approximately $71.9 million in FY 2006 funds for HOPE VI Revitalization Program grants.

2. *Proposed Rescission of Funds.* The public is hereby notified that although this NOFA announces the availability of Fiscal Year (FY) 2006 HOPE VI Funds, the FY 2007 budget proposes the rescission of the FY 2006 HOPE VI Appropriation. Please note, therefore, that if Congress adopts this portion of the President's budget, this NOFA may be cancelled at a later date and awards made under this NOFA may not ultimately be funded.

3. The maximum amount of each grant award is $20 million. It is anticipated that four grant awards will be made.

4. Housing choice voucher (HCV) assistance is available from the tenant protection voucher fund to successful applicants that receive the Revitalization grant awards. The dollar amount of HCV assistance is in addition to the $20 million maximum award amount and will be based upon resident relocation needs. Applicants must prepare their housing choice voucher assistance applications for the targeted project in accordance with the requirements of Notice PIH 2005–15 (and any reinstatement of or successor to that Notice) and submit it in its entirety with the HOPE VI Revitalization Application. HUD will process the housing choice voucher assistance applications for funded HOPE VI applicants.

5. All non-troubled public housing authorities (PHAs) with severely distressed public housing are eligible to apply, subject to the requirements under Section III of this NOFA. PHAs that manage only a HCV program, tribal PHAs and tribally-designated housing entities are not eligible.

6. A match of at least five percent is required.

7. Each applicant may submit only one HOPE VI revitalization application.

8. Application materials may be obtained from *http://www.Grants.gov/Apply.* Any technical corrections will be published in the **Federal Register** *and posted to Grants.gov.* Frequently asked questions will be posted on HUD's Web site at *http://www.hud.gov/offices/adm/grants/otherhud.cfm* and *http://www.hud.gov/offices/pih/programs/ph/hope6/.*

9. General Section Reference. Section I, "Funding Opportunity Description," of the *Notice of HUD's Fiscal Year 2006 Notice of Funding Availability (NOFA) Policy Requirements and General Section to the Super NOFA for HUD's Discretionary Programs* (General Section), Docket No.FR–5030 N 01, published in the **Federal Register** on January 20, 2006, and the Introduction to the SuperNOFA issued in the **Federal Register** on March 8, 2006, is hereby incorporated by reference.

Full Text of Announcement

I. Funding Opportunity Description

A. Program Description

In accordance with section 24(a) of the United States Housing Act of 1937 (42 U.S.C. 1437v) (1937 Act), the purpose of HOPE VI Revitalization grants is to assist PHAs to:

1. Improve the living environment for public housing residents of severely distressed public housing projects through the demolition, rehabilitation, reconfiguration, or replacement of obsolete public housing projects (or portions thereof);

2. Revitalize sites (including remaining public housing dwelling units) on which such public housing projects are located and contribute to the improvement of the surrounding neighborhood;

3. Provide housing that will avoid or decrease the concentration of very low-income families; and

4. Build sustainable communities.

B. Authority

1. The funding authority for HOPE VI Revitalization grants under this HOPE VI NOFA is provided by the Consolidated Appropriations Act, 2006 (Pub. L. 109–115, approved November 30, 2005) under the heading "Revitalization of Severely Distressed Public Housing (HOPE VI)."

2. The program authority for the HOPE VI program is section 24 of the 1937 Act, as amended by section 402 of the HOPE VI Program Reauthorization and Small Community Main Street Rejuvenation and Housing Act of 2003 (Pub. L. 108–186, approved December 16, 2003).

C. Definitions

1. *CSS Team.* The term "CSS Team" refers to PHA staff members and any consultants who will have the responsibility to design, implement, and manage your CSS program.

2. *CSS Partners.* The term "CSS Partners" refers to the agencies and organizations that you will work with to provide supportive services for residents. A partner could be a local service organization such as a Boys or Girls Club that donates its building and staff to the program, or an agency such as the local Temporary Assistance for Needy Families (TANF) agency that works with you to ensure that their services are coordinated and comprehensive.

3. *Developer.* A developer is an entity contracted to develop (and possibly operate) a mixed finance development that includes public housing units, pursuant to 24 CFR part 941, subpart F. A developer most often has an ownership interest in the entity that is established to own and operate the replacement units (e.g., as the general partner of a limited partnership).

4. *Firmly Committed.* "Firmly committed" means that the amount of match resources and their dedication to HOPE VI Revitalization activities must be explicit, in writing, and signed by a person authorized to make the commitment.

5. *Public Housing Project.* A public housing project is a group of assisted housing units that has a single Project Number assigned by the Director of Public Housing of a HUD Field Office and has, or had (in the case of previously demolished units) housing units under an Annual Contributions Contract.

6. *Replacement Housing.* Under this HOPE VI NOFA, a HOPE VI replacement housing unit shall be deemed to be any combination of public housing rental units, eligible homeownership units under section 24(d)(1)(J) of the 1937 Act, and HCV assistance that does not exceed the number of units demolished and disposed of at the targeted severely distressed public housing project.

7. *Severely Distressed.* a. In accordance with section 24(j)(2) of the 1937 Act, the term "severely distressed public housing" means a public housing project (or building in a project) that:

(1) Requires major redesign, reconstruction, or redevelopment—or partial or total demolition—to correct serious deficiencies in the original design (including inappropriately high population density), deferred maintenance, physical deterioration or obsolescence of major systems, and other deficiencies in the physical plan of the project;

(2) Is a significant contributing factor to the physical decline of, and disinvestment by public and private entities in, the surrounding neighborhood;

(3) (a) Is occupied predominantly by families who are very low-income families with children, have unemployed members, and are dependent on various forms of public assistance; (b) has high rates of vandalism and criminal activity (including drug-related criminal activity) in comparison to other housing in the area; or (c) is lacking in sufficient appropriate transportation, supportive services, economic opportunity, schools, civic and religious institutions, or public services, resulting in severe social distress in the project;

(4) Cannot be revitalized through assistance under other programs, such as the Capital Fund and Operating Fund programs for public housing under the 1937 Act, or the programs under sections 9 or 14 of the 1937 Act (as in effect before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, approved October 21, 1998)), because of cost constraints and inadequacy of available amounts; and

(5) In the case of an individual building that currently forms a portion of the public housing project targeted by the application to this NOFA:

(a) Is sufficiently separable from the remainder of the project of which the building is part, such that the revitalization of the building is feasible; or

(b) Was part of the targeted public housing project that has been legally vacated or demolished, but for which HUD has not yet provided replacement housing assistance (other than tenant-based assistance). "Replacement housing assistance" is defined as funds that have been furnished by HUD to perform major rehabilitation on, or reconstruction of, the public housing units that have been legally vacated or demolished.

b. A severely distressed project that has been legally vacated or demolished (but for which HUD has not yet provided replacement housing assistance, other than tenant-based assistance) must have met the definition of physical distress not later than the day the demolition application approval letter was dated by HUD.

8. *Targeted Project.* The targeted project is the current public housing project that will be revitalized with funding from this NOFA. The targeted project may include more than one public housing project or be a part of a public housing project. See Section III.C. of this NOFA for eligibility of multiple public housing projects and separability of a part of a public housing project.

9. *Team.* The term "your Team" includes PHA staff who will be involved in HOPE VI grant administration, and any alternative management entity that will manage the revitalization process, be responsible for meeting construction time tables, and obligating amounts in a timely manner. This team includes any developer partners, program managers, property managers, subcontractors, consultants, attorneys, financial consultants, and other entities or individuals identified in the application who are proposed to carry out program activities.

10. *Temporary Relocation.* There are no provisions for "temporary relocation" under the Uniform Relocation Assistance and Real Property Acquisition Policies Act Of 1970 (URA). See Notice CPD 04–2, "Guidance on the Application of the Uniform Relocation Assistance and Real Property Acquisition Policies Act Of 1970 (URA), As Amended, in HOPE VI Projects," paragraph IV.A.2. for the definition of "temporary relocation" as it applies to HOPE VI projects. The Notice can be obtained through HUDClips at *http://www.hudclips.org/.*

11. *Universal Design.* Universal design is the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. The intent of universal design is to simplify life for everyone by making products, communications, and the built environment more usable by as many people as possible at little or no extra cost. Universal design benefits people of all ages and abilities. Examples include designing wider doorways, installing levers instead of doorknobs, and putting bathtub/shower grab bars in all units. Computers and telephones can also be set up in ways that enable as many residents as possible to use them. The Department has a publication that contains a number of ideas about how the principles of Universal Design can benefit persons with disabilities. To order a copy of *Strategies for Providing Accessibility and Visitability for HOPE VI and Mixed Finance Homeownership,* go to the publications and resource page of the HOPE VI Web site at *http://www.huduser.org/publications/pubasst/strategies.html.*

II. Award Information

A. Availability of HOPE VI Funds

1. *Proposed Rescission of Funds.* The public is hereby notified that although this NOFA announces the availability of Fiscal Year (FY) 2006 HOPE VI Funds, the FY 2007 budget proposes the rescission of the FY 2006 HOPE VI Appropriation. Please note, therefore, that if Congress adopts this portion of the President's budget, this NOFA may be cancelled at a later date and awards made under this NOFA may not ultimately be funded.

2. *Revitalization Grants.* Approximately $71.9 million of the FY2006 HOPE VI appropriation has been allocated to fund HOPE VI Revitalization grants and will be awarded in accordance with this NOFA. There will be approximately four awards. The maximum amount you may request in your application for grant award is limited to $20 million or the sum of the amounts in Section IV.E. below, whichever is lower. HCV assistance is in addition to this amount.

3. *Housing Choice Voucher Assistance.* Housing choice voucher (HCV) assistance is available from the tenant protection voucher fund to successful applicants that receive the Revitalization grant awards. The dollar amount of HCV assistance is in addition to the $20 million maximum award amount and will be based upon resident relocation needs. Applicants must prepare their housing choice voucher assistance applications for the targeted project in accordance with the requirements of Notice PIH 2005–15 (and any reinstatement of or successor to that Notice) and submit it in its entirety with the HOPE VI Revitalization Application. HUD will process the housing choice voucher

assistance applications for funded HOPE VI applicants.

4. *Grant term.* The period for completion shall not exceed 54 months from the date the NOFA award is executed by HUD, as described in the grant agreement.

III. Eligibility Information

A. Eligible Applicants

1. Only PHAs that have severely distressed housing in their inventory and are otherwise in conformance with the threshold requirements provided in Section III.C. of this NOFA are eligible to apply.

2. *Housing Choice Voucher Programs Only, Tribal Housing Agencies, and Others.* PHAs that only administer HCV/Section 8 programs, tribal housing agencies and tribally-designated housing entities, are not eligible to apply. Non-profit organizations, for-profit organizations, and private citizens and entrepreneurs are not eligible to apply.

3. *Troubled Status.* If HUD has designated your housing authority as troubled pursuant to section 6(j)(2) of the 1937 Act, HUD will use documents and information available to it to determine whether you qualify as an eligible applicant. In accordance with section 24(j) of the 1937 Act, the term "applicant" means:

a. Any PHA that is not designated as "troubled" pursuant to section 6(j)(2) of the 1937 Act;

b. Any PHA for which a private housing management agent has been selected, or a receiver has been appointed, pursuant to section 6(j)(3) of the 1937 Act; and

c. Any PHA that is designated as "troubled" pursuant to section 6(j)(2) of the 1937 Act and that:

(1) Is designated as troubled principally for reasons that will not affect its capacity to carry out a revitalization program;

(2) Is making substantial progress toward eliminating the deficiencies of the agency that resulted in its troubled status;

(3) Has not been found to be in non-compliance with fair housing or other civil rights requirements; or

(4) Is otherwise determined by HUD to be capable of carrying out a revitalization program.

B. Cost Sharing or Matching

1. Match Requirements

a. *Revitalization grant Match.* HUD is required by the 1937 Act (42 U.S.C. 1437v(c)(1)(A)) to include the requirement for matching funds for all HOPE VI-related grants. You are required to have in place a match in the amount of five percent of the requested grant amount in cash or in-kind donations. Applications that do not demonstrate the minimum 5 percent match will not be considered for funding.

b. *Additional Community and Supportive Services (CSS) Match*

(1) In accordance with the 1937 Act (42 U.S.C. 1437v(c)(1)(B)), in addition to the 5 percent Revitalization grant match in Section a. above, you may be required to have in place a CSS match. Funds used for the Revitalization grant match cannot be used for the CSS match.

(2) If you are selected for funding through this NOFA, you may use up to 15 percent of your grant for CSS activities. However, if you propose to use more than 5 percent of your HOPE VI grant for CSS activities, you must have in place funds (cash or in-kind donations) from sources other than HOPE VI, that match the amount between 5 and 15 percent of the grant that you will use for CSS activities. These resources do not need to be new commitments in order to be counted for match.

c. *No HOPE VI Funding in Match.* In accordance with section 24(c) of the Act, for purposes of calculating the amount of matching funds required by Sections a. and b. above, you may NOT include amounts from HOPE VI program funding, including HOPE VI Revitalization, HOPE VI Demolition, HOPE VI Neighborhood Networks or HOPE VI Main Street grants. You may include funding from other public housing sources (*e.g.*, Capital Funds, ROSS funds), other federal sources, any state or local government source and any private contributions. You may also include the value of donated material or buildings, the value of any lease on a building, the value of the time and services contributed by volunteers, and the value of any other in-kind services or administrative costs provided.

d. *Firmly Committed.* Match donations must be *firmly committed.* See the Definitions section for more information.

e. Matching funds must be directly applicable to the revitalization of the targeted project and the transformation of the lives of residents.

f. The PHA's staff time is not an eligible cash or in-kind match.

g. See Section III, Program Requirements, (including Program Requirements that Apply to Match and Leverage and Program Requirements that Apply to Match) for match documentation requirements.

C. Other

1. *Eligible Revitalization Activities.* HOPE VI Revitalization grants may be used for activities to carry out revitalization programs for severely distressed public housing in accordance with section 24(d) of the 1937 Act. Revitalization activities approved by HUD must be conducted in accordance with the requirements of this NOFA. The following is a list of eligible activities.

a. *Relocation.* Relocation, including reasonable moving expenses, for residents displaced as a result of the revitalization of the project. See Sections III.C. and V.A. of this NOFA for relocation requirements.

b. *Demolition.* Demolition of dwelling units or non-dwelling facilities, in whole or in part, although demolition is not a required element of a HOPE VI revitalization plan.

c. *Disposition.* Disposition of a severely distressed public housing site, by sale or lease, in whole or in part, in accordance with section 18 of the 1937 Act and implementing regulations at 24 CFR part 970. A lease of one year or more that is not incident to the normal operation of a project is considered a disposition that is subject to section 18 of the 1937 Act.

d. *Rehabilitation and Physical Improvement.* Rehabilitation and physical improvement of:

1. Public housing; and

2. Community facilities, provided that the community facilities are primarily intended to facilitate the delivery of community and supportive services for residents of the public housing project and residents of off-site replacement housing, in accordance with 24 CFR 968.112(b), (d), (e), and (g)-(o) and 24 CFR 968.130 and 968.135(b) and (d) or successor regulations, as applicable.

e. *Development.* Development of:

1. Public housing replacement units; and

2. Other units (*e.g.*, market-rate units), provided a need exists for such units and such development is performed with non-public housing funds.

f. *Homeownership Activities.* Assistance involving the rehabilitation and development of homeownership units. Assistance may include:

1. Down payment or closing cost assistance;

2. Hard or soft second mortgages; or

3. Construction or permanent financing for new construction, acquisition, or rehabilitation costs related to homeownership replacement units.

g. *Acquisition.* Acquisition of:

1. Rental units and homeownership units;

2. Land for the development of off-site replacement units and community facilities (provided that the community facilities are primarily intended to facilitate the delivery of community and supportive services for residents of the public housing project and residents of off-site replacement housing);

3. Land for economic development-related activities, provided that such acquisition is performed with non-public housing funds.

h. *Management Improvements.* Necessary management improvements, including transitional security activities.

i. *Administration, Planning, Etc.* Administration, planning, technical assistance, and other activities (including architectural and engineering work, program management, and reasonable legal fees) that are related to the implementation of the revitalization plan, as approved by HUD. See Cost Control Standards in the Program Requirements section of this NOFA.

j. *Community and Supportive Services (CSS).*

1. The CSS component of the HOPE VI program encompasses all activities that are designed to promote upward mobility, self-sufficiency, and improved quality of life for the residents of the public housing project involved.

2. CSS activities. CSS activities may include, but are not limited to:

(a) Educational activities that promote learning and serve as the foundation for young people from infancy through high school graduation, helping them to succeed in academia and the professional world. Such activities, which include after-school programs, mentoring, and tutoring, must be created with strong partnerships with public and private educational institutions.

(b) Adult educational activities, including remedial education, literacy training, tutoring for completion of secondary or postsecondary education, assistance in the attainment of certificates of high school equivalency, and English as a Second Language courses, as needed.

(c) Readiness and retention activities, which frequently are key to securing private sector commitments to the provision of jobs.

(d) Employment training activities that include results-based job training, preparation, counseling, development, placement, and follow-up assistance after job placement.

(e) Programs that provide entry-level, registered apprenticeships in construction, construction-related, maintenance, or other related activities. A registered apprenticeship program is a program that has been registered with either a State Apprenticeship Agency recognized by the Department of Labor's (DOL) Office of Apprenticeship Training, Employer and Labor Services (OATELS) or, if there is no recognized state agency, by OATELS. See also DOL regulations at 29 CFR part 29.

(f) Training on topics such as parenting skills, consumer education, family budgeting, and credit management.

(g) Homeownership counseling that is scheduled to begin promptly after grant award so that, to the maximum extent possible, qualified residents will be ready to purchase new homeownership units when they are completed. The Family Self-Sufficiency program can also be used to promote homeownership, providing assistance with escrow accounts and counseling.

(h) Coordinating with health care providers or providing on-site space for health clinics, doctors, wellness centers, dentists, etc. that will primarily serve the public housing residents. HOPE VI funds may not be used to provide direct medical care to residents.

(i) Substance and alcohol abuse treatment and counseling.

(j) Activities that address domestic violence treatment and prevention.

(k) Child care services that provide sufficient hours of operation to facilitate parental access to education and job opportunities, serve appropriate age groups, and stimulate children to learn.

(l) Transportation, as necessary, to enable all family members to participate in available CSS activities and to commute to their places of employment.

(m) Entrepreneurship training and mentoring, with the goal of establishing resident-owned businesses.

k. *Leveraging.* Leveraging other resources, including additional housing resources, supportive services, job creation, and other economic development uses on or near the project that will benefit future residents of the site.

2. *Threshold Requirements.* Applications must meet all threshold requirements in order to be rated and ranked. If an application does not meet all threshold requirements, HUD will not consider the application as eligible for funding and will not rate and rank it. HUD will screen for technical deficiencies and administer a cure period. The subsection entitled, "Corrections to Deficient Applications," in Section V.B. of the General Section is incorporated by reference and applies to this NOFA, except that clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within 7 calendar days of the date of receipt of the HUD notification. The thresholds listed below can be cured for technical deficiencies except for those indicated as non-curable. If an applicant does not cure all its technical deficiencies that relate to threshold requirements within the cure period, HUD will consider the threshold(s) in question to be failed, will not consider the application as eligible for funding and will not rate and rank it. *Applicants MUST review and follow documentation requirements provided in this Thresholds Requirements Section and the Program Requirements of Section III.C.* A false statement (or certification) in an application is grounds for denial or termination of an award and grounds for possible prosecution as provided in 18 U.S.C. 1001, 1010, and 1012, and 32 U.S.C. 3729 and 3802. Required forms, certifications and assurances must be included in the HOPE VI application and will be available over the Internet at *http://www.hud.gov/offices/adm/grants/otherhud.cfm, http://www.hud.gov/offices/pih/programs/ph/hope6/* and *http://www.grants.gov.*

a. *Curable Thresholds.* The following thresholds may be cured in accordance with the criteria above. Examples of curable (correctable) technical deficiencies include but are not limited to inconsistencies in the funding request, failure to submit the proper certifications (*e.g.*, HUD–2880), and failure to submit a signature and/or date of signature on a certification.

(1) *Severe Distress of Targeted Project.* The targeted public housing project must be severely distressed. See Section I.C. of this NOFA for the definition of "severely distressed." If the targeted project is not severely distressed, your application will not be considered for funding. Applicants must use the severe distress certification form provided with this NOFA and place it in your attachments. The certification must be signed by an engineer or architect licensed by a state licensing board. The license does not need to have been issued in the same state as the severely distressed project. The engineer or architect must include his or her license number and state of registration on the certification. The engineer or architect may not be an employee of the housing authority or the city.

(2) *Site Control.* If you propose to develop off-site housing in ANY phase of your proposed revitalization plan, you *MUST* provide evidence in your application that you (not your developer) have site control of EVERY property. If you propose to develop off-site housing and you do not provide acceptable evidence of site control, your

ENTIRE application will be disqualified from further consideration for funding.

(1) Site control documentation may only be contingent upon:

(a) The receipt of the HOPE VI grant;

(b) Satisfactory compliance with the environmental review requirements of this NOFA; and

(c) The site and neighborhood standards in Section III.C. of this NOFA.

(d) Standard underwriting procedures.

(2) If you demonstrate site control through an option to purchase, the option must extend for at least 180 days after the application submission date.

(3) Evidence may include an option to purchase the property, a sales agreement, a land swap, or a deed. Evidence may NOT include a letter from the Mayor or other official, letters of support from members of the appropriate municipal entities, or a resolution evidencing the PHA's intent to exercise its power of eminent domain.

(4) You must include evidence/documentation of site control in your attachments.

(3) *Land Use.* Your application must include a certification from the appropriate local official (not the Executive Director) documenting that all required land use approvals for developed and undeveloped land have been secured for any off-site housing and other proposed uses, or that the request for such approval(s) is on the agenda for the next meeting of the appropriate authority in charge of land use. In the case of the latter, the certification must include the date of the meeting. You must include this certification in your attachments.

(4) *Selection of Developer.* You must assure that:

(a) You have initiated an RFQ by the application submission date for the competitive procurement of a developer for your first phase of construction, in accordance with 24 CFR 85.36 and 24 CFR 941.602(d) (as applicable). If you change developers after you are selected for funding, HUD reserves the right to rescind the grant; or

(b) You will act as your own developer for the proposed project. If you change your plan and procure an outside developer after you are selected for funding, HUD reserves the right to rescind the grant.

(c) You must demonstrate compliance with this threshold through completion and inclusion of the Assurances for HOPE VI Application document.

(5) *Relocation Plan Assurance.* (a) If you have not yet relocated residents, you must assure that

(i) A HOPE VI Relocation Plan was completed as of the application due date (to learn more about HOPE VI Relocation Plans, applicants may review Notice CPD 04–02, "Revision to *Notice CPD 02–8*, Guidance on the Application of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as Amended, in HOPE VI Projects";

(ii) That it conforms to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) requirements; and

(iii) That it implements HOPE VI relocation goals, as described in Section V.A. of this NOFA. This means your plan must describe how the HOPE VI Relocation Plan incorporates the HOPE VI relocation goals in Section V.A.

(b) If relocation was completed (i.e., the targeted public housing site is vacant) as of the application submission date, rather than certifying that the HOPE VI Relocation Plan has been completed, you must assure that the relocation was completed in accordance with URA and/or section 18 requirements (depending on which of these requirements applied to the demolition in question).

(c) You must demonstrate compliance with this threshold through completion and inclusion of the Assurances for HOPE VI Application document.

(6) *Resident Involvement in the Revitalization Program Assurance.* You must assure that you have involved affected public housing residents at the beginning and during the planning process for the revitalization program, prior to submission of your application. If you have not included affected residents in the planning process, your application will not be considered for funding. You MUST follow the resident involvement requirements listed in the Program Requirements section, Section III.C. of this NOFA. You must demonstrate compliance with this threshold through completion and inclusion of the Assurances for HOPE VI Application document.

(7) *Standard Forms and Certifications.* The last part of your application will be comprised of standard certifications common to many HUD programs. For the HOPE VI application, the required standard forms and certifications are:

a. Application for Federal Assistance (SF–424); this will be placed at the front of your application;

b. Acknowledgment of Application Receipt (HUD–2993), applicable ONLY if the applicant obtains a waiver from the electronic submission requirement; this will be placed at the front of your application;

c. Disclosure of Lobbying Activities (SF–LLL), if applicable;

d. Applicant/Recipient Disclosure/Update Report (HUD–2880);

e. Program Outcome Logic Model (HUD–96010);

f. America's Affordable Communities Initiative (HUD–27300), if applicable;

g. Funding Application (developed in accordance with PIH Notice 2005–15 or successor), including the Section 8 Tenant-Based Assistance Rental Certificate Program, Rental Voucher Program, form HUD–52515, if applicable; and

h. Facsimile Transmittal (HUD–96011).

(8) *HOPE VI Revitalization Applicant Certifications.* You must include in your application a certification from the Chairman of your Board of Commissioners to the requirements listed in the HOPE VI Revitalization Applicant Certifications. You must include this certification in your attachments.

b. *Non-Curable Thresholds.* The following thresholds may NOT be cured in accordance with the criteria referenced in III.C.2 above.

(1) *One application.* Each applicant may submit only one HOPE VI Revitalization application, in accordance with the criteria of this NOFA. If HUD receives multiple applications electronically, HUD will rate and rank the last application received and validated by Grants.gov by the application deadline. All other applications will not be considered eligible.

(1) HUD will not consider applications sent entirely by facsimile (See General Section).

(2) HUD will not accept for review or evaluation any videos submitted as part of the application or appendices.

(3) HUD will not consider any application that does not meet the timely submission requirements for electronic submission, in accordance with the criteria of the General Section.

(2) *Appropriateness of Proposal.* In accordance with section 24(e)(1) of the 1937 Act, each application must demonstrate the appropriateness of the proposal (revitalization plan) in the context of the local housing market relative to other alternatives. You must discuss other possible alternatives in the local housing market and explain why the housing envisioned in the application is more appropriate. This is a statutory requirement and an application threshold. If you do not demonstrate the appropriateness of the proposal (revitalization plan) in the context of the local housing market relative to other alternatives, your

application will not be considered for funding. Applicants must demonstrate compliance with this threshold in their narrative. Examples of alternative proposals may include:

(1) Rebuilding or rehabilitating an existing project or units at an off-site location that is in an isolated, non-residential, or otherwise inappropriate area;

(2) Proposing a range of incomes, housing types (rental, homeownership, market-rate, public housing, townhouse, detached house, etc.), or costs which cannot be supported by a market analysis; or

(3) Proposing to use the land in a manner that is contrary to the goals of your agency.

(3) *Contiguous, Single, and Scattered-Site Projects.* Except as provided in sections (1) and (2) below, each application must target one severely distressed public housing project. You must provide a city map illustrating the current targeted site(s), whether contiguous, single, or scattered-site projects.

(1) Contiguous Projects. Each application may request funds for more than one project if those projects are immediately (a) adjacent to one another or (b) within a quarter-mile of each other. If you include more than one project in your application, you must provide a map that clearly indicates that the projects are either adjacent or within a quarter-mile of each other. If HUD determines that they are not, your application will not be considered for funding.

(2) Scattered Site Projects. Your application may request funds to revitalize a scattered site public housing project. The sites targeted in an application proposing to revitalize scattered sites (regardless of whether the scattered sites are under multiple project numbers) must fall within an area with a one-mile radius. You may identify a larger site if you can show that all of the targeted scattered site units are located within the hard edges (e.g., major highways, railroad tracks, lakeshore, etc.) of a neighborhood. If you propose to revitalize a project that extends beyond a one-mile radius or is otherwise beyond the hard edges of a neighborhood, your application will not be considered for funding. If you propose to revitalize a scattered site public housing project, you must provide a map that clearly indicates that the projects fall within an area with a one-mile radius or, if larger, are located within the hard edges (e.g., major highways, railroad tracks, lakeshore, etc.) of a neighborhood.

(4) *Sites Previously Funded by HOPE VI Revitalization grants.* You may submit a Revitalization application that targets part of a project that is being, or has been, revitalized or replaced under a HOPE VI Revitalization grant awarded in previous years. You may not apply for new HOPE VI Revitalization funds for units in that project that were funded by the existing HOPE VI Revitalization grant or other HUD funds which are used to achieve significant revitalization of units (as opposed to regular upkeep), even if those funds are inadequate to pay the costs to revitalize or replace all of the targeted units. For example, if a project has 700 units and you were awarded a HOPE VI Revitalization grant or other HUD public housing funds to address 300 of those units, you may submit an FY–2006 HOPE VI Revitalization application to revitalize the remaining 400 units. You may not apply for funds to supplement work on the original 300 units. If you request funds to revitalize/replace the units not funded by the previous HOPE VI Revitalization grant, you must provide a listing of which units were funded by the previous grant and which units are being proposed for funding under the current grant application. You must demonstrate compliance with this threshold in your narrative (including the above listing as relevant). If you request funds to revitalize units or buildings that have been funded by an existing HOPE VI Revitalization grant, your application will not be considered for funding.

(5) *Separability.* In accordance with Section 24(j)(2)(A)(v) of the 1937 Act, if you propose to target only a portion of a project for revitalization, in your narrative you must: (1) Demonstrate to HUD's satisfaction that the severely distressed public housing is sufficiently separable from the remainder of the project, of which the building is a part, to make use of the building feasible for revitalization. Separations may include a road, berm, catch basin, or other recognized neighborhood distinction; and (2) Demonstrate that the site plan and building designs of the revitalized portion will provide defensible space for the occupants of the revitalized building(s) and that the properties that remain will not have a negative influence on the revitalized buildings(s), either physically or socially. You must demonstrate compliance with this threshold in your narrative. If you do not propose to target only a portion of a project for revitalization, you may indicate, "n/a" in your narrative.

(6) *Desegregation Orders.* You must be in full compliance with any desegregation or other court order, and voluntary compliance agreements related to Fair Housing (e.g., Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and section 504 of the Rehabilitation Act of 1973) that affects your public housing program and that is in effect on the date of application submission. If you are not in full compliance, your application will be ineligible for funding. HUD will evaluate your compliance with this threshold.

(7) *Dun and Bradstreet Data Universal Numbering System (DUNS) Number Requirement.* This threshold is hereby incorporated from the General Section. All applicants seeking funding directly from HUD must obtain a DUNS number and include the number in its Application for Federal Assistance submission. Failure to provide a DUNS number will prevent you from obtaining an award, regardless of whether it is a new award or renewal of an existing award. This policy is pursuant to the Office of Management and Budget (OMB) policy issued in the **Federal Register** on June 27, 2003 (68 FR 38402). HUD published its regulation implementing the DUNS number requirement on November 9, 2004 (69 FR 65024). A copy of the OMB **Federal Register** notice and HUD's regulation implementing the DUNS number can be found on HUD's Web site at *http://www.hud.gov/offices/adm/grants/duns.cfm*. Applicants cannot submit applications electronically without a DUNS number entry. Applicants must carefully enter the DUNS number on the application package, making sure it is identical to the DUNS number under which the Authorized Organization Representative is registered to submit an application.

(8) *Compliance with Fair Housing and Civil Rights Laws.* This threshold is hereby incorporated from the General Section. (a) With the exception of federally recognized Indian tribes and their instrumentalities, applicants must comply with all applicable fair housing and civil rights requirements in 24 CFR 5.105(a). If you are a federally recognized Indian tribe, you must comply with the nondiscrimination provisions enumerated at 24 CFR 1000.12, as applicable.

(b) If you, the applicant: (i) Have been charged with an ongoing systemic violation of the Fair Housing Act; or (ii) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (iii) Have received a letter of findings identifying ongoing systemic noncompliance under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of

1973, or section 109 of the Housing and Community Development Act of 1974, and the charge, lawsuit, or letter of findings referenced in subparagaph (i), (ii), or (iii) above has not been resolved to HUD's satisfaction before the application deadline, then you are ineligible and HUD will not rate and rank your application. HUD will determine if actions to resolve the charge, lawsuit, or letter of findings taken before the application deadline are sufficient to resolve the matter.

Examples of actions that would normally be considered sufficient to resolve the matter include, but are not limited to: (i) A voluntary compliance agreement signed by all parties in response to a letter of findings; (ii) A HUD-approved conciliation agreement signed by all parties; (iii) A consent order or consent decree; or (iv) An issuance of a judicial ruling or a HUD Administrative Law Judge's decision.

(9) *Delinquent Federal Debts.* This threshold is hereby incorporated from the General Section. Consistent with the purpose and intent of 31 U.S.C. 3720B and 28 U.S.C. 3201(e), HUD will not award federal funds to an applicant that has an outstanding delinquent federal debt unless (1) the delinquent account is paid in full, (2) a negotiated repayment schedule is established and the repayment schedule is not delinquent, or (3) other arrangements satisfactory to HUD are made prior to the deadline date.

(10) *Debarment and Suspension.* This threshold is hereby incorporated from the General Section. In accordance with 24 CFR part 24, no award of federal funds may be made to applicants that are presently debarred or suspended, or proposed to be debarred or suspended from doing business with the federal government.

3. Program Requirements.

a. *Demolition.*

(1) You may not carry out nor permit others to carry out the demolition of the targeted project or any portion of the project until HUD approves, in writing, one of the following ((a)–(c)), and until HUD has also (i) approved a Request for Release of Funds submitted in accordance with 24 CFR part 58, or (ii) if HUD performs an environmental review under 24 CFR part 50, approved the property for demolition, in writing, following its environmental review.

(a) Information regarding demolition in your HOPE VI Revitalization Application, along with Supplemental Submissions requested by HUD after the award of the grant. Section 24(g) of the 1937 Act provides that severely distressed public housing that is demolished pursuant to a revitalization plan is not required to be approved through a demolition application under Section 18 of the 1937 Act or regulations at 24 CFR part 970. If you do not receive a HOPE VI Revitalization grant, the information in your application will not be used to process a request for demolition;

(b) A demolition application under section 18 of the 1937 Act. While a section 18 approval is not required for HOPE VI related demolition, you will not have to wait for demolition approval through your supplemental submissions, as described in Section (a) above; or

(c) A Section 202 Mandatory Conversion Plan, in compliance with regulations at 24 CFR part 971 and other applicable HUD requirements, if the project is subject to Mandatory Conversion (Section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104–134, approved April 26, 1996). A Mandatory Conversion Plan concerns the removal of a public housing project from a PHA's inventory.

b. *Development*

(1) For any standard (non-mixed finance) public housing development activity (whether on-site reconstruction or off-site development), you must obtain HUD approval of a standard development proposal submitted under 24 CFR part 941 (or successor part).

(2) For mixed-finance housing development, you must obtain HUD approval of a mixed finance proposal, submitted under 24 CFR part 941, subpart F (or successor part and subpart).

(3) For new construction of community facilities primarily intended to facilitate the delivery of community and supportive services for residents of the project and residents of off-site replacement housing, you must comply with 24 CFR part 941 (or successor part). Information required for this activity must be included in either a standard or mixed finance development proposal, as applicable.

c. *Homeownership.*

(1) For homeownership replacement units developed under a revitalization plan, you must obtain HUD approval of a homeownership proposal. Your homeownership proposal must conform to either:

(a) Section 24(d)(1)(J) of the 1937 Act; or

(b) Section 32 of the 1937 Act (see 24 CFR part 906). Additional information on this option may be found at *http://www.hud.gov/offices/pih/centers/sac/homeownership.*

(2) The homeownership proposal must be consistent with the Section 8 Area Median Income (AMI) limitations (80 percent of AMI) and any other applicable provisions under the 1937 Act. (HUD publishes AMI tables for each family size in each locality annually. The income limit tables can be found at *http://www.huduser.org/datasets/il/il05/index.html.*)

d. *Acquisition.*

(1) Acquisition Proposal. Before you undertake any acquisition activities with HOPE VI or other public housing funds, you must obtain HUD approval of an acquisition proposal that meets the requirements of 24 CFR 941.303.

(2) Rental Units. For acquisition of rental units in existing or new apartment buildings, single family subdivisions, etc., with or without rehabilitation, for use as public housing replacement units, you must obtain HUD approval of a Development Proposal in accordance with 24 CFR 941.304 (conventional development) or 24 CFR 941.606 (mixed finance development).

(2) Land for Off-Site Replacement Units. For acquisition of land for public housing or homeownership development, you must comply with 24 CFR part 941 or successor part.

(3) Land for Economic Development-Related Activities.

(a) Acquisition of land for this purpose is eligible only if the economic development-related activities specifically promote the economic self-sufficiency of residents.

(b) Limited infrastructure and site improvements associated with developing retail, commercial, or office facilities, such as rough grading and bringing utilities to (but not on) the site are eligible activities with prior HUD approval.

e. *Match.* See Section III.B. and III.C.3, Program Requirements that Apply to Match and Leverage.

f. *Leverage.* See Section III.C.3, Program Requirements that Apply to Match and Leverage .

(1) You must actively enlist other stakeholders who are vested in and can provide significant financial assistance to your revitalization effort, both for physical development and CSS.

(2) HUD seeks to fund mixed-finance developments that use HOPE VI funds to leverage the maximum amount of other funds, particularly from private sources, that will result in revitalized public housing, other types of assisted and market-rate housing, and private retail and economic development.

(3) There are four types of Leverage: Development, CSS, Anticipatory, and Collateral. Development and CSS leverage are program requirements and will be described here. Anticipatory and

Collateral leverage are included only in the Leverage rating factor and are described in Section V. of this NOFA.

(4) See the Program Requirements that Apply to Match and Leverage in this section.

g. *Access to Services.* For both on-site and any off-site units, your overall Revitalization plan must result in increased access to municipal services, jobs, mentoring opportunities, transportation, and educational facilities; i.e., the physical plan and self-sufficiency strategy must be well-integrated and strong linkages must be established with the appropriate federal, state, and local agencies, nonprofit organizations, and the private sector to achieve such access.

h. *Building Standards.*

(1) Building Codes. All activities that include construction, rehabilitation, lead-based paint removal, and related activities must meet or exceed local building codes. You are encouraged to read the policy statement and final report of the HUD Review of Model Building Codes that identifies the variances between the design and construction requirements of the Fair Housing Act and several model building codes. That report can be found on the HUD Web site at *http://www.hud.gov/fhe/modelcodes.*

(2) Deconstruction. HUD encourages you to design programs that incorporate sustainable construction and demolition practices, such as the dismantling or "deconstruction" of public housing units, recycling of demolition debris, and reusing of salvage materials in new construction. "A Guide to Deconstruction" can be found at *http://www.hud.gov/deconstr.pdf.*

(3) Partnership for Advancing Technology in Housing (PATH). HUD encourages you to use PATH technologies in the construction and delivery of replacement housing. PATH is a voluntary initiative that seeks to accelerate the creation and widespread use of advanced technologies to radically improve the quality, durability, environmental performance, energy efficiency, and affordability of our Nation's housing.

(a) PATH's goal is to achieve dramatic improvement in the quality of American housing by the year 2010. PATH encourages leaders from the home building, product manufacturing, insurance and financial industries, and representatives from federal agencies dealing with housing issues to work together to spur housing design and construction innovations. PATH will provide technical support in design and cost analysis of advanced technologies to be incorporated in project construction.

(b) Applicants are encouraged to employ PATH technologies to exceed prevailing national building practices by:

(i) Reducing costs;

(ii) Improving durability;

(iii) Increasing energy efficiency;

(iv) Improving disaster resistance; and

(v) Reducing environmental impact.

(c) More information, the list of technologies, the latest PATH Newsletter, results from field demonstrations, and PATH projects can be found at *http://www.pathnet.org.*

(4) Energy Efficiency.

(a) New construction must comply with the latest HUD-adopted Model Energy Code issued by the Council of American Building Officials.

(b) HUD encourages you to set higher standards, where cost effective, for energy and water efficiency in HOPE VI new construction, which can achieve utility savings of 30 to 50 percent with minimal extra cost.

(c) You are encouraged to negotiate with your local utility company to obtain a lower rate. Utility rates and tax laws vary widely throughout the country. In some areas, PHAs are exempt or partially exempt from utility rate taxes. Some PHAs have paid unnecessarily high utility rates because they were billed at an incorrect rate classification.

(d) Local utility companies may be able to provide grant funds to assist in energy efficiency activities. States may also have programs that will assist in energy efficient building techniques.

(e) You must use new technologies that will conserve energy and decrease operating costs where cost effective. Examples of such technologies include:

(i) Geothermal heating and cooling;

(ii) Placement of buildings and size of eaves that take advantage of the directions of the sun throughout the year;

(iii) Photovoltaics (technologies that convert light into electrical power);

(iv) Extra insulation;

(v) Smart windows; and

(vi) Energy Star appliances.

(5) Universal Design. HUD encourages you to incorporate the principles of universal design in the construction or rehabilitation of housing, retail establishments, and community facilities, or when communicating with community residents at public meetings or events.

(6) Energy Star. HUD has adopted a wide-ranging energy action plan for improving energy efficiency in all program areas. As a first step in implementing the energy plan, HUD, the Environmental Protection Agency (EPA), and the Department of Energy (DoE) have signed a joint partnership to promote energy efficiency in HUD's affordable housing efforts and programs. The purpose of the Energy Star partnership is to promote energy efficiency of the affordable housing stock, but also to help protect the environment. Applicants constructing, rehabilitating, or maintaining housing or community facilities are encouraged to promote energy efficiency in design and operations. They are urged especially to purchase and use Energy Star-labeled products. Applicants providing housing assistance or counseling services are encouraged to promote Energy Star building by homebuyers and renters. Program activities can include developing Energy Star promotional and information materials, outreach to low- and moderate-income renters and buyers on the benefits and savings when using Energy Star products and appliances, and promoting the designation of community buildings and homes as Energy Star compliant. For further information about Energy Star, see *http://www.energystar.gov* or call 888–STAR–YES (888–782–7937), or for the hearing-impaired, call 888–588–9920 TTY. See also the energy efficiency requirements in Section III.C. above. See Section V.9.f. of this NOFA for the Energy Star Rating Factor.

(7) Lead-Based Paint. You must comply with lead-based paint evaluation and reduction requirements as provided for under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*). You also must comply with regulations at 24 CFR part 35, 24 CFR 965.701, and 24 CFR 968.110(k), as they may be amended or revised from time to time. Unless otherwise provided, you will be responsible for lead-based paint evaluation and reduction activities. The National Lead Information Hotline is 800–424–5323.

i. *Labor Standards.* The following standards must be implemented as appropriate in regard to HOPE VI grants:

(1) Labor Standards.

(a) Davis-Bacon wage rates apply to development of any public housing rental units or homeownership units developed with HOPE VI grant funds and to demolition followed by construction on the site. Davis-Bacon rates are "prevailing" minimum wage rates set by the Secretary of Labor that all laborers and mechanics employed in the development, including rehabilitation, of a public housing project must be paid, as set forth in a wage determination that the PHA must obtain prior to bidding on each

construction contract. The wage determination and provisions requiring payment of these wage rates must be included in the construction contract;

(b) HUD-determined wage rates apply to:

(i) Operation (including nonroutine maintenance) of revitalized housing, and

(ii) Demolition followed only by filling in the site and establishing a lawn.

(2) Exclusions. Under section 12(b) of the 1937 Act, wage rate requirements do not apply to individuals who:

(a) Perform services for which they volunteered;

(b) Do not receive compensation for those services or are paid expenses, reasonable benefits, or a nominal fee for the services; and

(c) Are not otherwise employed in the work involved (24 CFR part 70).

(3) If other Federal programs are used in connection with your HOPE VI activities, labor standards requirements apply to the extent required by the other Federal programs on portions of the project that are not subject to Davis-Bacon rates under the 1937 Act.

j. *Operation and Management Principles and Policies, and Management Agreement.* HOPE VI Revitalization grantees will be required to develop Management Agreements that describe their operation and management principles and policies for their public housing units. You and your procured property manager, if applicable, must comply (to the extent required) with the provisions of 24 CFR part 966 in planning for the implementation of the operation and management principles and policies described below.

(a) Rewarding work and promoting family stability by promoting positive incentives such as income disregards and ceiling rents;

(b) Instituting a system of local preferences adopted in response to local housing needs and priorities, e.g., preferences for victims of domestic violence, residency preferences, working families, and disaster victims. Note that local preferences for public housing must comply with Fair Housing requirements at 24 CFR 960.206;

(c) Encouraging self-sufficiency by including lease requirements that promote involvement in the resident association, performance of community service, participation in self-sufficiency activities, and transitioning from public housing;

(d) Implementing site-based waiting lists that follow project-based management principles for the redeveloped public housing. Note that site-based waiting lists for public housing must comply with Fair Housing requirements at 24 CFR 903.7(b)(2);

(e) Instituting strict applicant screening requirements such as credit checks, references, home visits, and criminal records checks;

(f) Strictly enforcing lease and eviction provisions;

(g) Improving the safety and security of residents through the implementation of defensible space principles and the installation of physical security systems such as surveillance equipment, control engineering systems, etc;

(h) Enhancing ongoing efforts to eliminate drugs and crime from neighborhoods through collaborative efforts with Federal, state, and local crime prevention programs and entities such as:

(i) Local law enforcement agencies;

(ii) Your local United States Attorney;

(iii) The Weed and Seed Program, if the targeted project is located in a designated Weed and Seed area. Operation Weed and Seed is a multi-agency strategy that "weeds out" violent crime, gang activity, drug use, and drug trafficking in targeted neighborhoods and then "seeds" the target area by restoring these neighborhoods through social and economic revitalization. Law enforcement activities constitute the "weed" portion of the program. Revitalization, which includes prevention, intervention, and treatment services as well as neighborhood restoration, constitutes the "seed". For more information, see the Community and Safety and Conservation Web site at *http://www.hud.gov/offices/pih/divisions/cscd/.*

k. *Non-Fungibility for Moving To Work (MTW) PHAs.* Funds awarded under this NOFA are not fungible under MTW agreements and must be accounted for separately, in accordance with the HOPE VI Revitalization grant Agreement, the requirements in OMB Circulars A–87, "Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments," A–133, "Audits of States, Local Governments, and Non-Profit Organizations" and the regulations 24 CFR part 85, "Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments,", and GAAP.

l. *Resident and Community Involvement.*

(1) General. You are required to involve the affected public housing residents, state and local governments, private service providers, financing agencies, and developers in the planning process, proposed implementation, and management of your revitalization plan. This involvement must be continuous from the beginning of the planning process through the implementation and management of the grant, if awarded.

(2) Resident Training Session. You must conduct at least one training session for residents of the severely distressed project on the HOPE VI development process. HUD does not prescribe the content of this meeting.

(3) Public Meetings.

(a) You must conduct at least three public meetings with residents and the broader community, in order to involve them in a meaningful way in the process of developing the revitalization plan and preparing the application. One of these meetings must have taken place at the beginning of the planning process.

(b) These three public meetings must take place on *different days* from each other and from the resident training session.

(c) During these three meetings, you must address the issues listed below (i.e., all issues need not be addressed at each meeting):

(i) The HOPE VI planning and implementation process;

(ii) The proposed physical plan, including site and unit design, and whether the unit design is in compliance with Fair Housing Act and Uniform Federal Accessibility Standards (UFAS) standards;

(iii) The extent of proposed demolition;

(iv) Planned community and supportive service activities;

(v) Other proposed revitalization activities;

(vi) Relocation issues, including relocation planning, mobility counseling, and maintaining the HOPE VI community planning process during the demolition and reconstruction phases where temporary relocation, i.e., relocation for a reasonable period (less than one year), is involved;

(vii) Reoccupancy plans and policies, including site-based waiting lists; and

(viii) Section 3 and employment opportunities to be created as a result of redevelopment activities.

(4) *Accessibility.* All training sessions and meetings must be held in facilities that are accessible to persons with disabilities, provide services such as day care, transportation, and sign language interpreters as appropriate, and as practical and applicable, be conducted in English and the language(s) most appropriate for the community.

(5) Allowable Time Period for Training and Meetings.

(a) At least one public meeting, which included representation from both the involved public housing residents and the community, must have been held at the beginning of the revitalization planplanning period;

(b) At least one training session must have been held after the publication date of this NOFA in the **Federal Register**; and

(c) The minimum of two more public meetings must have been held after the publication date of this NOFA in the **Federal Register**.

(d) The above minimum number of trainings and meetings are required to meet the Resident Involvement threshold in Section III.C.2 of this NOFA. Additional meetings and trainings will be counted toward demonstration of continual inclusion of the residents and community in the rating factors.

m. CSS Program Requirements.

(1) Term Period. CSS programs and services must last for the life of the grant and must be carefully planned so that they will be sustainable after the HOPE VI grant period ends.

(2) Allowed Funding Mechanisms:

(a) Maximum CSS grant amount. Consistent with sections 24(d)(1)(L) and 24(j)(3) of the 1937 Act, you may use up to 15 percent of the total HOPE VI grant to pay the costs of CSS activities. See Section III.B.1. of this NOFA for CSS grant matching requirements. You may spend additional sums on CSS activities using donations, other HUD funds made available for that purpose, other Federal, state, local, PHA, or private-sector donations (leverage).

(b) CSS Endowment Trust. Consistent with section 24(d)(2) of the 1937 Act, you may deposit up to 15 percent of your HOPE VI grant (the maximum amount of the award allowable for CSS activities) into an endowment trust to provide CSS activities. In order to establish an endowment trust, you must first execute with HUD a HOPE VI Endowment Trust Addendum to the grant agreement. When reviewing your request to set up an endowment trust, HUD will take into consideration your ability to pay for current CSS activities with HOPE VI or other funds and the projected long-term sustainability of the endowment trust to carry out those activities.

(3) CSS Team and Partners.

(a) The term "CSS Team" refers to PHA staff members and any consultants who will have the responsibility to design, implement, and manage your CSS program.

(b) The term "CSS Partners" refers to the agencies and organizations that you will work with to provide supportive services for residents. A partner could be a local service organization such as a Boys or Girls Club that donates its building and staff to the program, or an agency such as the local Temporary Assistance for Needy Families (TANF) agency that works with you to ensure that their services are coordinated and comprehensive.

(c) Partner Agreements. There are several relationships that you may have with your partners:

(i) Subgrant Agreements. You may enter into subgrant agreements with nonprofit organizations or state or local governments for the performance of CSS activities in accordance with your approved CSS work plan.

(ii) Contracts. You may enter into a contract with for-profit businesses, nonprofit organizations, or state or local governments for the performance of CSS activities in accordance with your approved CSS work plan.

(iii) Memoranda of Understanding (MOU). You may enter into an MOU with any entity that furnishes CSS services for the performance of activities in accordance with your approved CSS work plan. However, if money is to change hands, the MOU must be formalized with a contract or subgrant.

(iv) Informal Relationships. You may accept assistance from partners without prior documentation of your partner relationship. However, informal relationships do not lend themselves to planning and should definitely be formalized and memorialized with a binding contract or subgrant if money changes hands.

(4) Tracking and Case Management. If selected, the grantee is responsible for tracking and providing CSS programs and services to residents currently living on the targeted public housing site and residents already relocated from the site. It is imperative that case management services begin immediately upon award so that residents who will be relocated have time to participate in and benefit from CSS activities before leaving the site, and that residents who have already been relocated are able to participate in and benefit from CSS activities.

(5) CSS Strategy and Objectives Requirements

(a) Transition to Housing Self-Sufficiency. One of HUD's major priorities is to assist public housing residents in their efforts to become financially self-sufficient and less dependent upon direct government housing assistance. Your CSS program must include a well-defined, measurable endeavor that will enable public housing residents to transition to other affordable housing programs and to market housing. Family Self-Sufficiency (FSS) and CSS activities that are designed to increase education and income levels are considered a part of this endeavor, as is the establishment of reasonable limits on the length of time any household that is not headed by an elderly or disabled person can reside in a public housing unit within a HOPE VI Revitalization Development.

(b) Neighborhood Networks. All FY2006 Revitalization grantees will be required to establish Neighborhood Networks Centers (NNC) and to promote the inclusion of infrastructure that permits unit-based access to broadband internet connectivity in all new and replacement public housing units. This program provides residents with on-site access to computer and training resources that create knowledge and experience with computers and the Internet as tools to increase access to CSS, job training, and the job market. Grantees may use HOPE VI funds to establish NNCs and to provide unit-based Internet connectivity. More information on the requirements of the NNC program is available on the Neighborhood Networks Web site at *http://www.hud.gov/nnw/nnwindex.html*. There will not be a separate FY–2006 funded NOFA for HOPE VI Neighborhood Networks programs.

(c) Quantifiable Goals. The objectives of your CSS program must be results-oriented, with quantifiable goals and outcomes that can be used to measure progress and make changes in activities as necessary.

(d) Appropriate Scale and Type.

(i) CSS activities must be of an appropriate scale, type, and variety to meet the needs of all residents (including adults, seniors, youth ages 16 to 21, and children) of the severely distressed project, including residents remaining on-site, residents who will relocate permanently to other PHA units or Housing Choice Voucher-assisted housing, residents who will relocate temporarily during the construction phase, and new residents of the revitalized units.

(ii) Non-public housing residents may also participate in CSS activities, as long as the primary participants in the activities are residents as described in Section (i) above.

(e) Coordination.

(i) CSS activities must be consistent with state and local welfare reform requirements and goals.

(ii) Your CSS activities must be coordinated with the efforts of other service providers in your locality, including nonprofit organizations,

educational institutions, and state and local programs.

(iii) CSS activities must be well-integrated with the physical development process, both in terms of timing and the provision of facilities to house on-site service and educational activities.

(f) Your CSS program must provide appropriate community and supportive services to residents prior to any relocation.

n. *CSS Partnerships and Resources.* The following are the kinds of organizations and agencies that can provide you with resources necessary to carry out and sustain your CSS activities.

(1) Local Boards of Education, public libraries, local community colleges, institutions of higher learning, nonprofit or for-profit educational institutions, and public/private mentoring programs that will lead to new or improved educational facilities and improved educational achievement of young people in the revitalized development, from birth through higher education.

(2) TANF agencies/welfare departments for TANF and non-TANF in-kind services, and non-TANF cash donations, e. g., donation of TANF agency staff.

(3) Job development organizations that link private sector or nonprofit employers with low-income prospective employees.

(4) Workforce Development Agencies.

(5) Organizations that provide residents with job readiness and retention training and support.

(6) Economic development agencies such as the Small Business Administration, which provide entrepreneurial training and small business development centers.

(7) National corporations, local businesses, and other large institutions such as hospitals that can commit to provide entry-level jobs. Employers may agree to train residents or commit to hire residents after they complete jobs preparedness or training programs that are provided by you, other partners, or the employer itself.

(8) Programs that integrate employment training, education, and counseling, and where creative partnerships with local boards of education, state charter schools, TANF agencies, foundations, and private funding sources have been or could be established, such as:

(a) Youthbuild. HUD's Youthbuild program provides grants to organizations that provide education and job training to young adults ages 16 to 24 who have dropped out of school. Participants spend half their time rehabilitating low-income housing and the other half in educational programs. Youthbuild provides a vehicle for achieving compliance with the objective of section 3, as described in Section III.C. of the General Section. More information on HUD's Youthbuild program can be found at *http://www.hud.gov/progdesc/youthb.cfm.*

(b) Step-Up, an apprenticeship-based employment and training program that provides career potential for low-income persons by enabling them to work on construction projects that have certain prevailing wage requirements. Step-Up encourages work by offering apprenticeships through which low-income participants earn wages while learning skills on the job, supplemented by classroom-related instruction. Step-Up can also contribute to a PHA's effort to meet the requirements of section 3. More information can be found at *http://www.hud.gov/progdesc/stepup.cfm.*

(9) Sources of capital such as foundations, banks, credit unions, and charitable, fraternal, and business organizations.

(10) Nonprofit organizations such as the Girl Scouts and the Urban League, each of which has a Memorandum of Agreement (MOA) with HUD. Copies of these MOAs can be found on the Community and Supportive Services page of the HOPE VI Web site at *http://www.hud.gov/hopevi.*

(11) Civil rights and fair housing organizations.

(12) Local area agencies on aging.

(13) Local agencies and organizations serving persons with disabilities.

(14) Nonprofit organizations such as grassroots faith-based and other community-based organizations. HUD encourages you to partner or subgrant with nonprofit organizations, including grassroots faith-based and other community-based organizations, to provide CSS activities. Such organizations have a strong history of providing vital community services such as job training, childcare, relocation supportive services, youth programs, technology training, transportation, substance abuse programs, crime prevention, health services, assistance to the homeless and homelessness prevention, counseling individuals and families on fair housing rights, providing elderly housing opportunities, and homeownership and rental housing opportunities in the neighborhood of their choice. HUD believes that grassroots organizations, e.g., civic organizations, faith-communities, national and local self-help homeownership organizations, faith-based, and other community-based organizations, should be more effectively used, and has placed a high priority on expanding opportunities for grassroots organizations to participate in developing solutions for their own neighborhoods. See HUD's Center for Faith-Based and Community Initiatives Web site at *http://www.hud.gov/offices/fbci/index.cfm.*

(a) HUD will consider an organization a "grassroots" organization if it is headquartered in the local community to which it provides services; and

(i) Has an annual social services budget of no more than $300,000. This cap includes only the portion of the organization's budget allocated to providing social services. It does not include other portions of the budget such as salaries and expenses; or

(ii) Has six or fewer full-time equivalent employees.

(b) Local affiliates of national organizations are not considered "grassroots."

o. *Fair Housing and Equal Opportunity Requirements.*

(1) Site and Neighborhood Standards for Replacement Housing. You must comply with the Fair Housing Act and Title VI of the Civil Rights Act of 1964, and regulations thereunder. In determining the location of any replacement housing, you must comply with either the site and neighborhood standards regulations at 24 CFR 941.202 (b)–(d) or with the standards outlined in this NOFA. Because the objective of the HOPE VI program is to alleviate distressed conditions at the development and in the surrounding neighborhood, replacement housing under HOPE VI that is located on the site of the existing development or in its surrounding neighborhood will not require independent approval by HUD under Site and Neighborhood Standards. The term "surrounding neighborhood" means the neighborhood within a three-mile radius of the site of the existing development.

(a) HOPE VI Goals Related to Site and Neighborhood Standards. You are expected to ensure that your revitalization plan will expand assisted housing opportunities outside low-income areas and areas of minority concentration and will accomplish substantial revitalization in the project and its surrounding neighborhood. You are also expected to ensure that eligible households of all races and ethnic groups will have equal and meaningful access to the housing.

(b) Objectives in Selecting HUD-Assisted Sites. The fundamental goal of HUD's fair housing policy is to make full and free housing choice a reality. Housing choice requires that all

households may choose the type of neighborhood where they wish to reside, that minority neighborhoods are no longer deprived of essential public and private resources, and that stable, racially-mixed neighborhoods are available as a meaningful choice for all. To make full and free housing choice a reality, sites for HUD-assisted housing investment should be selected so as to advance two complementary goals:

(i) Expand assisted housing opportunities in non-minority neighborhoods, opening up choices throughout the metropolitan area for all assisted households; and

(ii) Reinvest in minority neighborhoods, improving the quality and affordability of housing there to represent a real choice for assisted households.

(c) Nondiscrimination and Equal Opportunity Requirements. You must comply with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and implementing regulations in determining the location of any replacement housing.

(d) Grantee Election of Requirements. You may, at your election, separately with regard to each site you propose, comply with the development regulations regarding Site and Neighborhood Standards (24 CFR 941.202 (b)–(d)), or with the Site and Neighborhood Standards contained in this Section.

(e) Replacement housing located on site or in the surrounding neighborhood. Replacement housing under HOPE VI that is located on the site of the existing project or in its surrounding neighborhood will not require independent approval under Site and Neighborhood Standards, since HUD will consider the scope and impact of the proposed revitalization to alleviate severely distressed conditions at the public housing project and its surrounding neighborhood in assessing the application to be funded under this NOFA.

(f) Off-Site Replacement Housing Located Outside of the Surrounding Neighborhood. Unless you demonstrate that there are already significant opportunities in the metropolitan area for assisted households to choose non-minority neighborhoods (or these opportunities are under development), HOPE VI replacement housing not covered by Section (e) above may not be located in an area of minority concentration (as defined in paragraph (g) below) without the prior approval of HUD. Such approval may be granted if you demonstrate to the satisfaction of HUD that:

(i) You have made determined and good faith efforts, and found it impossible with the resources available, to acquire an appropriate site(s) in an area not of minority concentration; or

(ii) The replacement housing, taking into consideration both the CSS activities or other revitalizing activities included in the revitalization plan, and any other revitalization activities in operation or firmly planned, will contribute to the stabilization or improvement of the neighborhood in which it is located, by addressing any serious deficiencies in services, safety, economic opportunity, educational opportunity, and housing stock.

(g) Area of Minority Concentration. The term "area of minority concentration" is any neighborhood in which:

(i) The percentage of households in a particular racial or ethnic minority group is at least 20 percentage points higher than the percentage of that minority group for the housing market area; i.e., the Metropolitan Statistical Area (MSA) in which the proposed housing is to be located;

(ii) The neighborhood's total percentage of minority persons is at least 20 percentage points higher than the total percentage of all minorities for the MSA as a whole; or

(iii) In the case of a metropolitan area, the neighborhood's total percentage of minority persons exceeds 50 percent of its population.

(2) Housing and Services for Persons with Disabilities.

(a) Accessibility Requirements. HOPE VI developments are subject to the accessibility requirements contained in several Federal laws. All applicable laws must be read together and followed. PIH Notice 2003–31, available at *http://www.hud.gov/offices/pih/publications/notices/*, and subsequent updates, provide an overview of all pertinent laws and implementing regulations pertaining to HOPE VI. All HOPE VI multifamily housing projects, whether they involve new construction or rehabilitation, are subject to the section 504 accessibility requirements described in 24 CFR part 8. See in particular, 24 CFR 8.20–8.24. In addition, under the Fair Housing Act, all new construction of covered multifamily buildings must contain certain features of accessible and adaptable design. Units covered are all those in elevator buildings with four or more units and all ground floor units in buildings without elevators. The relevant accessibility requirements are provided in HUD's FHEO Web site at *http://www.hud.gov/groups/fairhousing.cfm*.

(b) Specific Fair Housing requirements are:

(i) The Fair Housing Act (42 U.S.C. 3601–19) and regulations at 24 CFR part 100.

(ii) The prohibitions against discrimination on the basis of disability, including requirements that multifamily housing projects comply with the Uniform Federal Accessibility Standards, and that you make reasonable accommodations to individuals with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations at 24 CFR part 8.

(iii) Title II of the Americans with Disabilities Act (42 U.S.C 12101 *et seq.*) and its implementing regulations at 28 CFR part 35.

(iv) The Architectural Barriers Act of 1968 (42 U.S.C. 4151) and the regulations at 24 CFR part 40.

(c) Accessible Technology. The Rehabilitation Act Amendments of 1998 apply to all electronic information technology (EIT) used by a grantee for transmitting, receiving, using, or storing information to carry out the responsibilities of any Federal grant awarded. It includes, but is not limited to, computers (hardware, software, word processing, e-mail, and Web pages), facsimile machines, copiers, and telephones. When developing, procuring, maintaining, or using EIT, grantees must ensure that the EIT allows:

(i) Employees with disabilities to have access to and use information and data that are comparable to the access and use of data by employees who do not have disabilities; and

(ii) Members of the public with disabilities seeking information or service from a grantee must have access to and use of information and data that are comparable to the access and use of data by members of the public who do not have disabilities. If these standards impose an undue burden on a grantee, they may provide an alternative means to allow the individual to use the information and data. No grantee will be required to provide information services to a person with disabilities at any location other than the location at which the information services are generally provided.

p. *Relocation Requirements*

(1) Requirements.

(a) You must carry out relocation activities in compliance with a relocation plan that conforms to the following statutory and regulatory requirements, as applicable:

(i) Relocation or temporary relocation carried out as a result of rehabilitation under an approved revitalization plan is

subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), the URA regulations at 49 CFR part 24, and regulations at 24 CFR 968.108 or successor part.

(ii) Relocation carried out as a result of acquisition under an approved revitalization plan is subject to the URA and regulations at 24 CFR 941.207 or successor part.

(iii) Relocation carried out as a result of disposition under an approved revitalization plan is subject to section 18 of the 1937 Act, as amended.

(iv) Relocation carried out as a result of demolition under an approved revitalization plan is subject to the URA regulations at 24 CFR part 24.

(b) You must provide suitable, accessible, decent, safe, and sanitary housing for each family required to relocate as a result of revitalization activities under your revitalization plan. Any person (including individuals, partnerships, corporations, or associations) who moves from real property or moves personal property from real property directly (1) because of a written notice to acquire real property in whole or in part, or (2) because of the acquisition of the real property, in whole or in part, for a HUD-assisted activity, is covered by Federal relocation statute and regulations. Specifically, this type of move is covered by the acquisition policies and procedures and the relocation requirements of the URA, and the implementing government-wide regulation at 49 CFR part 24, and Notice CPD 04–02 (and any successor notice), "Revision to *Notice CPD 02–8,* Guidance on the Application of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as Amended, in HOPE VI Projects". The relocation requirements of the URA and the government-wide regulations, as well as CPD Notice 02–08, cover any person who moves permanently from real property or moves personal property from real property directly because of acquisition, rehabilitation, or demolition for an activity undertaken with HUD assistance.

(2) Relocation Plan. Each applicant must complete a HOPE VI Relocation plan in accordance with the requirements stated in Section IV.B. of this NOFA.

(a) The HOPE VI Relocation plan is intended to ensure that PHAs adhere to the URA and that all residents who have been or will be temporarily or permanently relocated from the site are provided with CSS activities such as mobility counseling and direct assistance in locating housing. Your HOPE VI Relocation plan must serve to minimize permanent displacement of current residents of the public housing site who wish to remain in or return to the revitalized community. Your HOPE VI Relocation plan must also furnish alternative permanent housing for current residents of the public housing site who do not wish to remain in or return to the revitalized community. Your CSS program must provide for the delivery of community and supportive services to residents prior to any relocation, temporary or permanent.

(b) You are encouraged to involve HUD-approved housing counseling agencies, including faith-based, nonprofit and other organizations, and individuals in the community to which relocatees choose to move, in order to ease the transition and minimize the impact on the neighborhood. HUD will view favorably innovative programs such as community mentors, support groups, and the like.

(c) If applicable, you are encouraged to work with surrounding jurisdictions to assure a smooth transition if residents choose to move from your jurisdiction to the surrounding area.

q. *Well-Functioning Communities.* See Section V.A. of this NOFA for requirements that the unit mix of on-site, off-site and homeownership units create a well-functioning community.

r. *Design.* HUD is seeking excellence in design. You must carefully select your architects and planners, and enlist local affiliates of national architectural and planning organizations such as the American Institute of Architects, the American Society of Landscape Architects, the American Planning Association, the Congress for the New Urbanism, and the department of architecture at a local college or university to assist you in assessing qualifications of design professionals or participating on a selection panel that results in the procurement of excellent design services. You should select a design team that is committed to a process in which residents, including young people and seniors, the broader community, and other stakeholders participate in designing the new community.

Your proposed site plan, new units, and other buildings must be designed to be compatible with and enrich the surrounding neighborhood. Local architecture and design elements and amenities should be incorporated into the new or rehabilitated homes so that the revitalized sites and structures will blend into the broader community and appeal to the market segments for which they are intended. Housing, community facilities, and economic development space must be well integrated. You must select members of your team who have the ability to meet these requirements.

s. *Internet Access.* You must have access to the Internet and provide HUD with email addresses of key staff and contact people.

t. *Non-Public Housing Funding for Non-Public Housing or Replacement Units.* Public housing funds may only be used to develop Replacement Housing. You may not use public housing funds, which include HOPE VI funds, to develop: retail or commercial space; economic development space; or housing units that are not Replacement Housing, as defined in this NOFA

u. *Market-Rate Housing and Economic Development.* If you include market-rate housing, economic development, or retail structures in your revitalization plan, such proposals must be supported by a market assessment from an independent third party, credentialed market research firm, or professional. This assessment should describe its assessment of the demand and associated pricing structure for the proposed residential units, economic development or retail structures, based on the market and economic conditions of the project area.

v. *Eminent Domain and Public Use.* Section 726 of the FY 2006 HUD Appropriations Act, under which this NOFA is funded, prohibits any use of these funds "to support any Federal, State, or local projects that seek to use the power of eminent domain, unless eminent domain is used only for a public use." The term "public use" is expressly stated *not* "to include economic development that primarily benefits private entities." Accordingly, applications under this NOFA may not propose mixed-use projects in which housing is complemented appreciably with commercial facilities (i.e., economic development) if eminent domain is used for the site.

w. *Cost Control Standards.* (1) Your hard development costs must be realistically developed through the use of technically competent methodologies, including cost estimating services, and should be comparable to industry standards for the kind of construction to be performed in the proposed geographic area.

(2) Your cost estimates must represent an economically viable preliminary plan for designing, planning, and carrying out your proposed activities in accordance with local costs of labor, materials, and services.

(3) Your projected soft costs must be reasonable and comparable to industry standards. Upon award, soft costs will be subject to HUD's "Safe Harbor" cost

control standards. For rental units, these safe harbors provide specific limitations on such costs as developer's fees (between 9 and 12 percent), PHA administration/consultant cost (no more than 3 to 6 percent of the total project budget), contractor's fee (6 percent), overhead (2 percent), and general conditions (6 percent). HUD's Cost Control and Safe Harbor Standards can be found on HUD's HOPE VI website.

x. *Timeliness of Development Activity.* Grantees must proceed within a reasonable timeframe, as indicated below. In determining reasonableness of such timeframe, HUD will take into consideration those delays caused by factors beyond your control. These timeframes must be reflected in the form of a program schedule, in accordance with the timeframes below:

1. Grantees must submit Supplemental Submissions within 90 days from the date of HUD's written request.

2. Grantees must submit CSS work plans within 90 days from the execution of the grant agreement.

3. Grantees must start construction within 12 months from the date of HUD's approval of the Supplemental Submissions as requested by HUD after grant award. This time period may not exceed 18 months from the date the grant agreement is executed.

4. Grantees must submit the development proposal (i.e., whether mixed-finance development, homeownership development, etc.) for the first phase of construction within 12 months of grant award. The program schedule must indicate the date on which the development proposal for each phase of the revitalization plan will be submitted to HUD.

5. The closing of the first phase must take place within 15 months of grant award. For this purpose, "closing" means all financial and legal arrangements have been executed and actual activities (construction, etc.) are ready to commence.

6. Grantees must complete construction within 48 months from the date of HUD's approval of your Supplemental Submissions. This time period for completion may not exceed 54 months from the date the grant agreement is executed.

7. All other required components of the revitalization plan and any other submissions not mentioned above must be submitted in accordance with the Quarterly Report Administrative and Compliance Checkpoints Report, as approved by HUD.

z. *HOPE VI Endowment Trust Addendum to the Grant Agreement.* This document must be executed between the grantee and HUD in order for the grantee to use CSS funds in accordance with this NOFA.

aa. *Revitalization Plan.* After HUD conducts a post-award review of your application and makes a visit to the site, you will be required to submit components of your revitalization plan to HUD, as provided in the HOPE VI Revitalization grant Agreement. These components include, but are not limited to:

a. Supplemental Submissions, including a HOPE VI Program Budget;

b. A Community and Supportive Services work plan, in accordance with guidance provided by HUD;

c. A standard or mixed-finance development proposal, as applicable;

d. A demolition and disposition application, as applicable; and

e. A homeownership proposal, as applicable.

bb. *Pre-Award Accounting System Surveys.* HUD may arrange for a pre-award survey of the applicant's financial management system in cases where the recommended applicant has no prior federal support, HUD's program officials have reason to question whether the applicant's financial management system meets Federal financial management standards, or the applicant is considered a high risk based upon past performance or financial management findings. HUD will not disburse funds to any applicant that does not have a financial management system that meets federal standards.

cc. *Name Check Review.* Applicants are subject to a name check review process. Name checks are intended to reveal matters that significantly reflect on the applicant's management and financial integrity, or if any key individual has been convicted or is presently facing criminal charges. If the name check reveals significant adverse findings that reflect on the business integrity or responsibility of the applicant or any key individual, HUD reserves the right to (1) deny funding or consider suspension or termination of an award immediately for cause, (2) require the removal of any key individual from association with management or implementation of the award, and (3) make appropriate provisions or revisions with respect to the method of payment or financial reporting requirements.

dd. *False Statements.* A false statement in an application is grounds for denial or termination of an award and possible punishment as provided in 18 U.S.C. 1001.

ee. *Prohibition Against Lobbying Activities.* Applicants are subject to the provisions of section 319 of Public Law 101–121 (approved October 23, 1989) (31 U.S.C. 1352) (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal government in connection with a specific contract, grant, or loan. In addition, applicants must disclose, using Standard Form LLL (SF–LLL), "Disclosure of Lobbying Activities," any funds, other than federally appropriated funds, that will be or have been used to influence federal employees, members of Congress, or congressional staff regarding specific grants or contracts. Federally recognized Indian tribes and tribally designated housing entities (TDHEs) established by federally recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but state-recognized Indian tribes and TDHEs established only under state law must comply with this requirement. Applicants must submit the SF–LLL if they have used or intend to use federal funds for lobbying activities.

ff. *Conducting Business in Accordance with Core Values and Ethical Standards.* Applicants subject to 24 CFR parts 84 and 85 (most nonprofit organizations and state, local, and tribal governments or government agencies or instrumentalities that receive Federal awards of financial assistance) are required to develop and maintain a written code of conduct (see 24 CFR 84.42 and 85.36(b)(3)). Consistent with regulations governing specific programs, your code of conduct must prohibit real and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees, or agents for their personal benefit in excess of minimal value; and outline administrative and disciplinary actions available to remedy violations of such standards. Before entering into an agreement with HUD, applicants awarded assistance under a HUD program NOFA announced in FY2006 will be required to submit a copy of its code of conduct and describe the methods it will use to ensure that all officers, employees, and agents of its organization are aware of its code of conduct. Applicants are prohibited from receiving an award of funds from HUD if they fail to meet this requirement for a code of conduct. Applicants that submitted an application during FY2004 or FY2005 and included a copy of their code of conduct will not be required to submit another copy if the applicant is

listed on HUD's Web site at *http://www.hud.gov/offices/adm/grants/codeofconduct/cconduct.cfm* and if the information has not been revised. Applicants not listed on the HUD Web site must submit a copy of their code of conduct with their FY2006 application for assistance. Applicants must also include a copy of their code of conduct if the information listed on HUD's Web site has changed (e.g., the person who submitted the previous application is no longer your authorized organization representative, the organization has changed its legal name or merged with another organization, or the address of the organization has changed, etc.). Applicants that need to may submit their code of conduct to HUD via facsimile using the form HUD–96011, Facsimile Transmittal. When using the facsimile transmittal form, please type the requested information. Use HUD–96011 as the cover page to the submission and include in the top line of the form under "Name of Document Being Requested," "Code of Conduct for (insert organization name, city, and state)," and fax the information to HUD's toll-free number at (800) HUD–1010. If you cannot access the 800 number or have problems, you may use (215) 825–8798 (this is not a toll-free number). When received HUD will update the information on its Code of Conduct website.

gg. *Providing Full and Equal Access to Grassroots Faith-Based and Other Community-Based Organizations in HUD Program Implementation.*

(1) HUD encourages nonprofit organizations, including grassroots faith-based and other community-based organizations, to participate in the vast array of programs for which funding is available through HUD's programs. HUD also encourages states, units of local government, universities, colleges, and other organizations to partner with grassroots organizations (e.g., civic organizations, faith communities, and grassroots faith-based and other community-based organizations) that have not been effectively utilized. These grassroots organizations have a strong history of providing vital community services, such as assisting the homeless and preventing homelessness, counseling individuals and families on fair housing rights, providing elderly housing opportunities, developing first-time homeownership programs, increasing homeownership and rental housing opportunities in neighborhoods of choice, developing affordable and accessible housing in neighborhoods across the country, creating economic development programs, and supporting the residents of public housing facilities. HUD seeks to make its programs more effective, efficient, and accessible by expanding opportunities for grassroots organizations to participate in developing solutions for their own neighborhoods. Additionally, HUD encourages applicants to include these grassroots faith-based and other community-based organizations in their work plans. Applicants, their partners, and participants must review the individual FY2006 HUD program announcements to determine whether they are eligible to apply for funding directly or whether they must establish a working relationship with an eligible applicant in order to participate in a HUD funding opportunity. Grassroots faith-based and other community-based organizations, and applicants that currently or propose to partner, fund, subgrant, or subcontract with grassroots organizations (including grassroots faith-based or other community-based nonprofit organizations eligible under applicable program regulations) in conducting their work programs will receive higher rating points as specified in the individual FY2006 HUD program announcements.

(2) Definitions of Grassroots Organizations.

(a) HUD will consider an organization a "grassroots organization" if the organization is headquartered in the local community in which it provides services; and

(i) Has a social services budget of $300,000 or less, or

(ii) Has six or fewer full-time equivalent employees.

(b) Local affiliates of national organizations are not considered "grassroots." Local affiliates of national organizations are encouraged, however, to partner with grassroots organizations, but must demonstrate that they are currently working with a grassroots organization e.g., having a grassroots faith-based or other community-based organization provide volunteers).

(c) The cap provided in paragraph (2)(a)(i) above includes only that portion of an organization's budget allocated to providing social services. It does not include other portions of the budget, such as salaries and expenses, not directly expended in the provision of social services.

hh. *Number of Units.* The number of units that you plan to develop should reflect your need for replacement units, the need for other affordable units and the market demand for market units, along with financial feasibility. The number of planned new construction public housing units may not result in a net increase from the number of public housing units owned, assisted or operated by the public housing authority on October 1, 1999, including any public housing units demolished as part of any revitalization effort. The total number of units to be developed may be less than, or more than, the original number of public housing units in the targeted public housing project. HUD will review requests to revitalize projects with small numbers of units on an equal basis with those with large numbers of units.

ii. *Environmental Requirements.*

a. HUD Approval. HUD notification that you have been selected to receive a HOPE VI grant constitutes only preliminary approval. Grant funds may not be released under this NOFA (except for activities that are excluded from environmental review under 24 CFR part 58 or 50) until the responsible entity, as defined in 24 CFR 58.2(a)(7), completes an environmental review and you submit and obtain HUD approval of a request for release of funds and the responsible entity's environmental certification in accordance with 24 CFR part 58 (or HUD has completed an environmental review under 24 CFR part 50 where HUD has determined to do the environmental review).

b. Responsibility. If you are selected for funding and an environmental review has not been conducted on the targeted site, the responsible entity must assume the environmental review responsibilities for projects being funded by HOPE VI. If you object to the responsible entity conducting the environmental review, on the basis of performance, timing, or compatibility of objectives, HUD will review the facts and determine who will perform the environmental review. At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing, or compatibility of objectives, or in accordance with 24 CFR 58.77(d)(1). If a responsible entity objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50. You must provide any documentation to the responsible entity (or HUD, where applicable) that is needed to perform the environmental review.

c. Phase I and Phase II Environmental Site Assessments. If you are selected for funding, you must have a Phase I environmental site assessment completed in accordance with the ASTM Standards E 1527–00, as

amended, for each affected site. A Phase I assessment is required whether the environmental review is completed under 24 CFR part 50 or 24 CFR part 58. The results of the Phase I assessment must be included in the documents that must be provided to the responsible entity (or HUD) for the environmental review. If the Phase I assessment recognizes environmental concerns or if the results are inconclusive, a Phase II environmental site assessment will be required.

d. Request for Release of Funds. You, and any participant in the development process, may not undertake any actions with respect to the project that are choice-limiting or could have environmentally adverse effects, including demolishing, acquiring, rehabilitating, converting, leasing, repairing, or constructing property proposed to be assisted under this NOFA, and you, and any participant in the development process, may not commit or expend HUD or local funds for these activities, until HUD has approved a Request for Release of Funds following a responsible entity's environmental review under 24 CFR part 58, or until HUD has completed an environmental review and given approval for the action under 24 CFR part 50. In addition, you must carry out any mitigating/remedial measures required by the responsible entity (or HUD). If a remediation plan, where required, is not approved by HUD and a fully-funded contract with a qualified contractor licensed to perform the required type of remediation is not executed, HUD reserves the right to determine that the grant is in default.

e. If the environmental review is completed before HUD approval of the HOPE VI Supplemental Submissions and you have submitted your Request for Release of Funds (RROF), the supplemental submissions approval letter shall state any conditions, modifications, prohibitions, etc. as a result of the environmental review, including the need for any further environmental review. You must carry out any mitigating/remedial measures required by HUD, or select an alternate eligible property, if permitted by HUD. If HUD does not approve the remediation plan and a fully funded contract with a qualified contractor licensed to perform the required type of remediation is not executed, HUD reserves the right to determine that the grant is in default.

f. If the environmental review is not completed and you have not submitted the RROF before HUD approval of the supplemental submissions, the letter approving the supplemental submissions will instruct you and any participant in the revitalization process to refrain from undertaking, obligating, or expending HUD or non-HUD funds on physical activities or other choice-limiting actions until HUD approves your RROF and the related certification of the responsible entity (or HUD has completed the environmental review). The supplemental submissions approval letter also will advise you that the approved supplemental submissions may be modified on the basis of the results of the environmental review.

g. There must not be any open issues or uncertainties related to environmental issues, public policy factors (such as sewer moratoriums), proper zoning, availability of all necessary utilities, or clouds on title that would preclude development in the requested locality. You will certify to these facts when signing the HOPE VI Revitalization Grant Application Certifications.

h. HUD's environmental Web site is located at *http://www.hud.gov/offices/cpd/energyenviron/environment/index.cfm*.

kk. *Match Donations and Leverage Resources—Post Award.* After award, during review of grantee mixed-finance, development or homeownership proposals, HUD will evaluate the nature of Match and Leverage resources to assess the conditions precedent to the availability of the funds to the grantee. HUD will assess the availability of the participating party(ies)'s financing, the amount and source of financing committed to the proposal by the participating party(ies), and the firm commitment of those funds. HUD may require an opinion of the PHA's and the owner entity's counsel (or other party designated by HUD) attesting that counsel has examined the availability of the participating party(ies)'s financing, and the amount and source of financing committed to the proposal by the participating party(ies), and has determined that such financing has been firmly committed by the participating party(ies) for use in carrying out the proposal, and that such commitment is in the amount required under the terms of the proposal.

ll. *Evidence of Use.* Grantees will be required to show evidence that matching resources were actually received and used for their intended purposes through quarterly reports as the project proceeds. Sources of matching funds may be substituted after grant award, as long as the dollar requirement is met.

mm. *Grantee Enforcement.* Grantees must pursue and enforce any commitment (including commitments for services) obtained from any public or private entity for any contribution or commitment to the project or surrounding area that was part of the match amount.

nn. *LOCCS Requirements.* The grantee must record all obligations and expenditures in LOCCS.

oo. *Final Audit.* Grantees are required to obtain a complete final closeout audit of the grant's financial statements by a certified public accountant (CPA), in accordance with generally accepted government audit standards. A written report of the audit must be forwarded to HUD within 60 days of issuance. Grant recipients must comply with the requirements of 24 CFR part 84 or 24 CFR part 85 as stated in OMB Circulars A–110, A–87, and A–122, as applicable.

pp. *Section 3.* HOPE VI grantees must comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Economic Opportunities for Low- and Very Low-Income Persons in Connection with assisted Projects) and its implementing regulations at 24 CFR part 135. Information about section 3 can be found at HUD's section 3 Web site at *http://www.hud.gov/fhe/sec3over.html*.

qq. *General Section References.* The following sub-sections of Section III.C. of the General Section are hereby incorporated by reference:

(1) The Americans with Disabilities Act of 1990;

(2) Affirmatively Furthering Fair Housing;

(3) Economic Opportunities for Low- and Very Low-Income Persons (Section 3);

(4) Executive Order 13166, Improving Access to Services for Persons With Limited English Proficiency (LEP);

(5) Accessible Technology;

(6) Procurement of Recovered Materials;

(7) Participation in HUD-Sponsored Program Evaluation;

(8) Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects;

(9) OMB Circulars and Government-wide Regulations Applicable to Financial Assistance Programs; and

(10) Drug-Free Workplace.

rr. *Program Requirements that Apply to Match.* If the commitment document for any match funds/in-kind services is not included in the application and provided before the NOFA submission date, the related match will not be considered. Depending upon the specific Memorandum of Understanding (MOU), the MOU alone may not firmly

commit Match funds, e.g., the MOU states that a donation agreement may be discussed in the future. If the MOU does firmly commit funds, the MOU language that does so should be highlighted or mentioned in the application. To ensure inclusion of Match funds, MOUs should be accompanied by commitment letters or contracts.

ss. *Program Requirements that Apply to Match and Leverage.*

1. You must actively enlist other stakeholders who are vested in and can provide significant financial assistance to your revitalization effort, both for physical development and CSS.

2. *Types of Resources.* HUD seeks to fund mixed-finance developments that use HOPE VI funds to leverage the maximum amount of other funds, particularly from private sources, that will result in revitalized public housing, other types of assisted and market-rate housing, and private retail and economic development. There are four types of resources: Development, CSS, Anticipatory, and Collateral. Development and CSS match and leverage are program requirements, the types of resources for which are discussed below. Anticipatory and Collateral leverage are included only in the Leverage rating factor.

3. *Development Resources.*

(1) *Types of Development Resources.* Types of Development Resources may include:

(a) Private mortgage-secured loans and other debt.

(i) Where there is both a construction loan and a permanent take-out loan that will replace that construction loan, you must provide documentation of both, but only the value of the permanent loan will be counted.

(ii) For privately financed homeownership construction loans, acceptable documentation of construction loans will be considered. Documentation of permanent financing is not required.

(iii) If you have obtained a construction loan but not a permanent loan, the value of the acceptably documented construction loan will be counted.

(iv) Your application must include each loan's expected term maturity and sources of repayment.

(b) Insured loans.

(c) Donations and contributions.

(d) Housing trust funds.

(e) Net sales proceeds from a homeownership project. Down payments from homebuyers will not be counted. Down payment assistance may be counted as a physical development resource if it is provided by a third party entity not related to the homebuyer.

(f) Funds committed to build private sector housing in direct connection with the HOPE VI Revitalization plan.

(g) Tax Increment Funding (TIF).

(h) Tax Exempt Bonds. Your application must include a description of the use and term.

(i) Other Public Housing Funds. Other public housing sources include HOPE VI Revitalization funds from other grants, HOPE VI Demolition funds, HOPE VI Neighborhood Networks funds, HOPE VI Main Street funds, Capital Fund program funds, and proposals to use operating subsidy for debt service. These HUD public housing funds will NOT be counted for points under CSS, Development and Collateral leverage in this NOFA. However, they can be used as part of your revitalization plan. Other public housing funds, except for HOPE VI Revitalization funds, will be counted toward your leverage rating for anticipatory leverage and may be used toward your match requirement.

(j) Other Federal Funds. Other federal sources may include non-public housing funds provided by HUD.

(k) Sale of Land. The value of land may be included as a development resource only if this value is a sales proceed. Absent a sales transaction, the value of land may not be counted.

(l) Donations of Land. Donations of land may be counted as a development resource, only if the donating entity owns the land to be donated. Donating entities may include a city, county/parish, church, community organization, etc. The application must include documentation of this ownership, signed by the appropriate authorizing official.

(m) Low-Income Housing Tax Credits (LIHTC).

(i) Low-Income Tax Credits are authorized by Section 42 of the IRS Code which allows investors to receive a credit against federal tax owed in return for providing funds to developers to help build or renovate housing that will be rented only to lower-income households for a minimum period of 15 years.

(ii) There are two types of credits, both of which are available over a 10-year period: A nine percent credit on construction/rehab costs, and a four percent credit on acquisition costs and all development costs financed partially with below-market federal loans (e.g., tax exempt bonds). Tax credits are generally reserved annually through State Housing Finance Agencies, a directory of which can be found at *http://www.ncsha.org/ncsha/public/statehfadirectory/index.htm.*

(iii) Only LIHTC commitments that have been secured as of the application submission date will be considered for the scoring under this NOFA. LIHTC commitments that are not secured (i.e., documentation in the application does not demonstrate they have been reserved by the state or local housing finance agency) will not be counted for scoring. Only tax credits that have been reserved specifically for revitalization performed through this NOFA will be counted.

(iv) Endorsements or general letters of support from organizations or vendors alone will not count as resources and should not be included in the application or on a Resources Summary Form.

(v) If you propose to include LIHTC equity as a development resource for any phase of development, your application must include a LIHTC reservation letter from your state or local housing finance agency in order to have the tax credit amounts counted as development leveraging. This letter must constitute a firm commitment and can only be conditioned on the receipt of the HOPE VI grant. HUD acknowledges that, depending on the housing finance agency, documentation for four percent tax credits may be represented in the form of a tax-exempt bond award letter. Accordingly, it will be accepted for match/leverage scoring purposes under Section V.A. of this NOFA, if you demonstrate that this is the only available evidence of four percent tax credits, and assuming that this documentation clearly indicates that tax-exempt bonds have been committed to the project.

(2) *Sources of Development Resources.* Sources of Development Resources may include:

(a) Public, private, and nonprofit entities, including LIHTC purchasers;

(b) State and local housing finance agencies;

(c) Local governments;

(d) The city's housing and redevelopment agency or other comparable agency. HUD will consider this to be a separate entity with which you are partnering if your PHA is also a redevelopment agency or otherwise has citywide responsibilities.

(i) You are strongly urged to seek a pledge of Community Development Block Grant (CDBG) funds for improvements to public infrastructure such as streets, water mains, etc. related to the revitalization effort. CDBG funds are awarded by HUD by formula to units of general local government and to states, which may then award a grant or loan to a PHA, a partnership, a nonprofit organization, or other entity

for revitalization activities, including loans to a project's for-profit partnership. More information about the CDBG Program can be found at *http://www.hud.gov/offices/cpd/index.cfm.*

(ii) The city, county/parish, or state may provide HOME funds to be used in conjunction with HOPE VI funds. The Home Investment Partnership program provides housing funds that are distributed from HUD to units of general local governments and states. Funds may be used for new construction, rehabilitation, acquisition of standard housing, assistance to homebuyers, and tenant-based rental assistance. Current legislation allows HOME funds to be used in conjunction with HOPE VI funds, but they may not be used in conjunction with public housing capital funds under section 9(d) of the 1937 Act. Information about the HOME program can be found at: *http://www.hud.gov/offices/cpd/affordablehousing/programs/home/index.cfm.*

(e) Foundations;

(f) Government Sponsored Enterprises such as the Federal Home Loan Bank, Fannie Mae, and Freddie Mac;

(g) HUD and other Federal agencies;

(h) Financial institutions, banks, or insurers; and

(i) Other private funders.

4. *Community and Supportive Services Resources.*

a. *General.*

(1) HUD seeks to fund mixed-finance developments that use HOPE VI funds to leverage the maximum amount of other resources to support CSS activities in order to ensure the successful transformation of the lives of residents and the sustainability of the revitalized public housing development. Match and leveraging of HOPE VI CSS funds with other funds and services is critical to the sustainability of CSS activities so that they will continue after the HOPE VI funds have been expended. Commitments of funding or in-kind services related to the provision of CSS activities may be counted as CSS resources and toward match and the calculation of CSS leverage in accordance with the requirements below.

(a) For CSS leverage (not match), include only funds/in-kind services that will be newly generated for HOPE VI activities. If an existing service provider significantly increases the level of services provided at the site, the increased amount of funds may be counted, except for TANF cash benefits. HUD will not count any funds for leverage points that have already been provided on a routine basis, such as TANF cash benefits and in-kind services that have been supporting ongoing CSS-type activities.

(b) Existing and newly generated TANF cash benefits will not count as leverage. Newly generated non-cash services provided by TANF agencies will count as leverage.

(c) Even though an in-kind CSS contribution may count as a resource, it may not be appropriate to include on the sources and uses attachment. Each source on the sources and uses attachment must be matched by a specific and appropriate use. For example, donations of staff time may not be used to offset costs for infrastructure.

(d) Note that wages projected to be paid to residents through jobs, or projected benefits (e.g., health/insurance/retirement benefits) related to projected resources to be provided by CSS partners may not be counted.

(e) Endorsements or general letters of support from organizations or vendors alone will not count as resources and should not be included in the application or on a Resources Summary Form.

(f) The PHA's staff time is not an eligible cash or in-kind match.

(2) *Types of Community and Supportive Services Resources.* Types of Community and Supportive Services resources may include but are not limited to:

(a) Materials;

(b) A building;

(c) A lease on a building;

(d) Other infrastructure;

(e) Time and services contributed by volunteers;

(f) Staff salaries and benefits;

(g) Supplies;

(h) The value of supportive services provided by a partner agency, in accordance with the eligible CSS activities described in Section I.D.

(3) *Sources of Community and Supportive Services Resources.* In order to achieve quantifiable self-sufficiency results, you must form partnerships with organizations that are skilled in the delivery of services to residents of public housing and that can provide commitments of resources to support those services. You must actively enlist as partners other stakeholders who are vested in and can provide commitments of funds and in-kind services for the CSS portion of your revitalization effort. The following are the kinds of organizations and agencies that can provide you with resources necessary to carry out and sustain your CSS activities.

(a) Local Boards of Education, public libraries, local community colleges, institutions of higher learning, nonprofit or for-profit educational institutions, and public/private mentoring programs that will lead to new or improved educational facilities and improved educational achievement of young people in the revitalized development, from birth through higher education.

(b) TANF agencies/welfare departments for TANF and non-TANF in-kind services, and non-TANF cash donations, e.g., donation of TANF agency staff.

(c) Job development organizations that link private sector or nonprofit employers with low-income prospective employees.

(d) Workforce Development Agencies.

(e) Organizations that provide residents with job readiness and retention training and support.

(f) Economic development agencies such as the Small Business Administration, which provide entrepreneurial training and small business development centers.

(g) National corporations, local businesses, and other large institutions such as hospitals that can commit to provide entry-level jobs. Employers may agree to train residents or commit to hire residents after they complete jobs preparedness or training programs that are provided by you, other partners, or the employer itself.

(h) Programs that integrate employment training, education, and counseling, and where creative partnerships with local boards of education, state charter schools, TANF agencies, foundations, and private funding sources have been or could be established, such as:

(i) Youthbuild. HUD's Youthbuild program provides grants to organizations that provide education and job training to young adults ages 16 to 24 who have dropped out of school. Participants spend half their time rehabilitating low-income housing and the other half in educational programs. Youthbuild provides a vehicle for achieving compliance with the objective of section 3, as described in Section III.C. of the General Section. More information on HUD's Youthbuild program can be found at *http://www.hud.gov/progdesc/youthb.cfm.*

(ii) Step-Up, an apprenticeship-based employment and training program that provides career potential for low-income persons by enabling them to work on construction projects that have certain prevailing wage requirements. Step-Up encourages work by offering apprenticeships through which low-income participants earn wages while learning skills on the job, supplemented by classroom-related instruction. Step-Up can also contribute to a PHA's effort

to meet the requirements of section 3. More information can be found at *http://www.hud.gov/progdesc/stepup.cfm.*

(i) Sources of capital such as foundations, banks, credit unions, and charitable, fraternal, and business organizations.

(j) Nonprofit organizations such as the Girl Scouts and the Urban League, each of which has a Memorandum of Agreement (MOA) with HUD. Copies of these MOAs can be found on the Community and Supportive Services page of the HOPE VI Web site at *http://www.hud.gov/hopevi.*

(k) Civil rights and fair housing organizations.

(l) Local area agencies on aging.

(m) Local agencies and organizations serving persons with disabilities.

IV. Application and Submission Information

General. All applications MUST be submitted electronically via Grants.Gov, as described in this NOFA. This section hereby incorporates Section IV of the General Section, except for Section IV.A.5. and Section IV.B.1. The General Section requirements apply to this NOFA unless otherwise stated in this NOFA. Applicants MUST follow the electronic submission requirements in the General Section and this NOFA.

A. Addresses To Request Application Package

This section describes how applicants may obtain application forms, additional information, and technical assistance. Copies of the published NOFA and application forms for HUD programs announced through NOFAs may be downloaded from the *Grants.gov* Web site at *http://www.grants.gov/FIND* and chosen from links provided under the topic "Search Grant Opportunities," which allows applicants to do a basic search or to browse by category or agency. Applicants having difficulty accessing the information may receive customer support from *Grants.gov* by calling its help line at (800) 518–GRANTS or sending an e-mail to *support@grants.gov.* The customer service representatives will assist applicants in accessing the information. Applicants that do not have Internet access that need to obtain a copy of a NOFA can contact HUD's NOFA Information Center toll-free at (800) HUD–8929. Persons with hearing or speech impairments may also call toll-free at (800) HUD–2209.

1. *Application Kits.* There are no application kits for HUD programs. All the information you need to apply will be in the NOFA and available at *http://www.grants.gov/Apply.* The NOFA and forms can be downloaded from *http://www.grants.gov/Apply,* by clicking on Apply Step 1. Please pay attention to the submission requirements and format for submission specified in this NOFA to ensure that you have submitted all required elements of your application.

2. *Official NOFA Content Retrieval.* In order to retrieve the instructions, applicants must go to the *Grants.gov* Web site entitled "Download Application Package" at *https://apply.grants.gov/forms_apps_idx.html.* Insert the Catalog of Federal Domestic Assistance (CFDA) number or the Funding Competition ID, or the Funding Opportunity Number. Once this information has been inserted, click on the "Download Package" button. The next page on the Web site, "Selected Grant Application for Download," instructs applicants to download the application and its instructions by selecting the corresponding download link and saving the files to the applicant's computer for future reference and use. You do not need to be registered to read the instructions or complete the application once you have downloaded it and saved it on your computer.

a. Instructions and Application Download Contents. The instructions download will contain several files. The Application Download will contain a cover page entitled "Grant Application Package." The cover page provides information regarding the application package you have chosen to download, i.e., Opportunity Title, Agency Name, CFDA Number, etc., so that you can ensure that you have selected the correct application to prepare. The Grant Application cover page separates the required forms into two categories: "Mandatory Documents" and "Optional Documents." Please note that regardless of the box in which the forms are listed, the published **Federal Register** document is the official document HUD uses to solicit applications. Therefore, applicants should follow the submission requirements in this HOPE VI NOFA. This NOFA contains a list of forms and other documents that are part of the submission. The NOFA also identifies which forms may be applicable to only certain applicants and if so, they need to be submitted with the application.

b. The published **Federal Register** document is the official document that HUD uses to solicit applications. Therefore, if there is a discrepancy between any materials published by HUD in its **Federal Register** publications and other information provided in paper copy, electronic copy, or at *http://www.grants.gov,* the **Federal Register** publication prevails. Please be sure to review your application submission against the requirements in the **Federal Register** file of the NOFA. Any technical corrections to the NOFA will also be published in the **Federal Register** and posted to the grants.gov Web site, as described above. Applicants are responsible for monitoring the Web sites above and the **Federal Register** during the application preparation period.

2. *Technical Assistance.* HUD staff will be available to provide you with general guidance and technical assistance about this NOFA. However, HUD staff is not permitted to help prepare your application. For technical support for downloading an application or submitting an application, please call *Grants.gov* Customer Support at (800) 518–GRANTS (this is a toll-free number) or send an e-mail to *support@grants.gov.*

B. Content and Form of Application Submission

1. *Application Submission.*

a. *Paper Application Submissions.* If your organization is granted a waiver to the electronic application submission requirement, you should follow the following instructions regarding paper application submissions. Unless otherwise indicated, the Executive Director of the applicant PHA, or his or her designee, must sign each form or certification that is required to be submitted with the application, whether part of an attachment or a standard certification. Signatures need not be original in the duplicate Headquarters copy and the duplicate field office copy.

c. *Paper Application Layout.* If you are granted a waiver to the electronic submission requirement:

(1) Double-space your narrative pages. Single-spaced pages will be counted as two pages;

(2) Use 8½ × 11-inch paper, one side only. Only the city map may be submitted on an 8 ½ by 14-inch sheet of paper. Larger pages will be counted as two pages;

(3) All margins should be approximately 1 inch. If any margin is smaller than ½ inch the page will be counted as two pages;

(4) Use 12-point, Times New Roman font;

(5) Any pages marked as sub-pages (e.g., with numbers and letters such as 75A, 75B, 75C), will be treated as separate pages;

(6) If a section is not applicable, omit it; do not insert a page marked n/a;

(7) Mark each Exhibit and Attachment with the appropriate tab listed in section IV.B. and in the Submission

Instructions. No material on the tab will be considered for review purposes, although pictures are allowed;

(8) No more than one page of text may be placed on one sheet of paper; i.e., you may not shrink pages to get two or more on a page. Shrunken pages, or pages where a minimized/reduced font are used, will be counted as multiple pages;

(9) Do not format your narrative in columns. Pages with text in columns will be counted as two pages; and

(10) The applications (copy and original) should each be packaged in a three-ring binder.

d. *Paper Application Page Count.* If you are granted a waiver to the electronic submission requirement:

(1) Narrative Exhibits.

(a) The first part of your application will be comprised of narrative exhibits. Your narratives will respond to each rating factor in the NOFA and will also respond to threshold requirements. Among other things, your narratives must describe your overall planning activities, including but not limited to relocation, community, and supportive services, and development issues.

(b) Each HOPE VI Revitalization application must contain no more than 100 pages of narrative exhibits. Any pages after the first 100 pages of narrative exhibits will not be reviewed. Although submitting pages in excess of the page limitations will not disqualify an application, HUD will not consider the information on any excess pages, which may result in a lower score or failure of a threshold. Text submitted at the request of HUD to correct a technical deficiency will not be counted in the 100-page limit.

(2) Attachments.

(a) The second part of your application will be comprised of Attachments. These documents will also respond to the rating factors in the NOFA, as well as threshold and mandatory documentation requirements. They will include documents such as maps, photographs, letters of commitment, application data forms, various certifications unique to HOPE VI Revitalization, and other certifications.

(b) Each HOPE VI Revitalization application must contain no more than 125 pages of attachments. Any pages after the first 125 pages of attachments will not be considered. Although submitting pages in excess of the page limit will not disqualify an application, HUD will not consider the information on any excess pages, which may result in a lower score or failure to meet a threshold.

(3) Exceptions to page limits. The documents listed below constitute the only exceptions and are not counted in the page limits listed in Sections (1) and (2) above:

(a) Additional pages submitted at the request of HUD in response to a technical deficiency.

(b) Attachments that provide documentation of commitments from resource providers or CSS providers.

(c) Attachments that provide documentation of site control and site acquisition in accordance with Section III. of this NOFA.

(d) Narratives and Attachments, as relevant, required to be submitted only by existing HOPE VI Revitalization grantees in accordance with Sections V.A.of this NOFA (Capacity).

(e) Information required of MTW applicants only.

e. *Electronic Format.*

(1) Exhibits. Exhibits are as listed in Section IV.B.2.a of this NOFA. Each Exhibit should be contained in a separate file and section of the application. Each file should contain one title page (do not create title pages separately from the document it goes with).

(a) Exhibit Title Pages. HUD will use title pages as tabs when it downloads and prints the application. Provided the information on the title page is limited to the list in Section (b) below, the title pages will not be counted when HUD determines the length of each Exhibit, or the overall length of the Exhibits.

(i) Each title page should only contain:

(A) The name of the Exhibit, as described in Section IV.B.2.a. of this NOFA, e. g., "Narrative Exhibit A: Summary Information';

(B) The name of the applicant; and

(C) The name of the file that contains the Exhibit.

(b) Exhibit File Names and Types.

(i) All Exhibit files in the application must be contained in one Exhibit ZIP file.

(ii) Each file within the ZIP file must be formatted so it can be read by MS Word 2000 (.DOC).

(iii) Each file name must include the information below, in the order stated:

(A) Short version of applicant's name, e. g., town, city, county/parish, etc., and state; and

(B) The word "Exhibit" and the Exhibit letter (A through I), as listed in Section IV.B.2.a. of this NOFA;

(C) An example of an Exhibit file name is, "Atlanta GA Exhibit A."

(2) Attachments. Attachments are as listed in Section IV.B.2.b. of this NOFA. Each Attachment should be contained in a separate file and section of the application. Each Attachment that is not a HUD Form should contain one title page.

(a) Attachment Title Pages. HUD will use title pages as tabs if it downloads and prints the application. Provided the information on the title page is limited to the list in Section (b) below, the title pages will not be counted when HUD determines the length of each Attachment, or the overall length of the Attachments. HUD forms do not require title pages.

(i) Each title page should only contain:

(A) The name of the Attachment, as described in Section IV.B.2.b. of this NOFA, e. g., "Attachment 10: Extraordinary Site Costs Certification';

(B) The name of the applicant; and

(C) The name of the file that contains the Attachment.

(b) Attachment File Names and Types.

(i) All Attachments that are not listed separately on grants.gov and are formatted as PureEdge forms, e.g., SF–424, must be contained in one Attachment ZIP file.

(ii) Each file within the ZIP file must be formatted so it can be read by MS Excel (.XLS) or Adobe Acrobat (.PDF).

(A) Attachments that are downloaded from grants.gov in MS Excel format may be submitted in Excel format.

(B) Attachments that are downloaded from grants.gov in text format, e.g., certifications, should be submitted in Adobe Acrobat (PDF) format.

(C) Third-party documents, e.g., leverage commitment letters, pictures, etc., should be submitted in Adobe Acrobat (PDF) format.

(iii) Each file name must include the information below, in the order stated:

(A) Short version of applicant's name, e.g., town, city, county/parish, etc., and state; and

(B) The word "Attachment" and the Attachment number (1 through 41), as listed in Section IV.B.2.b. of this NOFA;

(C) An example of an Exhibit file name is, "Atlanta GA Attachment 1'

(3) Maximum Length of Application.

(i) Page Definition and Format.

(A) For Exhibits, a "page" contains a maximum of 23 double-spaced lines. The length of each line must be a maximum of 6½ inches. This is the equivalent of formatting to be printed on 8½" × 11" paper, with one inch top, bottom, left and right margins. The font must be 12-point Times New Roman. Each page must be numbered.

(B) For Attachments, an applicant formatted text page is defined as in (A) above. Third-party documents converted into PDF format must not be shrunk to fit more than one original page on each application page. Pages of

HUD Forms and certification formats furnished by HUD are as numbered by HUD.

(C) The maximum total length of the Exhibits and of the Attachments is as stated in Section IV.B.1.d. above.

d. See Section IV of this NOFA on how to electronically submit third-party and large documents (i.e., documents 8½ by 14-inch, etc.).

2. *Application Content.* The following is a list of narrative exhibits and attachments that are required as part of the application. Non-submission of these items may lower your rating score or make you ineligible for award under this NOFA. Review the threshold requirements in Section III.C. of this NOFA and to ascertain the effects of non-submission. HUD forms required by this NOFA can be obtained on the Internet at *Grants.gov*. Applicants that are granted a waiver to the electronic submission requirement must include the narrative exhibits and attachments in the application in the order listed below.

a. *Narrative Exhibits.*

(1) Acknowledgment of Application Receipt, form HUD–2993 (applies only if you are granted a waiver to the electronic submission requirement). 0

(2) Application for Federal Assistance, Standard Form SF–424.

(3) HOPE VI Revitalization Application Table of Contents.

(4) Narrative Exhibit A: Summary Information.

(5) Narrative Exhibit B: Capacity.

(6) Narrative Exhibit C: Need.

(7) Narrative Exhibit D: Resident and Community Involvement.

(8) Narrative Exhibit E: Community and Supportive Services.

(9) Narrative Exhibit F: Relocation.

(10) Narrative Exhibit G: Fair Housing and Equal Opportunity.

(11) Narrative Exhibit H: Well-Functioning Communities.

(12) Narrative Exhibit I: Soundness of Approach.

b. *Attachments.*

(1) Attachments 1 through 7: HOPE VI Application Data Form, form HUD–52860–A.

(2) Attachment 8: HOPE VI Budget, form HUD–52825–A.

(3) Attachment 9: TDC–Grant Limitations Worksheet, form HUD–52799.

(4) Attachment 10: Extraordinary Site Costs Certification, if applicable.

(5) Attachment 11: City Map.

(6) Attachment 12: Assurances for a HOPE VI Application: for Developer, HOPE VI Revitalization Resident Training & Public Meeting Certification, Relocation Plan (whether relocation is completed or is yet to be completed).

(7) Attachment 13: Program Schedule.

(8) Attachment 14: Certification of Severe Physical Distress.

(9) Attachment 15: Photographs of the Severely Distressed Housing.

(10) Attachment 16: Neighborhood Conditions.

(11) Attachment 17: Preliminary Market Assessment Letter, if relevant.

(12) Attachment 18: Documentation of Site Control for Off-Site Public Housing.

(13) Attachments 19 through 22: HOPE VI Revitalization Leverage Resources, form HUD–52797.

(14) Attachment 23: Documentation of Environmental, & Neighborhood Standards.

(15) Attachment 24: Land Use Certification or Documentation.

(16) Attachment 25: Evaluation Commitment Letter(s).

(17) Attachment 26: Current Site Plan.

(18) Attachment 27: Photographs of Architecture in the Surrounding Community.

(19) Attachment 28: Conceptual Site Plan.

(20) Attachment 29: Conceptual Building Elevations.

(21) Attachment 30: HOPE VI Revitalization Application Certifications.

(22) Attachment 31: HOPE VI Revitalization Project Readiness Certification, form HUD–52787.

(23) Attachment 32: Standard Forms and Certifications.

a. Disclosure of Lobbying Activities (SF–LLL), if applicable;

b. Applicant/Recipient Disclosure/ Update Report (HUD–2880);

c. Program Outcome Logic Model (HUD–96010);

d. America's Affordable Communities Initiative (HUD–27300);

e. If applicable, Funding Application for Housing Choice Voucher Assistance prepared in accordance with Notice PIH 2005–15 (and any reinstatement of or successor to that Notice), including, Section 8 Tenant-Based Assistance Rental Certificate Program, Rental Voucher Program, form HUD–52515, and

f. Facsimile Transmittal (HUD–96011).

3. *Match Documentation.* See the match requirements in Section III.C., Program Requirements, Program Requirements that Apply to Match and Leverage .

4. *Resources Requirements for Match and Leverage.* See Section III.C., Program Requirements, Program Requirements that Apply to Match and Leverage .

5. *Threshold Documentation.* See the Threshold Requirements section of the NOFA in Section III.C. To meet threshold requirements, you must include specific documentation as required by this NOFA.

6. *Rating Factor Documentation.* See the Rating Factors in Section V.A for information on documentation. To receive points for certain rating factors, you must include specific documentation as required by this NOFA.

7. *Housing Choice Voucher (HCV) Assistance.* Housing choice voucher (HCV) assistance is available from the tenant protection voucher fund to successful applicants that receive the Revitalization grant awards. The dollar amount of HCV assistance is in addition to the $20 million maximum award amount and will be based upon resident relocation needs. Applicants must prepare their housing choice voucher assistance applications for the targeted project in accordance with the requirements of Notice PIH 2005–15 (and any reinstatement of or successor to that Notice) and submit it in its entirety with the HOPE VI Revitalization Application. HUD will process the housing choice voucher assistance applications for funded HOPE VI applicants. If you are not funded by this NOFA, the HCV application will not be processed. For applicants who are granted a waiver to the electronic application process, the HCV request should be located with the Standard Forms and Certifications at the back of the application.) The notice can be obtained through the Internet at *http://www.hudclips.org/cgi/index.cgi.*

8. *Further Documentation Guidance on Narrative Exhibits and Attachments. Please be sure to carefully review Sections III and V for program and documentation requirements for all the elements below.*

a. *Exhibit A.* Verify that you have included information relating to the following exhibits.

(1) Executive Summary. Provide an Executive Summary, not to exceed three pages. Describe your Revitalization plan, as clearly and thoroughly as possible. Do not argue for the need for the HOPE VI grant, but explain what you would do if you received a grant. Briefly describe why the targeted project is severely distressed, provide the number of units, and indicate how many of the units are occupied. Describe specific plans for the revitalization of the site. Include income mix, basic features (such as restoration of streets), and any mixed use or non-housing components. If you are proposing off site replacement housing, provide the number and type of units and describe the off site locations. Describe any homeownership

components included in your Plan, including numbers of units. Briefly summarize your plans for community and supportive services. State the amount of HOPE VI funds you are requesting, and list the other major funding sources you will use for your mixed-finance development. Identify whether you have procured a developer or whether you will act as your own developer.

(2) Physical Plan. Describe your planned physical revitalization activities:

(a) Rehabilitation of severely distressed public housing units in accordance with Sections I(D) and III(C) of the NOFA;

(b) Development of public housing replacement rental housing, both on-site and off-site in accordance with Sections I(D) and III(C) of the NOFA;

(c) Indicate whether you plan to use PATH technologies and Energy Star in the construction of replacement housing in accordance with Section III(C) of the NOFA;

(d) Market rate housing units (see Sections III(C);

(e) Units to be financed with low-income housing tax credits;

(f) Replacement homeownership assistance for displaced public housing residents or other public housing-eligible low-income families, in accordance with Sections I(D) and III(C) of the NOFA. Also describe any market-rate homeownership units planned, sources and uses of funds. Describe the relationship between the HOPE VI activities and costs and the development of homeownership units, both public housing and market rate. If you are selected for funding, you will be required to submit a Homeownership Proposal (homeownership term sheet);

(g) Rehabilitation or new construction of community facilities primarily intended to facilitate the delivery of community and supportive services for residents of the targeted development and residents of off-site replacement housing, in accordance with Sections I(D) and III(C). Describe the type and amount of such space and how the facilities will be used in CSS program delivery or other activities;

(h) Zoning, land acquisition, and infrastructure and site improvements. Note that HOPE VI grant funds may not be used to pay hard development costs or to buy equipment for retail or commercial facilities;

(3) *Hazard Reduction.* Review Sections I(D), III(C), and IV(E) of the NOFA. For units to be rehabilitated or demolished, describe the extent of any required abatement of environmentally hazardous materials such as asbestos.

(4) *Demolition.* Review Sections I(D) and III(C) of the NOFA. Describe your plans for demolition, including the buildings (dwelling and non-dwelling units) proposed to be demolished, the purpose of the demolition, and the use of the site after demolition. If the proposed demolition was previously approved as a section 18 demolition application, state the date the Section 18 demolition application was submitted to HUD and the date it was approved by HUD. Indicate whether you plan to implement the concept of Deconstruction, as described in Section III(C) of the NOFA.

(5) *Disposition.* Review Sections I(D) and III(C) of the NOFA. Describe the extent of any planned disposition of any portion of the site. Cite the number of units or acreage to be disposed, the method of disposition (sale, lease, trade), and the status of any disposition application made to HUD.

(6) *Site Improvements.* Review Sections I(D), III(C), and IV(E) of the NOFA. Describe any proposed on-site improvements, including infrastructure requirements, changes in streets, etc. Describe all public improvements needed to ensure the viability of the proposed project with a narrative description of the sources of funds available to carry out such improvements.

(7) *Site Conditions.* Review Sections I(D), III(C), and IV(E) of the NOFA. Describe the conditions of the site to be used for replacement housing. Listing all potential contamination or danger sources (*e.g.* smells, fire, heat, explosion and noise) that might be hazardous or cause discomfort to residents, PHA personnel, or construction workers. List potential danger sources, including commercial and industrial facilities, Brownfields and other sites with potentially contaminated soil, commercial airports and military airfields. Note any facilities and/or activities within one mile of the proposed site.

(8) *Separability.* Section III(C) of the NOFA. If applicable, address the separability of the revitalized building(s) within the targeted project. This is a threshold.

(9) *Proximity.* If applicable, describe how two contiguous projects meet the requirement of Section III(C) of the NOFA, or how scattered sites meet the requirements of Section III(C) of the NOFA,

b. *Exhibit B. Capacity.* Verify that you have included information relating to the following exhibits:

(1) *PHAS, Maintenance, and SEMAP.* Respond to the Rating Factors at V(A)(1)(g), V(A)(1)(h), and V(A)(1)(i) of the NOFA.

(2) *Development Capacity of Developer.* Respond to Rating Factor V(A)(1)(a).

(3) *Development Capacity of Applicant.* Respond to Rating Factor V(A)(1)(b).

(4) *Capacity of Existing HOPE VI Revitalization grantees.* Respond to Rating Factor V(A)(1)(c) of the NOFA. This rating factor applies only to PHAs with existing HOPE VI Revitalization grants from fiscal years 1993–2003. Production achievement numbers will be taken from the HOPE VI Quarterly Progress Reports for the quarter ending March 31, 2006.

(5) *CSS Program Capacity.* Respond to Rating Factor V(A)(1)(d) of the NOFA.

(6) *Property Management Capacity.* Respond to Rating Factor V(A)(1)(e) of the NOFA.

(7) *PHA or MTW Plan.* Respond to Rating Factor V(A)(1)(f) of the NOFA.

c. *Exhibit C. Need.* Verify that you have included information relating to the following:

(1) *Need for Revitalization: Severe Physical Distress of the Public Housing Site.* Respond to Rating Factor V(A)(2)(a) of the NOFA.

(2) *Need for Revitalization: Impact of the Severely Distressed Site on the Surrounding Neighborhood.* Respond to Rating Factor V(A)(2)(b) of the NOFA.

(3) *Need for HOPE VI Funding (Obligation of Capital Funds).* Respond to Rating Factor V(A)(2)(c) of the NOFA.

(4) *Previously-Funded Sites.* Respond to Section III(C)(2) of the NOFA. This is a threshold requirement.

(5) *Need for Affordable, Accessible Housing in the Community.* Respond to Rating Factor V(A)(2)(d) of the NOFA.

d. *Exhibit D. Resident and Community Involvement.* Verify that you have included information relating to the following. Discuss your communications about your development plan and HUD communications with residents, community members, and other interested parties. Include the resident training attachment. Review program requirements in Section III and respond to Rating Factor V(A)(4).

e. *Exhibit E. Community and Supportive Services.* Respond to Section V(A)(5). Verify that you have included information relating to the following. *Endowment Trust.* If you plan to place CSS funds in an Endowment Trust, review Section III(C) and Section V(A)(5), and state the dollar amount and percentage of the entire grant that you plan to place in the Trust.

f. *Exhibit F. Relocation.* Verify that you have included information relating to the following:

(1) *Housing Choice Voucher Needs.* Review Section III(C) and V(A)(6) of the NOFA. State the number of Housing Choice Vouchers that will be required for relocation if this HOPE VI application is approved, both in total and the number needed for FY 2006. Indicate the number of units and the bedroom breakout. Applicants must prepare their housing choice voucher assistance applications for the targeted project in accordance with the requirements of Notice PIH 2005–15 (and any reinstatement of or successor to that Notice) and submit it in its entirety with the HOPE VI Revitalization Application (not just HUD form 52515). This application should be placed at the back of the application with the other Standard Forms and Certifications. HUD will process the housing choice voucher assistance applications for funded HOPE VI applicants.

(2) *Relocation Plan.* Review Sections III(C)(2) and III(C)(3) of the NOFA and respond to Rating Factor V(A)(6). For additional guidance on developing a relocation plan, refer to CPD Notice 04–02 ("Guidance on the Application of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended, in HOPE VI Projects") or any successor notice.

g. *Exhibit G. Fair Housing and Equal Opportunity.* Verify that you have included information relating to the following:

(1) *Accessibility.* Respond to Rating Factor V(A)(7)(a)(1).

(2) *Universal Design.* Respond to Rating Factor V(A)(7)(a)(2).

(3) *Fair Housing.* Respond to Rating Factor V(A)(7)(b).

(4) *Section 3.* Respond to Rating Factor V(A)(7)(c).

h. *Exhibit H.* Verify that you have included information relating to the following:

(1) *Unit Mix and Need for Affordable Housing.* Respond to Rating Factor V(A)(8)(a);

(2) *Off-Site Housing.* Respond to Rating Factor V(A)(8)(b); and

(3) *Homeownership Housing.* Respond to Rating Factor V(A)(8)(c).

i. *Exhibit I.* Verify that you have included information relating to the following:

(1) *Appropriateness of Proposal.* Respond to the threshold requirement in Section III(C)(2).

(2) *Appropriateness and Feasibility of the Plan.* Respond to Rating Factor V(A)(9)(b);

(3) *Neighborhood Impact and Sustainability of the Plan.* Respond to Rating Factor V(A)(9)(c);

(4) *Project Readiness.* Respond to Rating Factor V(A)(9)(d) by completing the certification form provided;

(5) *Program Schedule.* Respond to Rating Factor V(A)(9)(e);

(6) *Design.* Describe the features of your proposed design and respond to Rating Factor V(A)(9)(f);

(7) *Energy Star.* Respond to Rating Factor V(A)(9)(g); and

(8) *Evaluation.* Respond to Rating Factor V(A)(9)(h).

j. *Attachments 1 through 7.* These attachments are required in all applications. See the instructions for filling out the HOPE VI Application Data Forms, Appendix 1, at the end of this NOFA.

k. *Attachment 8.* This attachment is required in all applications. In addition to the instructions included in the HOPE VI Budget form, general guidance on *preparing* a HOPE VI budget can be found on the Grant Administration page of the HOPE VI Web site, *http://www.hud.gov/offices/pih/programs/ph/hope6/.*

l. *Attachment 9. Form HUD–52799, "TDC/Grant Limitations Worksheet".* This attachment is required in all applications. The Excel workbook will assist you in *determining your* TDC limits required in Section IV.E..

m. *Attachment 10. Extraordinary Site Costs Certification.* This attachment is applicable only if you request funds to pay for extraordinary site costs, outside the TDC limits. See section IV.E.

n. *Attachment 11. City Map.* This attachment is required in all applications. Review Section III(C). Provide a to-scale city map that clearly identifies the following in the context of existing city streets, the central business district, other key city sites, and census tracts:

(a) the existing development;

(b) replacement neighborhoods, if available;

(c) off-site properties to be acquired, if any;

(d) the location of the Federally-designated Empowerment Zone or Enterprise Community (if applicable); and

(e) other useful information to place the project in the context of the city, county, or municipality and other revitalization activity underway or planned.

(2) If you request funds for more than one project or for scattered site housing, the map must clearly show that the application meets the NOFA's site and unit requirements. If you have received a waiver to the electronic submission requirement, this map may be submitted on 8–1/2" by 14" paper.

o. *Attachment 12.* Assurances for a HOPE VI Application: for Developer, HOPE VI Revitalization Resident Training & Public Meeting Certification, Relocation Plan (whether relocation is completed or is yet to be completed). Please complete this assurance document. Do not sign; a signature is not required.

q. *Attachment 13.* Program Schedule. Review Rating Factor V.A.9.e.

r. *Attachment 14.* Certification of Severe Physical Distress. This attachment is required in all applications. In accordance with Sections I(C) and III(C)(2) and (3), an engineer or architect must complete Attachment 16. No backup documentation is required for this certification.

s. *Attachment 15.* Photographs of the Severely Distressed Housing. *Photographs of the Severely Distressed Housing.* This attachment is required in all applications. Review Rating Factor V(A)(2)(a).

Submit photographs of the targeted severely distressed public housing that illustrate the extent of physical distress.

t. *Attachment 16.* Neighborhood Conditions. This attachment is required in all applications. Submit documentation described in Rating Factor V(A)(2)(b). Documentation may include crime statistics, photographs or renderings, socio-economic data, trends in property values, evidence of property deterioration and abandonment, evidence of underutilization of surrounding properties, and other indications of neighborhood distress and/or disinvestment.

u. *Attachment 17.* Preliminary Market Assessment Letter, if relevant. This is applicable if you include market rate housing in your application, in accordance with Section V, Soundess of Approach.

v. *Attachment 18.* Documentation of Site Control for Off-Site Public Housing. This is applicable if your plan includes off-site housing or other development. If applicable, provide evidence of site control for rental replacement units or land, in accordance with Section III(C)(2). See Section IV(B) for documentation requirements.

w. *Attachments 19 through 22.* HOPE VI Revitalization Leverage Resources, form HUD–52797. *These attachments are included in form HUD 52797, "HOPE VI Revitalization Leverage Resources" and are required in all applications.*

(1) *Physical Development Resources.* In accordance with Rating Factor V(A)(3)(b), complete this Attachment

19, as provided in this application, by entering the dollar value of each resource that will be used for physical development. For each resource entered, you must submit backup documentation in Attachment 19. See Section III.C, Program Requirements, Program Requirements for Match and Leverage for resource and documentation requirements.

(2) *CSS Resources.* In accordance with Rating Factor V(A)(3)(c), complete this Attachment 20, as provided in this Application, by entering the dollar value of all resources that will be used for CSS activities. For each resource entered, submit backup documentation in Attachment 20. See Section III.C, Program Requirements, Program Requirements for Match and Leverage for resource and documentation requirements.

(3) *Anticipatory Resources.* Complete Attachment 21, as provided in this Application, by entering the dollar value of all anticipatory resources as described in Rating Factor V(A)(3)(d). For each resource entered, submit backup documentation in Attachment 21. See Section III.C, Program Requirements, Program Requirements for Match and Leverage for resource and documentation requirements.

(4) *Collateral Resources.* Complete Attachment 22, as provided in this Application, by entering the dollar value of all collateral resources as described in Rating Factor V(A)(3)(e). For each resource entered, submit backup documentation behind Attachment 22. See Section III.C, Program Requirements, Program Requirements for Match and Leverage for resource and documentation requirements.

x. *Attachment 23.* Documentation of Environmental, & Neighborhood Standards. This is applicable if your plan includes off-site housing or other off-site development. Provide a certification that the site(s) acquired for off-site *public* housing meet environmental and site and neighborhood standards, as provided in Section V(A)(8)(b)(2). This certification may be in the form of a letter.

y. *Attachment 24.* Land Use Certification or Documentation. Complete this certification in accordance with the land use threshold in Section III(C)(2). This attachment may be a certification or copies of the actual land use documentation. The certification may be in the form of a letter.

z. *Attachment 25.* Evaluation Commitment Letter(s). This attachment is required in all applications. Review Section V(A)(9)(h) and provide the requested commitment letter(s) that addresses the indicated evaluation areas.

aa. *Attachment 26.* Current Site Plan. This attachment is required in all applications. The Site Plan shows the targeted public housing site's various buildings and identifies *which* buildings are to be rehabilitated, demolished, or disposed of. Demolished buildings should be shown and labeled as such.

bb. Attachment 27. Photographs of Architecture in the Surrounding Community. *Photographs of Architecture in the Surrounding Community.* This attachment is required in all applications. Provide photographs to demonstrate *that* your plan conforms to the Design requirements of Section III.C.3. and Rating Factor V(A)(9)(f).

cc. *Attachment 28.* Conceptual Site Plan. This attachment is required in all applications. *The Conceptual Site Plan* indicates where your plan's proposed construction *and* rehabilitation activities will take place and any planned acquisition of adjacent property and/or buildings. Review the design requirements of Section III.C.3. and Rating Factor V(A)(9)(f).

dd. *Attachment 29.* Conceptual Building Elevations. This attachment is required in all applications. Review the design requirements of Section III.C.3. and Rating Factor V(A)(9)(f). Include building elevation drawings for the various types of your proposed housing.

ee. *Attachment 30.* HOPE VI Revitalization Application Certifications. This attachment is required in all applications. This form is available from Grants.gov. Note that these certifications (4 page document) must be signed by the Chairman of the Board of the PHA, NOT the Executive Director.

ff. *Attachment 31.* HOPE VI Revitalization Project Readiness Certification, form HUD–52787. This attachment is required in all applications. Complete Attachment 31 by indicating which of the items in Rating Factor V(A)(9)(d) of the NOFA have been completed.

gg. *Attachment 32.* Standard Forms and Certifications.

a. Disclosure of Lobbying Activities (SF-LLL), if applicable;

b. Applicant/Recipient Disclosure/ Update Report (HUD–2880);

c. Program Outcome Logic Model (HUD–96010);

d. America's Affordable Communities Initiative (HUD–27300), if applicable;

e. If applicable, Funding Application for Housing Choice Voucher Assistance prepared in accordance with Notice PIH 2005–15 (and any reinstatement of or successor to that Notice), including, Section 8 Tenant-Based Assistance Rental Certificate Program, Rental Voucher Program, form HUD–52515. It is applicable only if you are requesting Housing Choice Vouchers that are related to your proposed plan. In preparing the request for vouchers, applicants must follow PIH Notice 2005–15 and any successor notices; and

f. Facsimile Transmittal (HUD–96011).

C. Deadline Dates and Times

Applications submitted through *Grants.gov* must be received and validated by *Grants.gov* no later than 11:59:59 p.m. eastern time on the application deadline date, July 10, 2006. *Important Submission Tip:* Please be aware that when submitting an application via *Grants.gov,* you will first receive a confirmation notice that *Grants.gov* received the application. The application will then go through a validation process. If the validation process finds problems with the application, it will be rejected and unavailable for retrieval by HUD.

The validation check ensures that:

1. The application is virus free;

2. The application meets the deadline requirements established for the funding opportunity;

3. The DUNS number submitted on the application matches the DUNS number in the registration, and that the Authorized Organization Representative has been authorized to submit the application for funding by the organization identified by its DUNS number; and

4. All the mandatory fields and forms were completed on the application.

5. Upload the application using Internet Explorer or Netscape browsers.

If the application fails any of these items on the validation check, the application will be rejected. The validation check occurs 24 to 48 hours after the application submission. Therefore, HUD recommends that all applicants submit their application no later than 48 to 72 hours before the deadline. That way, if the application fails the validation process, the applicant will receive an e-mail notification providing the error messages. By submitting 48 to 72 hours in advance of the deadline, applicants have time to cure deficiencies in their application and resubmit it in time to meet deadline requirements.

6. *Submission Date, Address, Delivery Requirements and Acceptance for Applicants that have Received Waivers that Allow Submission of a Paper Copy Application.* The following applies *ONLY* if you are granted a waiver to the

electronic application submission requirements.

a. *Method of Delivery.* Applicants granted a wavier to the electronic submission requirement must use the United States Postal Service (USPS) or overnight mail service (which provide written receipt of delivery date) to submit their applications to HUD. Hand-carried and courier delivered applications will not be accepted.

b. *Submission Date and Time.* Applications must be received by 4 p.m. on July 10, 2006. Applications will be considered late and ineligible to receive funding if not received on or before the application submission date and time, regardless of the postmark date.

c. *Address for Submitting Applications.* Send the original and one copy of your completed application to Ms. Dominique Blom, Acting Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410–5000. Please make sure that you note the room number. The correct room number is very important in ensuring that your application is properly accepted and not misdirected.

d. *Form of Acceptance.* HUD will consider an application as being accepted when it is delivered to the Office of Public Housing Investments, Room 4130, HUD Headquarters, 451 Seventh Street, SW., Washington, DC 20410–5000. Upon delivery and acceptance, the Grant Administrator will manually add the application's PHA name, development name, time of receipt, and date of receipt to an application receipt log.

e. *Wrong Address.* Applications mailed to the wrong location or office designated for receipt of the application, which result in the designated office not receiving the application in accordance with the requirements for timely submission, will result in the application being considered late. Late applications will not receive funding consideration. HUD will not be responsible for directing packages to the appropriate office(s).

f. *Field Office Copy.* You must send one duplicate copy of your application to your HUD field office. The HUD field office copy of the application is due before 4 p.m. on the application submission date. If the HUD field office receives an application on time, but the application is not received on time at Headquarters, it will not be considered.

g. *No Facsimiles or Videos.* With the exception of third party documents submitted via electronic facsimile (See Section IV.F. of the General Section), HUD will not accept for review and evaluation, or fund, any applications sent by facsimile (fax). However, facsimile corrections to technical deficiencies will be accepted, as described in Section V.B. of this NOFA. Also, videos submitted as part of an application will not be viewed.

h. *Proof of timely submission.* Proof of timely submission for all applications, regardless of whether they are delivered through USPS or overnight mail services shall be the date and time recorded by the Grant Administrator in the application receipt log.

i. *Acknowledgement of Application Receipt.* If you wish to receive acknowledgement of HUD's receipt of the application, the Acknowledgment of Application Receipt, form HUD–2993, should be included in the front of the application. After receipt, HUD will return the form to you.

D. *Intergovernmental Review.* Executive Order 12372, "Intergovernmental Review of Federal Programs," was issued to foster intergovernmental partnership and strengthen federalism by relying on state and local processes for the coordination and review of Federal financial assistance and direct Federal development. HUD implementing regulations are published at 24 CFR part 52. The order allows each state to designate an entity to perform a state review function. Applicants can find the official listing of State Points of Contact (SPOC) for this review process at *http://www.whitehouse.gov/omb/grants/spoc.html.* States not listed on the Web site have chosen not to participate in the intergovernmental review process and, therefore, do not have a SPOC. If your state has a SPOC, you should contact the SPOC to see if it is interested in reviewing your application before submission to HUD. Please make sure that you allow ample time for this review when developing and submitting your applications. If your state does not have a SPOC, you can submit your application directly to HUD using *Grants.gov.*

E. Funding Restrictions.

1. *Statutory Time Limits*

a. *Required Obligation Date.* Funds appropriated for the HOPE VI program for FY2006 must be obligated on or before September 30, 2007. Any funds that are not obligated by that date will be recaptured by the Treasury, and thereafter will not be available for obligation for any purpose.

b. *Required Expenditure Date.* In accordance with 31 U.S.C. 1552, all FY 2006 HOPE VI funds must be expended by September 30, 2012. Any funds that are not expended by that date will be placed in an expired account, and will be available only for the purposes of liquidating obligations properly chargeable to that account prior to its expiration and of making legitimate obligation adjustments.

3. *Grant Amount Limitations.*

a. *Requested Amount.* See Section II of this NOFA for details.

4. *Ineligible Activities.*

a. You may not use HOPE VI Revitalization grant funds to pay for any revitalization activities carried out on or before the date of the letter announcing the award of the HOPE VI Grant.

b. *Market-Rate Units.* HOPE VI funds may not be used to develop market-rate units or affordable housing units that do not qualify as public housing or homeownership replacement units.

c. *Retail or Commercial Development.* HOPE VI funds may not be used for hard construction costs related to, or for the purchase of equipment for, retail, commercial, or non-public housing office facilities.

5. *Total Development Cost (TDC).*

a. The "TDC Limit" (24 CFR 941.306, Notice PIH 2005–26 (HA), or extending Notice) refers to the maximum amount of HUD funding that HUD will approve for development of specific public housing units in a given location. The TDC limit applies only to the costs of development of public housing that are paid directly with HUD public housing funds, including HOPE VI funds; a PHA may exceed the TDC limit using non-public housing funds such as CDBG, HOME, low-income housing tax credit equity, etc.

b. The HUD TDC Cost Tables are issued for each calendar year for the building type and bedroom distribution for the public housing replacement units. Use the TDC limits in effect at the time this HOPE VI NOFA is published when making your TDC calculations. TDC definitions and limits in the final rule are summarized as follows:

(1) The total cost of development, which includes relocation costs, is limited to the sum of:

(a) Up to 100 percent of HUD's published TDC limits for the costs of demolition and new construction, multiplied by the number of HOPE VI public housing replacement units; and

(b) Ninety percent of the TDC limits, multiplied by the number of public housing units after substantial rehabilitation and reconfiguration.

(2) The TDC limit for a project is made up of the following components:

(a) Housing Cost Cap (HCC): HUD's published limit on the use of public housing funds for the cost of constructing the public housing units, which includes unit hard costs,

builder's overhead and profit, utilities from the street, finish landscaping, and a hard cost contingency. Estimates should take into consideration the Davis-Bacon wage rate and other requirements as described in "Labor Standards", Section III.C. of this NOFA.

(b) Community Renewal (CR): The balance of funds remaining within the project's TDC limit after the housing construction costs described in (a) above are subtracted from the TDC limit. This is the amount of public housing funds available to pay for PHA administration, planning, infrastructure and other site improvements, community and economic development facilities, acquisition, relocation, demolition, and remediation of units to be replaced on site, and all other development costs.

(3) CSS. You may request an amount not to exceed 15 percent of the total HOPE VI grant to pay the costs of CSS activities, as described in Section III.C. of this NOFA. These costs are in addition to, *i.e.*, excluded from, the TDC calculation above.

(4) Demolition and Site Remediation Costs of Unreplaced On-site Units. You may request an amount necessary for demolition and site remediation costs of units that will not be replaced on-site. This cost is in addition to (*i.e.*, excluded from) the TDC calculation above.

(5) Extraordinary Site Costs.

(a) You may request a reasonable amount to pay extraordinary site costs, which are construction costs related to unusual pre-existing site conditions that are incurred, or anticipated to be incurred. If such costs are significantly greater than those typically required for similar construction, are verified by an independent, certified engineer or architect (See Section IV.B. for documentation requirements.), and are approved by HUD, they may be excluded from the TDC calculation above. Extraordinary site costs may be incurred in the remediation and demolition of existing property, as well as in the development of new and rehabilitated units. Examples of such costs include, but are not limited to: abatement of extraordinary environmental site hazards; removal or replacement of extensive underground utility systems; extensive rock and soil removal and replacement; removal of hazardous underground tanks; work to address unusual site conditions such as slopes, terraces, water catchments, lakes, etc.; and work to address flood plain and other environmental remediation issues. Costs to abate asbestos and lead-based paint from structures are normal demolition costs. Extraordinary measures to remove lead-based paint that has leached into the soil would constitute an extraordinary site cost.

(b) Extraordinary site costs must be justified and verified by a licensed engineer or architect who is not an employee of the housing authority or the city. The engineer or architect must provide his or her license number and state of registration. If this certification is not included in the application after the cure period described in Section IV.B.4. of the General Section, extraordinary site costs will not be allowed in the award amount. In this case, the amount of the extraordinary site costs included in the application will be subtracted from the grant amount.

6. *Cost Control Standards.*

a. Your projected hard development costs must be realistic, developed through the use of technically competent methodologies, including cost estimating services, and comparable to industry standards for the kind of construction to be performed in the proposed geographic area.

b. Your cost estimates must represent an economically viable preliminary plan for designing, planning, and carrying out your proposed activities in accordance with local costs of labor, materials, and services.

c. Your projected soft costs must be reasonable and comparable to industry standards. Upon award, soft costs will be subject to HUD's "Safe Harbor" cost control standards. For rental units, these safe harbors provide specific limitations on such costs as developer's fees (between 9 and 12 percent), PHA administration/consultant cost (no more than 3 to 6 percent of the total project budget), contractor's fee (6 percent), overhead (2 percent), and general conditions (6 percent). HUD's Cost Control and Safe Harbor Standards can be found on HUD's HOPE VI Web site.

d. If you are eligible for funding, HUD will delete any unallowable items from your budget and may reduce your grant accordingly.

7. *Withdrawal of Grant Amounts.* In accordance with section 24(i) of the 1937 Act, if a grantee does not proceed within a reasonable timeframe, as described in Section VI.B.2. of this NOFA, HUD shall withdraw any unobligated grant amounts. HUD shall redistribute any withdrawn amounts to one or more other applicants eligible for HOPE VI assistance or to one or more other entities capable of proceeding expeditiously in the same locality in carrying out the Revitalization plan of the original grantee.

F. Other Submission Requirements

Application Submission and Receipt Procedures. This section provides the application submission and receipt instructions for HUD program applications. Please read the following instructions carefully and completely, as failure to comply with these procedures may disqualify your application.

1. *Electronic Submission of Applications.* Applicants must submit their applications electronically through *Grants.gov*. HUD described the *Grants.gov* registration process in its Early *Grants.gov* Registration notice published in the **Federal Register** on December 9, 2005 (70 FR 73332), and in other information available at *http://www.grants.gov/GetStarted*. The site provides registration checklists that applicants are advised to use, to ensure that they have all the information they need to complete all the steps in the registration process. Past applicants have found that the checklists made their registration easier and faster.

There are five sequential steps required for an applicant to complete the Grants.gov registration process:

a. *Step one* is to call Dun and Bradstreet and request a Dun and Bradstreet Universal Data Numbering System (DUNS) number for the organization (if it does not already have one), as described above. The DUNS number is used by the Federal government to identify the organization. Organizations should be able to obtain a DUNS number on the same date they contact Dun and Bradstreet by phone (866) 705–5711 (this is a toll-free number).

b. *Step two* is to register with the Central Contractor Registry (CCR) either toll-free by telephone ((888) 227–2423) or by going online at *http://www.ccr.gov*. When an organization registers with the CCR, the organization will be required to designate an E-Business Point of Contact (E-Business POC). The E-Business POC will designate a special password called an "M–PIN." The password gives the E-Business POC sole authority to designate which staff member(s) from the organization will be allowed to submit applications electronically on its behalf. Staff members that are designated by the organization's E-Business POC to submit applications on its behalf are called Authorized Organization Representatives (AORs). Registering with the CCR is required for an organization to be able to use *Grants.gov*. It takes 1 to 3 days to complete this process because security

information has to be sent to the organization.

Note that CCR registration expires on an annual basis and, therefore, it must be updated to remain active. The CCR will send the E-Business POC an e-mail message 30 days before the expiration date of their current registration. If the E-Business POC does not update the CCR registration by the expiration date, the CCR will send the organization a letter notifying it that its account has been deactivated.

c. *Step three* requires that AORs from the organization register with the Credential Provider to obtain their username and password, via the Web site, *https://apply.grants.gov/OrcRegister*. The AOR usernames and passwords serve as "electronic signatures" when an AOR submits an application via *Grants.gov* on behalf of an organization. AORs must wait until after their organization has received registration confirmation from the CCR before they can obtain their user names and passwords. AORs designate their user name and password when registering with a credential provider. AORs will receive validation of their user names and passwords on the same day that they submit the information online.

d. *Step four* requires the AORs to register with *Grants.gov*. AORs must register with *Grants.gov* to obtain an account at the Web site, *https://apply.grants.gov/GrantsgovRegister*. AOR registration with *Grants.gov* allows AORs to submit applications on behalf of the organization and to track the status of submitted applications.

e. *Step five* requires the E-Business POC to approve the designated AORs. When an AOR registers with *Grants.gov* (step 4), the E-Business POC will receive an e-mail notification. The E-Business POC must subsequently log into *Grants.gov* (using the organization's DUNS number as the user name and the M–PIN as the password) and approve the AOR(s), thereby giving each approved AOR permission to electronically submit applications on behalf of the organization using *Grants.gov*. Only the organization's E-Business POC can approve AORs. After the E-Business POC approves an AOR, *Grants.gov* will send the AOR confirmation of the approval via e-mail. See HUD's Notice on Early Registration for complete details of the registration process and steps.

2. *Important Registration Tips.*

a. The registration process is distinct from application submission and encompasses five-steps that can take approximately 10 business days to complete. Therefore, applicants must allow sufficient time to complete their registration prior to submitting their application. Applicants can submit their application to *Grants.gov* once they are fully registered. Please note that the Internal Revenue Service takes approximately 5 weeks to provide a new organization with a Tax Identification Number (TIN) or Employer Identification Number (EIN). You will need a TIN or EIN to register in the CCR. Please allow sufficient time to obtain the TIN or EIN if you currently do not have one for your organization, as you will need the number to complete the registration process in CCR.

b. Applicants must remember the password and ID they are provided during the registration process. Passwords and IDs are case sensitive. Forgetting your password or ID could delay the timely submission of your application.

c. Applicants must register and the E-Business Point of Contact must authorize the individual(s) who will be submitting the application on behalf of the organization. By authorizing the person to submit on behalf of the organization, the organization is stating that the person can make a legally binding commitment for the organization.

3. *Instructions on How To Submit an Electronic Application to HUD via www.grants.gov/Apply.*

a. *Complete Application Package. Grants.gov* has a full set of instructions on how to complete a grant application on its Web site at *http://www.grants.gov/CompleteApplication*. Applicants are encouraged to read the "Complete Application Package" Web site. The site contains a multimedia demonstration that guides applicants through the process of completing an application package. The training demonstration is also available in text format on the Web site. *Grants.gov* allows applicants to download the application package, application instructions, and forms incorporated in the instructions and work off-line. In addition to forms that are part of the application instructions downloaded from *Grants.gov*, there are a series of electronic forms that use a PureEdge™ Reader. The PureEdge™ Reader is available free for download from Step 2 of *www.grants.gov/Get Started*. *Grants.gov* has an updated version of the PureEdge Viewer (version 6.2). If applicants have not upgraded their version of the PureEdge viewer, they must do so before downloading the application package. The PureEdge™ Reader allows applicants to read the electronic files in a form format so that they will look like any other Standard or HUD form. The PureEdge™ forms have content-sensitive help. To use this feature, click on the icon that features an arrow with a question mark at the top of the page. This engages the content-sensitive help for each field on the electronic form. The PureEdge™ forms can be downloaded and saved on your hard drive, network drive(s), or CDs. Because of the size of the application, HUD recommends downloading the application to your computer hard drive.

Please review Section IV. to ensure that your application contains all the required materials.

MacIntosh users will need to use the Virtual PC emulator software, which allows PC software to run on MacIntosh platforms. More information on PureEdge™ Support for MacIntosh Users is available at *http://www.grants.gov/CompleteApplication#*, located under the topic Tips and Tools. *Grants.gov* is in the process of upgrading its system to allow MacIntosh users to be able to view PureEdge forms. The new feature will be issued shortly. Please check the *Grants.gov* Web site for the announcement of this additional feature.

b. *Mandatory Fields on PureEdge™ Forms.* In the PureEdge™ forms, you will find fields with a yellow background. These data fields are mandatory and must be completed.

c. *Completion of SF–424 Fields First.* The PureEdge™ forms are designed to automatically populate common data such as the applicant name and address, DUNS number, etc., on all PureEdge™ electronic forms. In order to trigger this function, the Standard Form 424 (SF–424) must be completed first. Once applicants complete the SF–424, the information entered will transfer to the other forms.

d. *Submission of Narrative Statements, Third Party Letters, and Certifications.* In addition to forms, many of the NOFAs require the submission of other documentation, such as third party letters, certifications, or program narrative statements. This section discusses how you should submit this additional information electronically as part of your application:

(1) *Narrative Statements to the Factors for Award.* Narrative statements must be submitted as an electronic file in Microsoft Word (version 9 or earlier), Microsoft Excel 2000, or in Portable Document Format (PDF) that is compatible with Adobe™ Reader version 6.0 or earlier. Applicants should also follow the directions provided above in Section IV. regarding narratives. If HUD receives a file in a

format other than those specified, HUD will not be able to read the file, and it will not be reviewed. Each response to a Factor for Award should be clearly identified and can be incorporated into a single attachment or all attachments zipped together into a single attached file. Please carefully review the NOFA requirements for submission format in section IV.B. Documents that applicants possess in electronic format, e.g., narratives they have written, or graphic images (such as Computer Aided Design (CAD) files from an architect), must be attached using the "Attachments" form included in the application package downloaded from *Grants.gov*. In order to reduce the size of its attachments, applicants can compress all or several files using a ZIP utility. Applicants can then attach the zipped file as described above.

(2) *Third Party Letters, Certifications Requiring Signatures, and Other Documentation.* Applicants required to submit third party documentation (e.g., establishing matching or leveraged fund, documentation of 501(c)(3) status or incorporation papers, documents that support the need for the program, memoranda of understanding (MOUs), or program required documentation that supports your organization's claims regarding work that has been done to remove regulatory barriers to affordable housing) can choose from the following two options, as a way to provide HUD with the documentation:

(a) *Scanning Documents to Create Electronic Files.* Scanning documents increases the size of files. Applicants may not submit scanned files unless the facsimile solution described below will not work due to the nature of the document. Electronic files must be labeled so that the recipient at HUD will know what the file contains. See Section IV for instructions on how to name the files applicants must submit.

(b) *Faxing Required Documentation.* Applicants may submit the required documentation to HUD by facsimile. Applicants may only use the fax method to submit attachments that are part of their electronic applications. HUD will not accept entire applications by fax. HUD will disqualify applications submitted entirely by fax.

Facsimiles submitted in response to a NOFA must use the form HUD–96011. The transmittal form to be downloaded with the application can be found on *Grants.gov*. The transmittal form found in the downloaded application contains a unique identifier that allows HUD to match an applicant's application submitted via *Grants.gov* with faxes coming from a variety of sources. Therefore, for HUD to correctly match a fax to a particular application, the applicant must use and require third parties that fax documentation on its behalf to use the form HUD–96011 as the cover page of the facsimile. Using the form HUD–96011 will ensure that HUD can electronically read faxes submitted by and on behalf of an applicant and match them to the applicant's application package received via *Grants.gov*.

When you download an application package from *Grants.gov*, be sure to save it to your hard drive, complete the SF–424, and then provide copies of the form HUD–96011 facsimile transmittal cover page to third parties that will submit information in support of your application. Do not download the same application package from *Grants.gov* more than once. Each time the application package is downloaded, the forms are given a unique ID number. To ensure that all the forms in your package contain the same unique ID number, after downloading your application complete the SF–424, save the forms to your hard drive, and use the saved forms to create your application. If you have to provide a copy of the form HUD–96011 to another party that will be responsible for faxing an item as part of your application, make a copy of the facsimile transmittal cover page from your downloaded application and provide that copy to the third party for use with the fax transmission. Please instruct third parties to use the form HUD–96011 that you have provided as a cover page when they submit information supporting your application using the facsimile method, because it contains the embedded ID number that is unique to your application submission. Applicants must fax their information, and third parties must fax information in support of an applicant's application, using the HUD–96011 facsimile transmittal cover page, to the following fax number: (800) HUD–1010. If you cannot access this 800 number or have problems, you may use (215) 825–8798 (this is not a toll-free number). Failure to use the form HUD–96011 as the cover page will create a problem in electronically matching your faxes to the application. If HUD is unable to match the faxes electronically due to an applicant's failure to follow these directions, HUD will not hand-match faxes to applications and not consider the faxed information in rating the application.

In addition, applicants must fax individual documents as separate submissions to avoid fax transmission problems. When faxing several documents, applicants must use the form HUD–96011 as the cover page for each document (e.g., Letter of Matching or Leveraging funds, Memorandum of Understanding, Certification of Consistency with the Consolidated Plan, etc.) Please be aware that faxing large documents at one time may result in transmission failures. Be sure to check the record of your transmission issued by the fax machine to ensure that your fax submission was completed "OK." For large or long documents, HUD suggests that you divide the document into smaller sections for faxing purposes. Each time you fax a document that you have divided into smaller sections, you should indicate on the cover sheet the section number of the total number of sections that you submitted (e.g., "Part 1 of 4 parts" or "pages 1–10 of 20 pages").

Your facsimile machine should provide you with a record of whether HUD received your transmission. If you get a negative response or a transmission error, you should resubmit the document until you confirm that HUD has received your transmission. HUD will not acknowledge that it received a fax successfully. When HUD receives a fax electronically, HUD will electronically read it with an optical character reader and attach it to the application submitted through *Grants.gov*. Applicants and third parties submitting information in support of the applicant's application may submit information by facsimile transmissions at any time before the application deadline date. Applicants must ensure that the form HUD–96011 used to fax information matches their electronic application (i.e., is part of the application package downloaded from *Grants.gov*). All faxed materials must be received no later than 11:59:59 p.m. eastern time on the application deadline date. HUD will store the information and match it to the electronic application when HUD receives it from *Grants.gov*.

Facsimile Transmission Tip: Be sure to save your receipt of successful facsimile transmission as proof that the document was timely submitted to HUD. In cases where receipt may be in question, the transmittal receipt is your proof of timely receipt and successful submission.

(c) *Submissions Using Other File Formats.* If you are required to submit files in other formats such as CAD files of architectural drawings and blueprints, or pictures, you must attach these as electronic files in PDF format that is compatible with Adobe™ Reader version 6.0 or earlier. The files should be part of the zipped folder that is

attached and submitted with your application transmission.

e. *Customer Support.* The *Grants.gov* Web site provides customer support via (800) 518-GRANTS (this is a toll-free number) or via e-mail at *support@grants.gov*. The customer support center is open from 7 a.m. to 9 p.m. eastern time, Monday through Friday, except Federal holidays, to address *Grants.gov* technology issues. For technical assistance to program-related questions, contact the number listed in Section VII Agency Contact.

4. *Timely Receipt Requirements and Proof of Timely Submission.*

a. *Electronic Submission.*

(1) All applications must be received and validated by *Grants.gov* by 11:59:59 p.m. eastern time on the application deadline date. If the application is not validated before the deadline date, it will not be considered as meeting the deadline requirements.

Important Submission Tip: Upon successful submission, an applicant will receive an e-mail notification confirming receipt and indicating the application is being validated and that the validation process will be completed in approximately 24 to 48 hours. If the application does not pass the validation check, it will be rejected and the applicant notified of the reason for the rejected application. Applicants should therefore not assume because *Grants.gov* received an application, that they have successfully submitted the application until they receive the validation notice. If a rejection notice is received, the applicant should review the reasons for rejection and, if time permits, correct the error(s) and resubmit the application in time to meet the deadline requirements.

(2) Proof of timely submission and validation is automatically recorded by *Grants.gov*. An electronic time stamp is generated within the system when the application has been successfully received and validated.

(3) An applicant will receive an acknowledgement of receipt and a tracking number from *Grants.gov* with the successful transmission of its application followed by the validation receipt. When the validated application is transmitted from *Grants.gov* to HUD, the applicant will receive an e-mail notification that the application was received by the funding agency. Applicants should print and file these receipts along with facsimile receipts for information provided by facsimile, as proof of timely submission. Applicants will be considered as meeting the deadline date requirements when *Grants.gov* has received and validated your application no later than the deadline date and time, and all fax transmissions have been received by the deadline date and time.

(4) Applications validated by *Grants.gov* after the established deadline date and time for the program will be considered late. HUD will not consider any late application submissions. Similarly, HUD will not consider information submitted by facsimile as part of the application if received by HUD after the established deadline date and time. Please take into account the transmission time required for submitting your application via the Internet and the time required to fax any related documents. HUD suggests that applicants submit their applications during the operating hours of the *Grants.gov* Support Desk so that, if there are questions concerning transmission, operators will be available to assist you through the process. Submitting your application during the Support Desk hours will also ensure that you have sufficient time for the application to complete its transmission before the application deadline.

(5) Applicants using dial-up connections should be aware that transmitting your application takes extra time before *Grants.gov* receives it. *Grants.gov* will provide either an error or a successfully received transmission message. The *Grants.gov* Support Desk reports that some applicants abort the transmission because they think that nothing is occurring during the transmission process. Please be patient and give the system time to process the application. Uploading and transmitting a large file, particularly electronic forms with associated eXtensible mark-up language (XML) schema, will take considerable time to process and be received by *Grants.gov*.

Important Submission Tip. When submitting an application electronically, applicants should take the following steps to speed up the transmission process:

- Close all other applications running on the computer used for the upload;
- Save the completed application to the desktop, checking to make sure that the file that you intend to submit is the complete and final version of your application;
- Open and view all attachment files to make sure they are the final versions of the attachments that you plan to submit. Check your system to make sure other versions are not still saved and delete old versions so you do not submit the wrong attachments in the application submission;
- Check the application for errors using the check application for errors button contained in the *Grants.gov* application; if errors are found, follow each error message and correct the error;
- Submit your application using Internet Explorer or Netscape browsers. *Grants.gov* has been tested using these browsers, and HUD has found easier transmission with these browsers than others;
- Transmission, even for very large applications, should be completed in a few minutes. Transmission should not take longer than an hour. If transmission takes longer, close down the application, and contact the *Grants.gov* help line, retaining the help desk ticket number for future reference. You may also use the submit tips available on the *Grants.gov* Web site;
- Submit the application to *Grants.gov* 48 to 72 hours in advance of the deadline to provide sufficient time to correct any validation errors noted and address any registration issues;
- If validation errors are reported, correct the validation errors and resubmit the application if it is prior to the deadline date; late applications will not be accepted by *Grants.gov*;
- If you are not sure what to do, call the *Grants.gov* help desk and retain the ticket number for future reference.
- Do not attempt to submit electronically if the computer you are using does not meet the minimum requirements for electronic submission. These requirements are listed on the *Grants.gov* Web site, as well as HUD's Web site;
- If you get an "MEC" error message, it is a Microsoft Configuration Error. Contact your software provider or your computer/information technology support desk to help you configure your system for the size files you are trying to upload. This is not a *Grants.gov* system issue, but rather an issue with your computer configuration.

b. Late applications, whether received electronically or in hard copy, will not receive funding consideration. HUD will not be responsible for directing or forwarding applications to the appropriate location. Applicants should pay close attention to these submission and timely receipt instructions, as they can make a difference in whether HUD will accept your application for funding consideration.

5. *Waiver of Electronic Submission Requirements.* For FY2006, the procedures for obtaining a waiver of the electronic submission requirement have changed. On December 29, 2005 (70 FR 77292), HUD published a final rule that established in 24 CFR 5.1005 the regulatory framework for HUD's electronic submission requirement, as well as the procedures for obtaining a waiver. Applicants seeking a waiver of

the electronic submission requirement must request a waiver in accordance with 24 CFR 5.1005. If the waiver is granted, the program office's response will include instructions on how, where, and how many hard copies of the paper application must be submitted. Applicants that are granted a waiver of the electronic submission requirement will not be afforded additional time to submit their applications. The deadlines for applications will remain as provided in this NOFA. As a result, applicants seeking a waiver of the electronic application submission requirement should submit their waiver request with sufficient time to allow HUD to process and respond to the request. Applicants should also allow themselves sufficient time to submit their application so that HUD receives the application by the established deadline date. For this reason, HUD strongly recommends that an applicant that finds it is unable to submit its application electronically and must seek a waiver of the electronic grant submission requirement, submit its waiver request to the headquarters of the applicable HUD office no later than 30 days before the application deadline date. This will allow time for HUD to process the waiver request and give the applicant sufficient time to submit the paper application to meet the deadline date requirement if the waiver is granted. To expedite the receipt and review of such requests, applicants may email their requests to the program contact listed in the NOFA. Applications that are received after the established deadline date will not be considered.

V. Application Review Information

A. Criteria

1. Rating Factor: Capacity—23 Points Total

a. *Capacity of the Development Team*—5 points. Address this Rating Factor through your narrative. This rating factor looks at the capacity of the development team as a whole. The term "your Team" includes PHA staff who will be involved in HOPE VI grant administration, and any alternative management entity that will manage the revitalization process, be responsible for meeting construction time tables, and obligating amounts in a timely manner. This includes any developer partners, program managers, property managers, subcontractors, consultants, attorneys, financial consultants, and other entities or individuals identified and proposed to carry out program activities.

(1) You will receive up to 5 points if your application demonstrates that:

(a) Your developer or other team members have extensive, recent (within the last five years), and successful experience in the redevelopment of public housing, including planning, implementing, and managing physical development, financing, leveraging, and partnership activities;

(b) Your developer or other team members have extensive, recent (within the last five years), and successful experience in mixed finance and mixed income development, including planning, implementing, and managing physical development, financing, leveraging, and partnership activities;

(c) You propose development using low-income tax credits, and your developer or other team members have relevant tax credit experience; and

(d) If homeownership, rent-to-own, cooperative ownership, or other major development components are proposed, your developer or other team member has relevant, successful experience in development, sales, or conversion activities.

(2) You will receive up to 3 points if your developer or other team members have some but not extensive experience in the factors described above.

(3) You will receive zero points if your developer or other team members do not have the experience described above and the application does not demonstrate that it has the capacity to carry out your Revitalization plan. You will also receive 0 points if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

b. *Development Capacity of Applicant*—5 points. Address this Rating Factor through your narrative. This rating factor looks at the development capacity of ONLY the applicant (not other members of the development team).

(1) You will receive up to 5 points if your application demonstrates that:

(a) Separate from your team, you have extensive, recent (within the last five years), and successful experience in the redevelopment of public housing, including planning, implementing, and managing physical development, financing, leveraging, and partnership activities;

(a) Separate from your team, you have extensive, recent (within the last five years), and successful experience in mixed finance and mixed income development, including planning, implementing, and managing physical development, financing, leveraging, and partnership activities;

(c) As relevant, you have identified potential gaps in your current staffing in relation to development activities, and you have plans to fill such gaps, internally or externally, in a timely manner in order to implement successfully your Revitalization plan;

(d) You have demonstrated that physical development activities will proceed as promptly as possible following grant award, and you will be able to begin significant construction within 18 months of the award of the grant. Applicants must provide a program schedule, developed in accordance with the timeframes in Section III.C. (Timeliness of Development) and V.A, in order to demonstrate this criterion.

(1) You will receive up to 3 points if you have some but not extensive experience in the factors described above.

(2) You will receive zero points if you do not have the experience described and the application does not demonstrate that it has the capacity to carry out your Revitalization plan. You will also receive 0 points if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

c. *Capacity of Existing HOPE VI Revitalization grantees.* HUD will use data from the Quarterly Reports to evaluate this Rating Factor.

(1) This section applies only to applicants that have received HOPE VI Revitalization grants for fiscal years 1993–2003. If an applicant has more than one HOPE VI Revitalization grant, each will be rated separately, not averaged, and the highest deduction will be made. Applicants with HOPE VI Revitalization grants only from FY2004 or FY2005, or no existing HOPE VI Revitalization grants are not subject to this section.

(2) As indicated in the following tables, up to 5 points will be deducted if a grantee has failed to achieve adequate progress in relation to cumulative public housing rental unit production. Production achievement numbers will be taken from the quarterly reporting system for the quarter most recently completed at the time the NOFA is published in the **Federal Register** (March 31, 2006).

Percent of public housing unit production completed	Points deducted
Grants Awarded in FY1993–1999	
Less than 100	5
Grants Awarded in FY2000	
90–100	0
80–89	1
75–79	2
70–74	3

Percent of public housing unit production completed	Points deducted
65–69	4
Less than 65	5
Grants Awarded in FY2001	
80–100	0
70–79	1
60–69	2
50–59	3
40–49	4
Less than 40	5
Grants Awarded in FY2002	
60–100	0
50–59	1
40–49	2
30–39	3
20–29	4
Less than 20	5
Grants Awarded in FY2003	
25–100	0
20–24	1
15–19	2
10–14	3
5–9	4
Less than 5	5

d. *CSS Program Capacity*—3 points. See Sections I. and III. of this NOFA for detailed information on CSS activities. Address this Rating Factor through your narrative.

(1) You will receive 2 points if your application demonstrates one of the following. If you fail to demonstrate one of the following, you will receive 0 points:

(a) If you propose to carry out your CSS plan in-house and you have recent, quantifiable, successful experience in planning, implementing, and managing the types of CSS activities proposed in your application, or

(b) If you propose that a member(s) of your team will carry out your CSS plan, that this procured team member(s) has the qualifications and demonstrated experience to plan, implement, manage, and coordinate the types of activities proposed, and that you have the capacity to manage that team member, including a plan for promptly hiring staff or procuring this team member.

(2) You will receive 1 point if your application demonstrates that:

(a) You have an existing HOPE VI grant and your current CSS team will be adequate to implement a new program, including new or changing programs, without weakening your existing team.

(b) You do not have an existing HOPE VI Revitalization grant and you demonstrate how your proposed CSS team will be adequate to implement a new program, including new or changing services, without weakening your existing staffing structure.

e. *Property Management Capacity*—3 points. Address this Rating Factor through your narrative.

(1) Property management activities may be the responsibility of the PHA or another member of the team, which may include a separate entity that you have procured or will procure to carry out property management activities. In your application you will describe the number of units and the condition of the units currently managed by you or your property manager, your annual budget for those activities, and any awards or recognition that you or your property manager have received.

(2) Past Property Management Experience—2 points.

(a) You will receive 2 points if your application demonstrates that you or your property manager currently have extensive knowledge and recent (within the last five years), successful experience in property management of the housing types included in your revitalization plan. This may include market-rate rental housing, public housing, and other affordable housing, including rental units developed with low-income housing tax credit assistance. If your Revitalization plan includes cooperatively-owned housing, rent-to-own units, or other types of managed housing, in order to receive the points for this factor, you must demonstrate recent, successful experience in the management of such housing by the relevant member(s) of your team.

(b) You will receive 1 point if your application demonstrates that you or your property manager has some but not extensive experience of the kind required for your Revitalization plan.

(c) You will receive 0 points if your application does not demonstrate that you or your property manager have the experience to manage your proposed plan, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

(3) Property Management Plan—1 point.

(a) You will receive 1 point if your application describes how you or your property manager will administer the following elements of a property management plan:

(i) Property maintenance.
(ii) Rent collection.
(iii) PIC 50058 reporting.
(iv) Site-based management experience.
(v) Tenant grievances.
(vi) Evictions.
(vii) Occupancy rate.
(viii) Unit turnaround.
(ix) Preventive maintenance.
(x) Work order completion.
(xi) Project-based budgeting.
(xii) Management of Homeownership and rent-to-own programs.
(xiii) Energy Audits.
(xiv) Utility/Energy Incentives.

(b) You will receive 0 points if your application does not describe how you or your property manager will administer all the elements of a property management plan listed above, or if there is not sufficient information provided to evaluate this factor.

f. *PHA or MTW Plan*—1 point.

(1) You will receive 1 point if your application demonstrates that you have incorporated the revitalization plan described in your application into your most recent PHA plan or MTW Annual plan (whether approved by HUD or pending approval). In order to qualify as "incorporated" under this factor, your PHA or MTW plan must indicate the intent to pursue a HOPE VI Revitalization grant and the public housing development for which it is targeted.

(2) You will receive 0 points if you have not incorporated the revitalization plan described in your application into your PHA or MTW plan, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

g. *Public Housing Assessment System (PHAS)*—2 points.

(1) If you have been rated as an Overall High Performer for your most recent PHAS review as of the application submission date, you will receive 2 points.

(2) If you have been rated as an Overall Standard Performer for your most recent PHAS review as of the application submission date, you will receive 1 point.

(3) If you have been rated as a Troubled Performer that is either Troubled in One Area or Overall Troubled as of the application submission date, you will receive 0 points.

(4) For this rating factor, MTW PHA applicants will be rated on their compliance with their MTW Agreements.

(a) If you are in compliance with your MTW Agreement, you will receive 2 points.

(b) If you are not in compliance with your MTW Agreement, you will receive zero points.

h. *Regular Maintenance—2 points.*

(1) Through PHAS, HUD measures the prevalence of items that need to be fixed (defects) in PHAs' public housing developments. PHAs receive a report entitled "Comparison of the Top 20 Observed Defects (Projected)." HUD

conducts analyses related to this report. In these analyses, HUD separates the regular maintenance projected defects from the total projected defects (other categories of defects include capital and life threatening/exigent health and safety), applies them across all units in the PHA's inventory and develops a rate of defects per unit. HUD will compare the PHA's most recent PHAS projected number of regular maintenance defects per unit and compare it to the previous projected number of regular maintenance defects per unit. (a) You will receive 2 points if your projected number of regular maintenance defects per unit has improved. (b) You will receive 0 points if your projected number of regular maintenance defects per unit have not improved.

(2) MTW PHA. For this rating factor, MTW PHA applicants will be rated on their compliance with their MTW Agreements.

(a) If you are in compliance with your MTW Agreement, you will receive 2 points.

(b) If you are not in compliance with your MTW Agreement, you will receive zero points.

i. *Section 8 Management Assessment Program (SEMAP)—2* points

(1) If you have been rated as a High Performer for your most recent SEMAP rating as of the application submission date, you will receive 2 points.

(2) If you have been rated as Standard for your most recent SEMAP rating as of the application submission date, you will receive 1 point.

(3) If you have been rated as Troubled for your most recent SEMAP rating as of the application submission date, you will receive zero points.

(4) For this rating factor, MTW PHA applicants will be rated on their compliance with their MTW Agreements.

(a) If you are in compliance with your MTW Agreement, you will receive 2 points.

(b) If you are not in compliance with your MTW Agreement, you will receive zero points.

2. Rating Factor: Need—20 Points Total

a. *Severe Physical Distress of the Public Housing Development*—10 Points.

(1) HUD will evaluate the extent of the severe physical distress of the targeted public housing development. If the targeted units have already been demolished, HUD will evaluate your description of the extent of the severe physical distress of the site as of the day the demolition application was approved by HUD. You will receive points for the following separate subfactors, as indicated.

(a) You will receive up to 3 points if your application demonstrates that there are major deficiencies in the project's infrastructure, including roofs, electrical, plumbing, heating and cooling, mechanical systems, settlement, and other deficiencies in Housing Quality Standards.

(b) You will receive up to 3 points if your application demonstrates that there are major deficiencies in the project site, including poor soil conditions, inadequate drainage, deteriorated laterals and sewers, and inappropriate topography.

(c) You will receive up to 4 points if your application demonstrates that there are major design deficiencies, including: Inappropriately high population density, room, and unit size and configurations; Isolation; Indefensible space; Significant utility expenses caused by energy conservation deficiencies that may be documented by an energy audit; and Inaccessibility for persons with disabilities with regard to individual units (less than 5 percent of the units are accessible), entranceways, and common areas.

b. *Impact of the Severely Distressed Site on the Surrounding Neighborhood*—3 Points.

(1) HUD will evaluate the extent to which the severely distressed public housing project is a significant contributing factor to the physical decline of, and disinvestment by, public and private entities in the surrounding neighborhood. In making this determination, HUD will evaluate your narrative, crime statistics, photographs or renderings, socio-economic data, trends in property values, evidence of property deterioration and abandonment, evidence of underutilization of surrounding properties, and indications of neighborhood disinvestment.

(2) You will receive up to 3 Points if your application demonstrates that the project has a significant impact on the surrounding neighborhood, as documented by each item listed above.

(3) You will receive up to 2 Points if your application demonstrates that the project has a moderate impact on the neighborhood, and only some of the items listed above are adequately documented.

(4) You will receive 0 Points if your application does not demonstrate that the project has an impact on the surrounding neighborhood, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

c. *Need for HOPE VI Funding*—4 Points.

(1) HUD will evaluate the extent to which you could undertake the proposed revitalization activities without a HOPE VI grant. Large amounts of available FY 2001–2005 Capital Funds (including Comprehensive Improvement Assistance Program (CIAP) and Comprehensive Grant Program (CGP) but not Replacement Housing Factor funds (RHF) for purposes of this NOFA) indicate that the revitalization could be carried out without a HOPE VI grant. Available Capital Funds are defined as non-obligated funds that have not been earmarked for other purposes in your PHA Plan. Funds earmarked in the PHA Plan for uses other than the revitalization proposed in this application will not be considered as available. Based on the above definition, to determine the amount of available FY 2001–2005 Capital Funds, applicants must indicate in their application the amount in the narrative of their application. See Section IV.B. of this NOFA for documentation requirements.

(2) You will receive 4 Points if your available Capital Funds balance is up to 20 percent of the amount of HOPE VI funds requested.

(3) You will receive 3 Points if your available balance is 21–45 percent of the amount of HOPE VI funds requested.

(4) You will receive 2 Points if your available balance is 46–70 percent of the amount of HOPE VI funds requested.

(5) You will receive 1 Point if your available balance is 71 to 90 percent of the amount of HOPE VI funds requested.

(6) You will receive zero Points if your available balance is more than 90 percent of the amount of HOPE VI funds requested.

d. *Need for Affordable Accessible Housing in the Community*—3 Points.

(1) Your application must demonstrate the need for other housing available and affordable to families receiving tenant-based assistance under section 8 (HCV), as described below and must be the most recent information available at the time of the application deadline.

(2) For purposes of this factor, the need for affordable housing in the community will be measured by Housing Choice Voucher program utilization rates or public housing occupancy rates, whichever of the two reflects the most need. In figuring the Housing Choice Voucher utilization rate, determine and provide the percentage of HCV units out of the total number authorized or the percentage of HCV funds expended out of the total amount authorized, whichever

percentage is higher. In figuring the public housing occupancy rate, provide the percentage of units occupied out of the total in your Federal public housing inventory, excluding the targeted public housing site. You should base your calculation only on the Federal public housing units you manage. You may not exclude units in your public housing inventory that are being reserved for relocation needs related to other HOPE VI Revitalization grant(s); or units in your public housing inventory that are being held vacant for uses related to a section 504 voluntary compliance agreement. If you are a non-MTW site, you must use information consistent with the Section Eight Management Assessment Program (SEMAP) and/or the Public Housing Assessment System (PHAS) submissions. If you are an MTW site, and do not report into SEMAP and/or PHAS, you must demonstrate your utilization and/or occupancy rate using similar methods and information sources in order to earn points under this rating factor.

(3) You will receive 3 Points if your application demonstrates that the higher of:

(a) The utilization rate of your Housing Choice Voucher program is 97 percent or higher; or

(b) The occupancy rate of your public housing inventory is 97 percent or higher.

(c) HUD will use the higher of the two rates to determine your score.

(4) You will receive 2 Points if your application demonstrates that the higher of:

(a) The utilization rate of your Housing Choice Voucher program is between 95 and 96 percent; or,

(b) The occupancy rate of your public housing inventory is between 95 and 96 percent.

(c) HUD will use the higher of the two rates to determine your score.

(5) You will receive 1 Point if your application demonstrates that the higher of:

(a) The utilization rate of your Housing Choice Voucher program is between 93 and 94 percent; or

(b) The occupancy rate of your public housing inventory is between 93 and 94 percent.

(c) HUD will use the higher of the two rates to determine your score.

(6) You will receive 0 Points if both the utilization rate of your Housing Choice Voucher program and the occupancy rate of your public housing inventory are less than 93 percent.

3. Rating Factor: Leveraging—16 Points Total

a. *Leverage.* Although related to match, leverage is strictly a rating factor. Leverage consists of firm commitments of funds and other resources. HUD will rate your application based on the amount of funds and other resources that will be leveraged by the HOPE VI grant as a percentage of the amount of HOPE VI funds requested. There are four types of Leverage: Development and CSS, as described in the "Program Requirements" section of Section III.C. of this NOFA, and Anticipatory, and Collateral as described in this rating factor. Each resource may be used for only one leverage category. Any resource listed in more than one category will be disqualified from all categories. In determining Leverage ratios, HUD will include as Leverage the match amounts that are required by Section III. of this NOFA. Applicants must follow the Program Requirements for Match and Leverage section of Section III.C of this NOFA when preparing their leverage documentation. If leverage sources and amounts are not documented in accordance with Sections III.C., they will not be counted toward your leverage amounts.

b. *Development Leveraging*—7 Points. For each commitment document, HUD will evaluate the strength of commitment and add the amounts that are acceptably documented. HUD will then calculate the ratio of the amount of HUD funds requested to the amount of funds that HUD deems acceptably documented. HUD will round figures to two decimal points, using standard rounding rules. See Section III.C, Program Requirements, Program Requirements for Match and Leverage for resource and documentation requirements. These requirements MUST be followed in order to earn points under the leverage rating factor.

(1) You will receive 7 Points if the ratio of the amount of HOPE VI funds requested for physical development activities (not including CSS, administration or relocation) to the dollar value of documented, committed development resources from other sources is 1:3 or higher.

(2) You will receive 6 Points if the ratio is between 1:2.50 and 1:2.99.

(3) You will receive 5 Points if the ratio is between 1:2.0 and 1:2.49.

(4) You will receive 4 Points if the ratio is between 1:1.50 and 1:1.99.

(5) You will receive 3 Points if the ratio is between 1:1.0 and 1:1.49.

(6) You will receive 2 Points if the ratio is between 1:0.50 and 1:0.99.

(7) You will receive one Point if the ratio is between 1:0.25 and 1:0.49.

(8) You will receive 0 Points if the ratio is less than 1:0.25, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible. You will receive 0 Points if your application does not request HOPE VI funds for CSS purposes.

c. *CSS Leveraging*—5 Points. See Section III.C, Program Requirements, Program Requirements for Match and Leverage for resource and documentation requirements. These requirements MUST be followed in order to earn points under the leverage rating factor.

(1) You will receive 5 Points if the ratio of the amount of HOPE VI funds requested for CSS activities to the dollar value of documented, committed CSS resources leveraged from other sources is 1:2 or higher.

(2) You will receive 4 Points if the ratio is between 1:1.75 and 1:1.99.

(3) You will receive 3 Points if the ratio is between 1:1.5 and 1:1.749.

(4) You will receive 2 Points if the ratio is between 1:1.25 and 1:1.49.

(5) You will receive one Point if the ratio is between 1:1 and 1:1.249.

(6) You will receive 0 Points if the ratio is less than 1:1, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible. You will receive 0 Points if your application does not request HOPE VI funds for CSS purposes.

d. *Anticipatory Resources Leveraging*—2 Points.

Anticipatory Resources relate to activities that have taken place in the past and that were conducted in direct relation to a HOPE VI Revitalization grant. In many cases, PHAs, cities, or other entities may have carried out revitalization activities (including demolition) in previous years in anticipation of your receipt of a HOPE VI Revitalization grant. These expenditures, if documented, may be counted as leveraged anticipatory resources. They cannot duplicate any other type of resource and cannot be counted towards match. Public Housing funds other than HOPE VI Revitalization, e.g., HOPE VI Demolition grant funds, HOPE VI Neighborhood Networks grant funds, HOPE VI Main Street grant funds, Capital Fund Program, may be included, and will be counted, toward your Anticipatory Resources rating below. For Anticipatory Resources ratios, "HOPE VI funds requested for physical development activities" is defined as your total requested amount of funds minus your requested CSS, administration amounts, and relocation.

HUD will presume that your combined CSS, administration and relocation amounts are the total of Budget Line Items 1408 (excluding non-CSS Management Improvements), 1410, and 1495 on the form HUD–52825–A, "HOPE VI Budget" that is included in your application. See Section III for Program Requirements and Section IV for Documentation Requirements. These requirements MUST be followed as relevant in order to earn points under the leverage rating factor.

(1) You will receive 2 Points if the ratio of the amount of HOPE VI funds requested for physical development activities to the amount of your documented anticipatory resources is 1:0.1 or higher.

(2) You will receive 0 Points if the ratio of the amount of HOPE VI funds requested for physical development activities, to the amount of your documented anticipatory resources is less than 1:0.1.

e. *Collateral Investment Leveraging*—2 Points.

Collateral investment includes physical redevelopment activities that are currently underway, or have yet to begin but are projected to be completed before October 1, 2010. The expected completion time must be addressed in your application. In order for a leverage source to be counted as collateral investment, your application must demonstrate that the related activities will directly enhance the new HOPE VI community, but will occur whether or not a Revitalization grant is awarded to you and the public housing project is revitalized. This includes economic or other kinds of development activities that would have occurred with or without the anticipation of HOPE VI funds. These resources cannot duplicate any other type of resource and cannot be counted as match. Examples of collateral investments include local schools, libraries, subways, light rail stations, improved roads, day care facilities, and medical facilities. See Section III for Program Requirements and Section IV for Documentation Requirements. These requirements MUST be followed as relevant in order to earn points under the leverage rating factor.

(1) You will receive 2 Points if the ratio of the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) to the amount of your documented collateral resources is 1:1.0 or higher.

(2) You will receive 0 Points if the ratio of the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) to the amount of your documented collateral resources is less than 1:1.0.

4. Rating Factor: Resident and Community Involvement—3 Points Total

a. HUD will evaluate the nature, extent, and quality of the resident and community outreach and involvement you have achieved by the time your application is submitted, as well as your plans for continued and additional outreach and involvement beyond the minimum threshold requirements. See Section III.C. of this NOFA for Resident and Community Involvement requirements.

b. *Resident and Community Involvement*—3 Points.

You will receive one Point for each of the following criteria met in your application, which are over and above the threshold requirements listed in Section III.C. of this NOFA.

(1) Your application demonstrates that you have communicated regularly and significantly with affected residents, state and local governments, private service providers, financing entities, developers, and other members of the surrounding community about the development of your revitalization plant by giving residents and community members information about your actions regarding the revitalization plan and providing a forum where residents and community members can contribute recommendations and opinions with regard to the development and implementation of the revitalization plan.

(2) Your application demonstrates your efforts, past and proposed, to make appropriate HUD communications about HOPE VI available to affected residents and other interested parties, e.g., a copy of the NOFA, computer access to the HUD Web site, etc.

(3) Your application demonstrates your plans to provide affected residents with reasonable training on the general principles of development, technical assistance, and capacity building so that they may participate meaningfully in the development and implementation process.

5. Rating Factor: Community and Supportive Services—12 Points Total

a. *CSS Program Requirements.* See Section III.C for CSS program requirements. In your application, you will describe your CSS plan, including any plans to implement a CSS Endowment Trust. Each of the following subfactors will be rated separately.

b. *Case Management*—2 points.

(1) You will receive 2 Points if your application demonstrates that you are already providing case management services to the targeted residents by this proposal as of the application due;

(2) You will receive 1 point if your application demonstrates that you will be able to provide case management within 30 days from the date of the grant award letter so that residents who will be relocated have time to participate and benefit from CSS activities before leaving the site.

(3) You will receive 0 points if your application does not demonstrate either of the above criteria, or your application does not include sufficient information to be able to evaluate this factor.

c. *Needs Assessment and Results*—3 points.

(1) You will receive 3 points if your application demonstrates that a comprehensive resident needs assessment has been completed as of the application due date and that this needs assessment is the basis for the CSS Program proposed in the application. You must describe and quantify the results of the needs assessment.

(2) You will receive up to 2 points if your application demonstrates that a resident needs assessment has been completed as of the application due date, but does not show that the needs assessment was comprehensive clearly linked to the proposed CSS Program, and/or does not describe and quantify the results of the needs assessment.

(2) You will receive 0 points if your application does not demonstrate any of the above criteria, or your application does not include sufficient information to be able to evaluate this factor.

d. *Transition to Housing Self-Sufficiency*—5 points.

You will receive up to 5 Points if you address the methods you will use to assist public housing residents in their efforts to transition to other affordable and market-rate housing, i.e., to gain "housing self-sufficiency."

(1) You will receive up to 5 Points if your application demonstrates that your CSS Program includes and addresses all three of the below items. Your CSS Program:

(a) Provides measurable outcomes for this endeavor;

(b) Describes in detail how your other CSS and FSS activities relate to the transition of public housing residents to housing self-sufficiency; and

(c) Specifically addresses the grassroots, community-based and faith-based organizations, etc. that will join you in the endeavor.

(2) You will receive up to 2 Points if your CSS Program includes and

addresses at least two of the above three items (a) through (c) above.

(3) You will receive 0 Points if your CSS Program includes and addresses less than two of the above items (a) through (c) above.

f. *Quality and Results Orientation in CSS Program*—2 points.

(1) You will receive 2 Points if you have proposed a comprehensive, high quality, results-oriented CSS program that is based on a case management system and that provides services/programs to meet the needs of all residents groups (e.g., youth, adult, elderly, disabled) targeted by the application. These services/programs may be provided directly or by partners. They must be designed to assist residents affected by the revitalization in transforming their lives and becoming self-sufficient, as relevant.

(2) You will receive up to 1 Point if you have proposed a CSS program that meets some but not all of the criteria in the paragraph above;

(3) You will receive 0 points if your application does not demonstrate any of the above criteria, or your application does not include sufficient information to be able to evaluate this factor.

6. Rating Factor: Relocation—5 Points Total

See Sections III.C. of this NOFA for Relocation and Relocation Plan requirements. For all applicants, whether you have completed, or have yet to complete, relocation of all residents of the targeted project, your HOPE VI Relocation Plan must include the three goals set out in section 24 of the 1937 Act, as described in Sections a.(1)(a), (b) and (c) below.

a. You will receive up to 5 Points for this Factor if you describe thoroughly how your Relocation Plan:

(1) Includes a description of specific activities that have minimized, or will minimize, permanent displacement of residents of the units that will be rehabilitated or demolished in the targeted public housing site, provided that those residents wish to remain in or return to the revitalized community;

(2) Includes a description of specific activities that will give existing residents priority over other families for future occupancy of public housing units in completed HOPE VI Revitalization Development projects, or, for existing residents that can afford to live in non-public housing HOPE VI units, priority for future occupancy of those planned units; and

(3) Includes a description of specific CSS activities that will be provided to residents prior to any relocation;

b. You will receive up to 3 Points for this Factor if your Relocation Plan complies with some but not all of the criteria above.

c. You will receive 0 Points for this Factor if: (1) Your Relocation Plan does not comply with any of the requirements above; or (2) your application does not provide sufficient information to evaluate this rating factor.

7. Rating Factor: Fair Housing and Equal Opportunity—6 Points Total

a. *FHEO Disability Issues*—3 Points Total.

(1) Accessibility—2 Points.

(a) Over and above the accessibility requirements listed in Section III.C. of this NOFA, you will receive 2 Points if your application demonstrates that you have a *detailed* plan to:

(i) Provide accessibility in homeownership units (e.g., setting a goal of constructing a percentage of the homeownership units as accessible units for persons with mobility impairments; promising to work with prospective disabled buyers on modifications to be carried out at a buyer's request; exploring design alternatives that result in townhouses that are accessible to persons with disabilities);

(ii) Provide accessible units for all eligible populations ranging from one-bedroom units for non-elderly single persons with disabilities through units in all bedroom sizes to be provided;

(iii) Provide for accessibility modifications, where necessary, to Housing Choice Voucher-assisted units of residents who relocate from the targeted project to private or other public housing due to revitalization activities. The Department has determined that the costs of such modifications are eligible costs under the HOPE VI program;

(iv) Where playgrounds are planned, propose ways to make them accessible to children with disabilities, over and above statutory and regulatory requirements; and

(v) Where possible, design units with accessible front entrances.

(b) You will receive 1 Point if your application demonstrates that you have a detailed plan to implement from one to four of the accessibility priorities stated above, explaining why and how you will implement the identified accessibility priorities.

(c) You will receive 0 Points if your application does not demonstrate that you have a detailed plan that meets the specifications above, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

(2) Universal Design—1 Point.

(a) You will receive 1 Point if your application demonstrates that you have a specific plan to meet:

(i) The adaptability standards adopted by HUD at 24 CFR 8.3 that apply to those units not otherwise covered by the accessibility requirements. Adaptability is the ability of certain elements of a dwelling unit, such as kitchen counters, sinks, and grab bars, to be added to, raised, lowered, or otherwise altered, to accommodate the needs of persons with or without disabilities, or to accommodate the needs of persons with different types or degrees of disability. For example, the wiring for visible emergency alarms may be installed so that a unit can be made ready for occupancy by a hearing-impaired person (For information on adaptability, see *http://www.hud.gov/offices/pih/programs/ph/hope6/pubs/glossary.pdf)*; and

(ii) The visitability standards recommended by HUD that apply to units not otherwise covered by the accessibility requirements. Visitability standards allow a person with mobility impairments access into the home, but do not require that all features be made accessible. A visitable home also serves persons without disabilities, such as a mother pushing a stroller or a person delivering a large appliance. See *http://www.hud.gov/offices/pih/programs/ph/hope6/pubs/glossary.pdf* for information on visitability. The two standards of visitability are:

(A) At least one entrance at grade (no steps), approached by a sidewalk; and

(B) The entrance door and all interior passage doors are at least 2 feet 10 inches wide, allowing 32 inches of clear passage space.

(b) You will receive 0 Points if your application does not demonstrate that you have specific plans to implement both (i) and (ii) as specified above, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

b. *Fair Housing and Affirmative Marketing*—1 Point Total.

(1) Fair Housing—1 Point.

(a) You will receive one Point if your application demonstrates that:

(i) You have made and will make specific efforts to attract families from all segments of the population on a non-discriminatory basis and with a broad spectrum of incomes to the revitalized site through intensive affirmative marketing efforts and how these efforts contribute to the deconcentration of low-income neighborhoods;

(ii) You have made and will make specific efforts to target your marketing and outreach activities to those persons and groups least likely to know about these housing opportunities, in order to promote housing choice and opportunity throughout your jurisdiction and contribute to the deconcentration of both minority and low-income neighborhoods. In your application, you must describe how your outreach and marketing efforts will reach out to persons of different races and ethnic groups, families with or without children, persons with disabilities and able-bodied persons, and the elderly; and

(iii) The specific steps you plan to take through your proposed activities to affirmatively further fair housing. These steps can include, but are not limited to:

(A) Addressing impediments to fair housing choice relating to your operations;

(B) Working with local jurisdictions to implement their initiatives to affirmatively further fair housing;

(C) Implementing, in accordance with Departmental guidance, relocation plans that result in increased housing choice and opportunity for residents affected by HOPE VI revitalization activities funded under this NOFA;

(D) Implementing admissions and occupancy policies that are nondiscriminatory and help reduce racial and national origin concentrations; and

(E) Initiating other steps to remedy discrimination in housing and promote fair housing rights and fair housing choice.

(b) You will receive 0 Points if you do not address all of the above issues, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

c. *Economic Opportunities for Low- and Very Low-Income Persons (Section 3)*—2 Points.

(1) HOPE VI grantees must comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Economic Opportunities for Low- and Very Low-Income Persons in Connection with assisted Projects) and its implementing regulations at 24 CFR part 135. Information about section 3 can be found at HUD's section 3 Web site at *http://www.hud.gov/fhe/sec3over.html.*

(2) You will receive 2 Points if your application demonstrates that you have a feasible plan to implement section 3 that not only meets the minimum requirements described in Section (1) above but also exceeds those requirements. Your plan must include your goals by age group, types of jobs, and other opportunities to be provided, and plans for tracking and evaluation. Section 3 firms must be in place quickly so that residents are trained in time to take advantage of employment opportunities such as jobs and other contractual opportunities in the pre-development, demolition, and construction phases of the revitalization. Your section 3 plan must demonstrate that you will, to the greatest extent feasible, direct training, employment, and other economic opportunities to:

(a) Low- and very low-income persons, particularly those who are recipients of government assistance for housing, and

(b) Business concerns which provide economic opportunities to low- and very low-income persons.

(3) You will receive 0 Points if your plan to implement section 3 does not meet the standards listed in Section (1) and (2) above, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

8. Rating Factor: Well-Functioning Communities—8 Points Total

a. Affordable Housing—Up to 3 Points.

(1) Housing Definitions. For the purposes of this rating section, housing units are defined differently than in PIH housing programs, as follows:

(a) "Project-based affordable housing units" are defined as on-site and off-site housing units where there are affordable-housing use restrictions on the unit, e.g., public housing, project-based HCV (Section 8) units, LIHTC units, HOME units, affordable homeownership units, etc.

(b) "Public housing" is defined as rental units that will be subject to the ACC.

(2) Unit Mix and Need for Affordable Housing.

(a) Your proposed unit mix should sustain or create more project-based affordable housing units that will be available to persons eligible for public housing in markets where the plan shows there is demand for the maintenance or creation of such units. While it is up to you to determine the unit mix that is appropriate for your site, it is essential that this unit mix include a sufficient amount of public housing rental units and other project-based affordable units. To the extent that the local market shows there is a demand for it, applicants are encouraged to create additional project-based affordable housing units to be made available for persons eligible for public housing.

(b) For purposes of this factor, HUD will determine whether you need project-based affordable housing by using your Housing Choice Voucher program utilization rate or public housing occupancy rate, whichever of the two reflects the least need. In figuring the Housing Choice Voucher utilization rate, determine and provide the percentage of HCV units out of the total number authorized or the percentage of HCV funds expended out of the total amount authorized, whichever percentage is higher. In figuring the public housing occupancy rate, provide the percentage of units occupied out of the total in your federal public housing inventory, excluding the units in the targeted project. You should base your calculation only on the federal public housing units you manage. You may not exclude units in your public housing inventory that are being reserved for relocation needs related to other HOPE VI Revitalization grant(s); or units in your public housing inventory that are being held vacant for uses related to a section 504 voluntary compliance agreement. If you are a non-MTW site, you must use information consistent with the Section Eight Management Assessment Program (SEMAP) and/or the Public Housing Assessment System (PHAS) submissions. If you are an MTW site, and do not report into SEMAP and/or PHAS, you must demonstrate your utilization and/or occupancy rate using similar methods and information sources in order to earn points under this rating factor.

(3) Scoring when there will be *No Need* for More Affordable Housing after the Targeted Project is Demolished—1 Point.

(a) You will receive 1 Point for this factor if your application demonstrates that either:

(i) The utilization rate of your Housing Choice Voucher program is less than 95 percent; or

(ii) The occupancy rate of your public housing inventory is less than 95 percent.

(iii) If either (a) or (b) above is less than 95 percent, the other percentage will be disregarded.

(4) Scoring when there *will be Need* for More Affordable Housing after the Targeted Project is Demolished—up to 3 Points.

(a) For this factor, HUD considers you in need of project-based affordable housing if both:

(i) The utilization rate of your Housing Choice Voucher program is 95 percent or more; and

(ii) The occupancy rate of your public housing inventory is 95 percent or more.

(iii) If either (i) or (ii) above are less than 95 percent, you do not need affordable housing. You qualify for (3) above, not this section (4).

(b) The percentages below are defined as the number of planned project-based affordable units divided by the number of public housing units that the targeted project contains or contained;

(c) You will receive 3 Points if your application demonstrates that the number of project-based affordable units in your plan is 125 percent or more of the number of public housing units that the targeted project contains or contained;

(d) You will receive 2 Points if your application demonstrates that the number of project-based affordable units in your plan is 110 to 124 percent of the number of public housing units that the targeted project contains or contained;

(e) You will receive 1 Point if your application demonstrates that the number of project-based affordable units in your plan is 100 to 109 percent of the number of public housing units that the targeted project contains or contained.

(f) You will receive 0 Points if your application demonstrates that the number of project-based affordable units in your plan is less than the number of public housing units that the targeted project contains or contained or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

b. *Off-Site Housing*—1 Point.

(1) Factor Background:

(a) Although not required, you are encouraged to consider development of replacement housing in locations other than the original severely distressed site (i.e., off-site housing). Locating off-site housing in neighborhoods with low levels of poverty and low concentrations of minorities will provide maximized housing alternatives for low-income residents who are currently on-site and assist the goal of creating desegregated, mixed-income communities. The effect on-site will be to assist in the deconcentration of low-income residents and increase the number of replacement units.

(b) Although it is acknowledged that off-site housing is not appropriate in some communities, if you do not propose to include off-site housing in your Revitalization plan, you are not eligible to receive this point.

(c) If you propose an off-site housing component in your application, you must be sure to include that component when you discuss other components (e.g. on-site housing, homeownership housing, etc.). Throughout your application, your unit counts and other numerical data must take into account the off-site component.

(2) Scoring.

You will receive 1 Point if you propose to develop an off-site housing component(s) and document that: You have site control of the property(ies), that the site(s) meets all environmental review requirements, and that the site(s) meets site and neighborhood standards, in accordance with Section III.C.(1) of this NOFA.

c. *Homeownership Housing*—4 Points.

The Department has placed the highest priority on increasing homeownership opportunities for low- and moderate-income persons, persons with disabilities, the elderly, minorities, and families where English may be a second language. Too often these individuals and families are shut out of the housing market through no fault of their own. HUD encourages applicants to work aggressively to open up the realm of homeownership.

(1) Your application will receive 4 Points if your application demonstrates that your revitalization plan includes homeownership and that you have a feasible, well-defined plan for homeownership. In order to demonstrate this, your application should include descriptions of the following:

(a) The purpose of your homeownership program;

(b) The number of units planned and their location(s);

(c) A description and justification of the families that will be targeted for the program;

(d) The proposed source of your construction and permanent financing of the units; and

(e) A description of the homeownership counseling you or a HUD-approved housing counseling agency will provide to prospective families, including such subjects as the homeownership process, housing in non-impacted areas, credit repair, budgeting, and home maintenance.

(2) You will receive 2 Points for this factor if you address in your description from one to four of the items listed under (1).

(3) You will receive 0 Points for this factor if you do not propose to include homeownership units in your Revitalization plan, your proposed program is not feasible and well defined, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

9. Rating Factor: Soundness of Approach—30 Points Total

a. Quality and Consistency of the Application—2 Points.

(1) The information and strategies described in your application must be well organized, coherent, and internally consistent. Numbers and statistics in your narratives must be consistent with the information provided in the attachments. Also, the physical and CSS aspects of the application must be compatible and coordinated with each other. Pay particular attention to the data provided for:

(a) Types and numbers of units;

(b) Budgets;

(c) Other financial estimates, including sources and uses; and

(d) Numbers of residents affected.

(2) You will receive 2 Points if your application demonstrates a high level of quality and consistency;

(3) You will receive 1 Point if your application has a high level of quality, but contains minor internal discrepancies;

(4) You will receive 0 Points if your application fails to demonstrate an acceptable level of quality and consistency;

b. *Appropriateness and Feasibility of the Plan*—5 Points.

(1) You will receive 5 Points if your application demonstrates the following about your revitalization plan:

(a) It is appropriate and suitable, in the context of the community and other revitalization options, in accordance with the Appropriateness of Proposal threshold in Section III.C. of this NOFA;

(b) Fulfills the needs that your application demonstrated for Rating Factor 2;

(c) Is marketable, in the context of local conditions;

(d) If you include market-rate housing, economic development, or retail structures in your revitalization plan, you must provide a signed letter from an independent, third party, credentialed market research firm, or professional that describes its assessment of the demand and associated pricing structure for the proposed residential units, economic development or retail structures, based on the market and economic conditions of the project area.

(e) Is financially feasible, as demonstrated in the financial structure(s) proposed in the application;

(f) Does not propose to use public housing funds for non-public housing uses;

(g) If extraordinary site costs have been identified, a certification of these costs has been provided in the application;

(h) Describes the cost controls that will be used in implementing the project, in accordance with the Funding Restrictions and Program Requirements sections of this NOFA;

(i) Includes a completed TDC/Grant Limitations Worksheet in the application and follows the Funding Restrictions and Program Requirements sections of this NOFA.

(2) You will receive 3 points if your application demonstrates some but not all of the criteria above.

(3) You will receive zero Points if your application does not demonstrate the criteria above or your application does not provide sufficient information to evaluate this factor.

c. *Neighborhood Impact and Sustainability of the Plan*—5 Points.

(1) You will receive up to 5 Points if your application demonstrates your revitalization plan, including plans for retail, office, other economic development activities, as appropriate, will:

(a) Result in a revitalized site that will enhance the neighborhood in which the project is located;

(b) Spur outside investment into the surrounding community;

(c) Enhance economic opportunities for residents; and

(d) Remove an impediment to continued redevelopment or start a community-wide revitalization process.

(2) You will receive up to 3 Points if your application demonstrates that your revitalization plan will have only a moderate effect on activities in the surrounding community, as described in (a) through (d) above.

(3) You will receive 0 Points if your application does not demonstrate that your revitalization plan will have an effect on the surrounding community, as described in (a) through (d) above, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

d. *Project Readiness*—7 Points.

HUD places top priority on projects that will be able to commence immediately after grant award. You will receive the following points for each applicable subfactor certified in your application.

(1) You will receive 2 Points if the targeted severely distressed public housing site is completely vacant, i.e., all residents have been relocated.

(2) You will receive 2 Points if the targeted severely distressed public housing site is cleared, i.e., all buildings are demolished, or your revitalization plan only includes rehabilitation and no demolition of public housing units.

(3) You will receive 1 Point if a Master Development Agreement (MDA) has been developed and is ready to submit to HUD. However, in cases where the PHA (not an affiliate/subsidiary/instrumentality) will act as its own developer for all components of the revitalization plan, then an MDA is not needed and the one point will be awarded automatically.

(4) You will receive 1 Point if your preliminary site design is complete.

(5) You will receive 1 Point if you have held five (5) or more public planning sessions leading to resident acceptance of the plan.

e. *Program Schedule*—5 Points.

You will receive 5 points if the program schedule provided in your application incorporates all the timelines/milestones discussed below. If your schedule does not incorporate all the timelines/milestones, you will earn 0 Points. The timelines/milestones are:

(1) Grantees must submit Supplemental Submissions within 90 days from the date of HUD's written request.

(2) Grantees must submit CSS work plans within 90 days from the execution of the grant agreement.

(3) Grantees must start construction within 12 months from the date of HUD's approval of the Supplemental Submissions as requested by HUD after grant award. This time period may not exceed 18 months from the date the grant agreement is executed.

(4) Grantees must submit the development proposal (i.e., whether mixed-finance development, homeownership development, etc.) for the first phase of construction within 12 months of grant award. The program schedule must indicate the date on which the development proposal for each phase of the Revitalization plan will be submitted to HUD.

(5) The closing of the first phase must take place within 15 months of grant award. For this purpose, "closing" means all financial and legal arrangements have been executed and actual activities (construction, etc.) are ready to commence.

(6) Grantees must complete construction within 48 months from the date of HUD's approval of your Supplemental Submissions. This time period for completion may not exceed 54 months from the date the grant agreement is executed.

f. *Design*—3 Points.

(1) You will receive up to 3 Points if your proposed site plan, new dwelling units, and buildings demonstrate that:

(a) You have proposed a site plan that is compact, pedestrian-friendly, with an interconnected network of streets and public open space;

(b) Your proposed housing, community facilities, and economic development facilities are thoroughly integrated into the community through the use of local architectural tradition, building scale, grouping of buildings, and design elements; and

(c) Your plan proposes appropriate enhancements of the natural environment.

(2) You will receive one Point if your proposed site plan, new dwelling units, and buildings demonstrate design that adequately addresses one or two, but not all three of the elements in (1) above.

(3) You will receive 0 Points if your proposed design is perfunctory or otherwise does not address the elements in (1) above. You will also receive 0 Points if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

g. *Energy Star*—1 Point.

(1) Promotion of Energy Star compliance is a HOPE VI Revitalization program requirement. See Section III.C. of this NOFA.

(2) You will receive 1 Point if your application demonstrates that you will:

(a) Use Energy Star labeled products;

(b) Promote Energy Star design of replacement units; and

(c) Include Energy Star in homeownership counseling.

(3) You will receive 0 Points if your application does not demonstrate that you will perform (a) through (c) above.

h. *Evaluation*—2 Points.

You are encouraged to work with your local university(ies), other institutions of learning, foundations, or others to evaluate the performance and impact of their HOPE VI revitalization plan over the life of the grant. The proposed methodology must measure success against goals you set at the outset of your revitalization activities. Evaluators must establish baselines and provide ongoing interim reports that will allow you to make changes as necessary as your project proceeds. Where possible, you are encouraged to form partnerships with Historically Black Colleges and Universities (HBCUs); Hispanic-Serving Institutions (HSIs); Community Outreach Partnership Centers (COPCs); the Alaskan Native/Native Hawaiian Institution Assisting Communities Program (as appropriate); and others in HUD's University Partnerships Program.

(1) You will receive 2 Points if your application includes a letter(s) from an institution(s) of higher learning, foundations, or other organization that specializes in research and evaluation that provides a commitment to work with you to evaluate your program and

describes its proposed approach to carry out the evaluation if your application is selected for funding. The letter must provide the extent of the commitment and involvement, the extent to which you and the local institution of higher learning will cooperate, and the proposed approach. The commitment letter must address all of the following areas for evaluation in order to earn full points:

(a) The impact of your HOPE VI effort on the lives of the residents;

(b) The nature and extent of economic development generated in the community;

(c) The effect of the revitalization effort on the surrounding community, including spillover revitalization activities, property values, etc.; and

(d) Your success at integrating the physical and CSS aspects of your strategy.

(2) You will receive zero Points if your application does not include a commitment letter that addresses each of the areas above (paragraphs (a)–(d).

10. Rating Factor: Incentive Criteria on Regulatory Barrier Removal—2 Points Total

a. *Description.*

Applicants must follow the guidance provided in the General Section under Section V.B. concerning the Removal of Regulatory Barriers to Affordable Housing in order to earn points under this rating factor. Information from the General Section V.B. is provided below in part. In FY2006, HUD continues to make removal of regulatory barriers a policy priority. Through the Department's America's Affordable Communities Initiative, HUD is seeking input into how it can work more effectively with the public and private sectors to remove regulatory barriers to affordable housing. Increasing the affordability of rental and homeownership housing continues to be a high priority of the Department. Addressing these barriers to housing affordability is a necessary component of any overall national housing policy. Under this policy priority, higher rating points are available to (1) governmental applicants that are able to demonstrate successful efforts in removing regulatory barriers to affordable housing and (2) nongovernmental applicants that are associated with jurisdictions that have undertaken successful efforts in removing barriers. To obtain the policy priority points for efforts to successfully remove regulatory barriers, applicants must complete form HUD–27300, "Questionnaire for HUD's Initiative on Removal of Regulatory Barriers." Copies of HUD's notices published on this issue can be found on HUD's Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm*. Form HUD–27300 is available at *http://www.hudclips.org/sub/nonhud/cgi/pdfforms/27300.pdf*.

b. *Scoring.*

(1) Local jurisdictions and counties with land use and building regulatory authority applying for funding, as well as housing authorities, nonprofit organizations, and other qualified applicants applying for funds for projects located in these jurisdictions, are invited to answer the 20 questions under Part A.

(2) State agencies or departments applying for funding, as well as housing authorities, nonprofit organizations, and other qualified applicants applying for funds for projects located in unincorporated areas or areas not otherwise covered in Part A, are invited to answer the 15 questions under Part B.

(3) Applicants that will be providing services in multiple jurisdictions may choose to address the questions in either Part A or Part B for that jurisdiction in which the preponderance of services will be performed if an award is made.

(4) In no case will an applicant receive more than two points for barrier removal activities under this policy priority.

(5) Under Part A, an applicant that scores at least five in column 2 will receive 1 point in the NOFA evaluation. An applicant that scores 10 or more in column 2 will receive 2 points in the NOFA evaluation.

(6) Under Part B, an applicant that scores at least four in Column 2 will receive one point in the NOFA evaluation. An applicant that scores eight or greater will receive a total of two points in the respective evaluation.

(7) A limited number of questions on form HUD–27300 expressly request the applicant to provide brief documentation with its response. Other questions require that, for each *affirmative* statement made, the applicant supply a reference, Internet address, or brief statement indicating where the back-up information may be found and a point of contact, including a telephone number or e-mail address. Applicants are encouraged to read HUD's three notices, which are available at *http://www.hud.gov/affordablecommunities*, to obtain an understanding of this policy priority and how it can affect their score. Applicants that do not provide the Internet addresses, references, or documentation will not get the policy priority points.

B. Reviews and Selection Process

HUD's selection process is designed to ensure that grants are awarded to eligible PHAs with the most meritorious applications. HUD will consider the information you submit by the application submission date. After the application submission date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information that you or any third party may want to provide.

1. Application Screening

a. HUD will screen each application to determine if:

(1) It meets the threshold criteria listed in Section III.C. of this NOFA; and

(2) It is deficient, *i.e.*, contains any Technical Deficiencies.

b. See Section III.C. of this NOFA for case-by-case information regarding thresholds and technical deficiencies. See Section IV.B. of this NOFA for documentation requirements that will support threshold compliance and will avoid technical deficiencies.

c. *Corrections to Deficient Applications—Cure Period.* The subsection entitled, "Corrections to Deficient Applications," in Section V.B. of the General Section is incorporated by reference and applies to this NOFA, except that clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within 7 calendar days of the date of receipt of the HUD notification. (If the deadline date falls on a Saturday, Sunday, or federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or federal holiday.).

d. *Applications that will not be rated or ranked.* HUD will not rate or rank applications that are deficient at the end of the cure period stated in Section V.B. of the General Section or have not met the thresholds described in Section III.C. of this NOFA. Such applications will not be eligible for funding.

2. Preliminary Rating and Ranking

a. *Rating.*

(1) HUD staff will preliminarily rate each eligible application, SOLELY on the basis of the rating factors described in Section V.A of this NOFA.

(2) When rating applications, HUD reviewers will not use any information included in any HOPE VI application submitted in a prior year.

(3) HUD will assign a preliminary score for each rating factor and a preliminary total score for each eligible application.

(4) The maximum number of points for each application is 125.

b. *Ranking.*

(1) After preliminary review, applications will be ranked in score order.

3. Final Panel Review

a. A Final Review Panel made up of HUD staff will:

(1) Review the Preliminary Rating and Ranking documentation to:

(a) Ensure that any inconsistencies between preliminary reviewers have been identified and rectified; and

(b) Ensure that the Preliminary Rating and Ranking documentation accurately reflects the contents of the application.

(2) Assign a final score to each application; and

(3) Recommend for selection the most highly rated applications, subject to the amount of available funding, in accordance with the allocation of funds described in Section II of this NOFA.

4. HUD reserves the right to make reductions in funding for any ineligible items included in an applicant's proposed budget.

5. In accordance with the FY2006 HOPE VI appropriation, HUD may not use HOPE VI funds to grant competitive advantage in awards to settle litigation or pay judgments.

6. Tie Scores

If two or more applications have the same score and there are insufficient funds to select all of them, HUD will select for funding the application(s) with the highest score for the Soundness of Approach Rating Factor. If a tie remains, HUD will select for funding the application(s) with the highest score for the Capacity Rating Factor. HUD will select further tied applications with the highest score for the Need Rating Factor.

7. Remaining Funds

a. HUD reserves the right to reallocate remaining funds from this NOFA to other eligible activities under section 24 of the 1937 Act.

(1) If the total amount of funds requested by all applications found eligible for funding under Section V.B. of this NOFA is less than the amount of funds available from this NOFA, all eligible applications will be funded and those funds in excess of the total requested amount will be considered remaining funds.

(2) If the total amount of funds requested by all applications found eligible for funding under Section V.B. of this NOFA is greater than the amount of funds available from this NOFA, eligible applications will be funded until the amount of non-awarded funds is less than the amount required to feasibly fund the next eligible application. In this case, the funds that have not been awarded will be considered remaining funds.

8. The following sub-sections of Section V. of the General Section are hereby incorporated by reference:

a. HUD's Strategic Goals;

b. Policy Priorities;

c. Threshold Compliance;

d. Corrections to Deficient Applications;

e. Rating; and

f. Ranking.

VI. Award Administration Information

A. Award Notices

1. *Initial Announcement.* The HUD Reform Act prohibits HUD from notifying you as to whether or not you have been selected to receive a grant until it has announced all grant recipients. If your application has been found to be ineligible or if it did not receive enough Points to be funded, you will not be notified until the successful applicants have been notified. HUD will provide written notification to all applicants, whether or not they have been selected for funding.

2. *Award Letter.* The notice of award letter is signed by the Assistant Secretary for Public and Indian Housing (grants officer) and will be delivered by fax and the U.S. Postal Service.

3. *Revitalization Grant Agreement.* When you are selected to receive a Revitalization grant, HUD will send you a HOPE VI Revitalization grant Agreement, which constitutes the contract between you and HUD to carry out and fund public housing revitalization activities. Both you and HUD will sign the cover sheet of the grant agreement, form HUD–1044. It is effective on the date of HUD's signature, which is the second signature. The grant agreement differs from year to year. Past Revitalization grant Agreements can be found on the HOPE VI Web site at *http://www.hud.gov/hopevi.*

4. *Applicant Debriefing.* Upon request, HUD will provide an applicant a copy of the total score received by their application and the score received for each rating factor.

5. *General Section References.* The following sub-section of Section VI.A. of the General Section is hereby incorporated by reference:

a. Adjustments to Funding.

b. Administrative and National Policy Requirements

1. *Program Requirements.* See the Program Requirements in Section III for information on HOPE VI program requirements grantees must follow.

2. *Conflict of Interest in Grant Activities.*

a. *Prohibition.* In addition to the conflict of interest requirements in 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of a grantee and who exercises or has exercised any functions or responsibilities with respect to activities assisted under a HOPE VI grant, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

b. *HUD-Approved Exception.*

(1) Standard. HUD may grant an exception to the prohibition above on a case-by-case basis when it determines that such an exception will serve to further the purposes of HOPE VI and its effective and efficient administration.

(2) Procedure. HUD will consider granting an exception only after the grantee has provided a disclosure of the nature of the conflict, accompanied by:

(a) An assurance that there has been public disclosure of the conflict;

(b) A description of how the public disclosure was made; and

(c) An opinion of the grantee's attorney that the interest for which the exception is sought does not violate state or local laws.

(d) Consideration of Relevant Factors. In determining whether to grant a requested exception under Section (b) above, HUD will consider the cumulative effect of the following factors, where applicable:

(A) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the Revitalization plan and demolition activities that would otherwise not be available;

(B) Whether an opportunity was provided for open competitive bidding or negotiation;

(C) Whether the person affected is a member of a group or class intended to be the beneficiaries of the Revitalization plan and Demolition plan and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(D) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process, with respect to the specific activity in question;

(E) Whether the interest or benefit was present before the affected person was

in a position as described in Section (C) above;

(F) Whether undue hardship will result either to the grantee or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(G) Any other relevant considerations.

3. *Salary Limitation for Consultants.* FY 2006 funds may not be used to pay or to provide reimbursement for payment of the salary of a consultant whether retained by the federal government or the grantee at more than the daily equivalent of the rate of the high of the pay band paid for level IV of the Executive Schedule, unless specifically authorized by law.

4. *Flood Insurance.* In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), your application may not propose to provide financial assistance for acquisition or construction (including rehabilitation) of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

a. The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

b. Where the community is participating in the National Flood Insurance Program, flood insurance is obtained as a condition of execution of a grant agreement.

5. *Coastal Barrier Resources Act.* In accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501), your application may not target properties in the Coastal Barrier Resources System.

6. *Policy Requirements.*

a. *OMB Circulars and Administrative Requirements.* You must comply with the following administrative requirements related to the expenditure of federal funds. OMB circulars can be found at *http://www.whitehouse.gov/omb/circulars/index.html.* Copies of the OMB circulars may be obtained from EOP Publications, Room 2200, New Executive Office Building, Washington, DC 20503; telephone (202) 395–7332 (this is not a toll-free number). The Code of Federal Regulations can be found at *http://www.access.gpo.gov/nara/cfr/index.html.*

(1) Administrative requirements applicable to PHAs are:

(a) 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments), as modified by 24 CFR 941 or successor part, subpart F, relating to the procurement of partners in mixed finance developments.

(b) OMB Circular A–87 (Cost Principles for State, Local, and Indian Tribal Governments);

(c) 24 CFR 85.26 (audit requirements).

(2) Administrative requirements applicable to nonprofit organizations are:

(a) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations);

(b) OMB Circular A–122 (Cost Principles for Nonprofit Organizations);

(c) 24 CFR 84.26 (audit requirements).

(3) Administrative requirements applicable to for profit organizations are:

(a) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations);

(b) 48 CFR part 31 (contract cost principles and procedures);

(c) 24 CFR 84.26 (audit requirements).

C. Reporting

1. Quarterly Report

a. If you are selected for funding, you must submit a quarterly report to HUD.

(1) HUD will provide training and technical assistance on the filing and submitting of quarterly reports.

(2) Filing of quarterly reports is mandatory for all grantees, and failure to do so within the required timeframe will result in suspension of grant funds until the report is filed and approved by HUD.

(3) Grantees will be held to the milestones that are reported on the Quarterly Report Administrative and Compliance Checkpoints Report, as approved by HUD.

(4) Grantees must also report obligations and expenditures in LOCCS, or its successor system, on a quarterly basis.

2. Logic Model Reporting

a. The reporting shall include submission of a completed Logic Model indicating results achieved against the proposed output goal(s) and proposed outcome(s) which you stated in your approved application and agreed upon with HUD. The submission of the Logic Model and required information should be in accord with the reporting timeframes as identified in your grant agreement.

b. The goals and outcomes that you include in the Logic Model should reflect your major activities and accomplishments under the grant. For example, you would include unit construction, demolition, etc. from the "bricks-and-mortar" portion of the grant. As another example, for the CSS portion of the grant, you may include the number of jobs created or the number of families that have reached self-sufficiency, but you would not include information on specific job training and self-sufficiency courses.

c. As a condition of the receipt of financial assistance under this NOFA, all successful applicants will be required to cooperate with all HUD staff or contractors performing HUD-funded research and evaluation studies.

3. Final Report

a. The grantees shall submit a final report, which will include a financial report and a narrative evaluating overall performance against its HOPE VI Revitalization plan. Grantees shall use quantifiable data to measure performance against goals and objectives outlined in its application. The financial report shall contain a summary of all expenditures made from the beginning of the grant agreement to the end of the grant agreement and shall include any unexpended balances.

b. Racial and Ethnic Data. HUD requires that funded recipients collect racial and ethnic beneficiary data. It has adopted the Office of Management and Budget's Standards for the Collection of Racial and Ethnic Data. In view of these requirements, you should use form HUD–27061, Racial and Ethnic Data Reporting Form (instructions for its use), found on *www.HUDClips.org*, a comparable program form, or a comparable electronic data system for this purpose.

c. The final narrative and financial report shall be due to HUD 90 days after either the full expenditure of funds, or when the grant term expires, whichever comes first.

VII. Agency Contacts

A. Technical Assistance

1. Before the application submission date, HUD staff will be available to provide you with general guidance and technical assistance. However, HUD staff is not permitted to assist in preparing your application. If you have a question or need a clarification, you may call or send an email message to the Office of Public Housing Investments, attention: Leigh van Rij, at 202–401–8812, extension 5788, *leigh_e._van_rij@hud.gov* (these are not toll-free numbers). You may also call, fax, or write Ms. Dominique Blom, Acting Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW.,

Room 4130, Washington, DC 20410–5000; telephone (202) 401–8812; fax (202) 401–2370 (these are not toll-free numbers). Persons with hearing or speech challenges may access these telephone numbers through a text telephone (TTY) by calling the toll-free Federal Information Relay Service at (800) 877–8339.

2. *Frequently Asked Questions and General HOPE VI Information.* Before the application submission date, frequently asked questions (FAQ) on the NOFA will be posted to HUD's grants Web site at *http://www.hud.gov/offices/adm/grants/otherhud.cfm.*

3. You may obtain general information about HUD's HOPE VI programs from HUD's HOPE VI Web site: *http://www.hud.gov/offices/pih/programs/ph/hope6/.*

B. Technical Corrections to the NOFA

1. Technical corrections to this NOFA will be posted to the Grants.gov Web site

2. Any technical corrections will also be published in the **Federal Register.**

3. You are responsible for monitoring these sites during the application preparation period.

VIII. Other Information

A. *Waivers.* Any HOPE VI-funded activities at public housing projects are subject to statutory requirements applicable to public housing projects under the 1937 Act, other statutes, and the annual contributions contract (ACC). Within such restrictions, HUD seeks innovative solutions to the long-standing problems of severely distressed public housing projects. You may request, for the revitalized project, a waiver of HUD regulations, subject to statutory limitations and a finding of good cause under 24 CFR 5.110 if the waiver will permit you to undertake measures that enhance the long-term viability of a project revitalized under this program. HUD will assess each request to determine whether good cause is established to grant the waiver.

B. *Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made for this notice in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. in the Office of the General Counsel, Regulations Division, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

C. *General Section References.* The following sub-sections of Section VIII. of the General Section are hereby incorporated by reference:

1. Executive Order 13132, Federalism;

2. Public Access, Documentation and Disclosure;

4. Section 103 of the HUD Reform Act;

5. The FY 2004 HUD NOFA Process and Future HUD Funding Processes; and

6. Sense of Congress.

D. *Paperwork Reduction Act Statement.* The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2577–0208. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. Public reporting burden for the collection of information is estimated to average 68 hours per annum per respondent for the application and grant administration. This includes the time for collecting, reviewing, and reporting the data for the application, quarterly reports and final report. The information will be used for grantee selection and monitoring the administration of funds. Response to this request for information is required in order to receive the benefits to be derived.

Overview Information

A. *Federal Agency Name.* Department of Housing and Urban Development, Office of Public and Indian Housing.

B. *Funding Opportunity Title.* HOPE VI Main Street Grants.

C. *Announcement Type.* Initial announcement.

D. *Funding Opportunity Number.* The **Federal Register** number for this NOFA is: FR–5059–N–01. The Office of Management and Budget (OMB) paperwork approval number for this program is 2577–0208.

E. *Catalog of Federal Domestic Assistance (CFDA) Number.* The CFDA number for this NOFA is 14–866, "*Demolition and Revitalization of Severely Distressed Affordable Housing* (HOPE VI)."

F. *Dates.*

1. *Application Submission Date.* The application deadline date is July 10, 2006. Applications must be received and validated Grants.gov by 11:59:59 p.m. on the application deadline date. See the General Section for application submission and timely receipt requirements.

2. *Estimated Grant Award Date.* The estimated award date will be June 12, 2006.

G. *Electronic Application Submission.* Applications for this NOFA must be submitted electronically through *http://www.grants.gov*. The applicant must be fully registered completing the five step registration process for new applicants or if you have previously submitted an application for assistance with Grants.gov, ensuring that the registration in the Central Contractor Registry is updated. See HUD's **Federal Register** Notice published on December 9, 2005 entitled "Notice of Opportunity to Register Early for Electronic Submission of Grant and HUD's registration brochure entitled "Step By Step: Your Guide to Registering for Grant Opportunities, Information for Applicants and Grantees. Submission validation by grants.gov may take 24–48 hours so when submitting your application please take these time frames into account. HUD recommends early submission so that if your application is rejected you will have to make the correction and resubmit prior to the deadline date. See "Other Submission Requirements," Section IV.F. of this NOFA and the General Section, and *http://www.grants.gov/GetStarted*.

Full Text of Announcement

II. Funding Opportunity Description

A. *Available Funds.* This NOFA announces the availability of approximately $2.5 million in Fiscal Year (FY) 2005 funds and approximately $2.5 million in FY 2006 funds.

B. *Purpose of the Program.* The purpose of the HOPE VI Main Street program is to provide grants to small communities to assist in the rehabilitation and new construction of affordable housing in conjunction with an existing program to revitalize an historic or traditional central business district or "Main Street Area." The objectives of the program are to:

1. Redevelop Main Street Areas;

2. Preserve historic or traditional architecture or design features in Main Street Areas;

3. Enhance economic development efforts in Main Street Areas; and

4. Provide affordable housing in Main Street Areas.

C. *Statutory Authority.*

1. The program authority for the HOPE VI Main Street program is section 24 of the United States Housing Act of 1937 (42 U.S.C. 1437v), as amended by section 535 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998), as amended, and the HOPE VI Program Reauthorization and Small Community Mainstreet Rejuvenation and Housing Act of 2003 (Pub. L. 108–186, 117 Stat. 2685, approved December 16, 2003).

2. The funding authority for the HOPE VI Main Street program is provided by the Consolidated Appropriations Act, 2005 (Pub. L 108–447, approved December 8, 2005), under Title II, Public and Indian Housing, Revitalization of Severely Distressed Public Housing (Hope VI), and the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006 (Pub. L. 109–115, approved November 30, 2005), under Revitalization of Severely Distressed Public Housing (HOPE VI).

3. The HOPE VI Program Reauthorization and Small Community Mainstreet Rejuvenation and Housing Act of 2003 states that, of the amount appropriated for the overall HOPE VI program for any fiscal year, the Secretary shall provide up to five percent for use only for the Main Street initiative. The statute amended section 24(n) of the Act, which now provides for grants to smaller communities, to provide assistance to carry out eligible affordable housing activities.

D. *Definition of Terms*

1. *Affordable Housing* means rental or homeownership dwelling units that:

e. Are made available for initial occupancy to low-income families, with a subset of units made available to very low- and extremely low-income families; and

f. Are subject to the same rules regarding occupant contribution toward rent or purchase, and terms of rental or purchase, as are public housing units in a HOPE VI development. Public housing rights and responsibilities vary among HOPE VI developments. HOPE VI public housing units use various mechanisms to set the resident portion of rent, resident job training or employment requirements, resident rights of return, and other occupancy issues.

2. *Applicant Team ("Team")* means the group of entities that will develop the Project. The Team includes the unit of local government that submits the application and, where applicable, the procured developer, the procured property manager, architects (including architects who are knowledgeable about universal design and section 504 accessible design requirements), construction contractors, attorneys, investment partners that comprise an owner entity, and other parties that may be involved in the development and management of the Project.

3. *Community and Supportive Services ("CSS")* means services to residents of the Project that may include, but are not limited to:

e. Homeownership counseling that is scheduled to begin promptly after grant award so that, to the maximum extent possible, qualified residents will be ready to purchase new homeownership units when they are completed;

f. Educational, life skills, job readiness and retention, employment training, and other activities as described on HUD's HOPE VI Web site at *http://www.hud.gov/offices/pih/programs/ph/hope6/css/*; and

g. Coordinating with fair housing groups to educate the Main Street Affordable Housing Project's targeted population on its fair housing rights.

4. *Firmly Committed means* that the amount of Match or Leverage resources, and their dedication to HOPE VI Main Street activities must be explicit, in writing, and signed by a person authorized to make the commitment.

5. *General Section* means the Notice of HUD's Fiscal Year 2006 Notice of Funding Availability Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Programs; Notice, Docket No. FR–FR–5030–N–01, published in the **Federal Register** on January 20, 2006.

6. *Homeownership Unit* means a housing unit that the Local Government makes available through a grant from this NOFA for purchase by low-income

families for use as their principal residence;

7. *Initial Occupancy Period* means the period of time that a rental unit is occupied by the initial low-income resident or the period of time that a homeownership unit is owned by the initial third-party, low-income purchaser. There is no set requirement for the length of this occupancy period.

8. *Jurisdiction* means the physical area under the supervision of the Local Government.

9. *Leverage* means non-HOPE VI funded donations of cash and in-kind services that are firmly committed to the development of the Main Street Affordable Housing Project (called Main Street Affordable Housing Project Leverage) or to the Main Street Area as a whole (called Main Street Area Leverage)

e. Leverage may include funds/in-kind services that are already expended, received but not expended, and *firmly committed* but not yet received.

f. Types of resources that may be counted include:

(1) Private mortgage-secured loans, Insured loans, and other debt;

(2) Housing trust funds;

(3) Net sales proceeds from a homeownership project that exceed the amount of HOPE VI funds used to develop the homeownership unit;

(4) Tax Increment Financing (TIF);

(5) Proceeds from Low-Income Housing Tax Credits (LIHTC), Historic Preservation Tax Credits, and Tax Exempt Bonds;

(6) Land Sale Proceeds. The value of land sale proceeds may be included as leverage only if this value is a sales proceed. Absent a sales transaction, the value of land will not be counted;

(7) Other Federal Funds. Other federal sources may include non-public housing funds provided by HUD;

(8) In-Kind Services, including donations of:

(a) Property such as land (donations of land may be counted as leverage only if the donating entity owns the land to be donated), materials, supplies, a building, a lease on a building, and other infrastructure;

(b) Services such as Homeownership Counseling, other CSS and FSS resources (see "Definitions," Section I.D. of this NOFA for the definition of CSS), and time and services contributed by volunteers.

g. Leverage does NOT include, and HUD will not count:

(1) Staff time of either the Local Government applicant or the recognized developer entity; and

(2) Wages projected to be paid to residents through jobs that are provided by CSS partners.

10. *Local Government* means any city, county/parish, town, township, parish, village, or other general purpose political subdivision of a state; Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, the District of Columbia and the Trust Territory of the Pacific Islands, or a general purpose political subdivision thereof; a combination of such political subdivisions that is recognized by the Secretary.

11. *Low-Income* means a family (resident) with an income equal to or less than 80 percent of median income for the local area, adjusted for family size, in accordance with section 3(b)(2) of the United States Housing Act of 1937, as amended. HUD may establish a level higher or lower than 80 percent because of prevailing construction costs or unusually high or low family incomes in the area. HUD prescribed income limits are stated at *http://www.huduser.org/datasets/il/IL05/Section8_IncomeLimits_2005.doc.* Local area is defined as the non-metropolitan county/parish or Primary Metropolitan Statistical Area/Metropolitan Statistical Area (PMSA/MSA) or county/parish, as prescribed by HUD, in which the low-income family resides.

12. *Main Street Area* means an area designated by the applicant, that:

e. Is within the jurisdiction of the applicant; b. Has specific boundaries;

f. Is or was;

(1) Traditionally the central business district and center for socio-economic interaction;

(2) Characterized by a cohesive core of historic and/or older commercial and mixed-use buildings, often interspersed with civic, religious, and residential buildings, which represent the community's architectural heritage;

(3) Typically arranged along a main street with intersecting side streets and public space; and

(4) Pedestrian-oriented.

13. *Main Street Affordable Housing Project ("Project")* is defined in "Program Requirements," Section III.C. of this NOFA.

14. *Main Street Rejuvenation Master Plan ("Main Street Plan")* is a document, or group of documents, that serves to guide the rejuvenation of a Main Street Area. It may be a formal, detailed declaration of intent, or an informal collection of records from various City, Chamber of Commerce, Main Street organization meetings, and portions of the applicant's city-wide Master Plan, that describes and demonstrates the Main Street rejuvenation effort's components, such as:

e. Design, promotion, and economic impact;

f. Broad community support;

g. Investment by both the public and private sectors;

h. Long-term planning and commitment by a local organization;

i. Active administration and implementation by the applicant, or by a locally recognized Main Street rejuvenation organization; and

j. Strong preservation element for historic or traditional architecture.

k. Main Street Plan documentation must comply with the minimum requirements stated in "Program Requirements," Section III.C. of this NOFA.

15. *Match* is cash or in-kind donations that:

e. Total at least five percent of the requested HOPE VI Main Street grant amount; and

f. Are from government or private-sector sources other than HOPE VI funding, including Community Development Block Grant Funds, which by statute are considered local money.

16. *Owner entity* is the legal entity that holds title to the real property that contains any affordable housing units developed through this NOFA.

17. *Person with disabilities* means a person who:

e. Has a condition defined as a disability in section 223 of the Social Security Act;

f. Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance Bill of Rights Act; or

g. Is determined to have a physical, mental, or emotional impairment which:

(1) Is expected to be of long-continued and indefinite duration;

(2) Substantially impedes his or her ability to live independently; and

(3) Is of such a nature that such ability could be improved by more suitable housing conditions.

h. The term "person with disabilities" may include persons who have acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for AIDS. In addition, no individual shall be considered a person with disabilities, for purposes of eligibility for low-income housing, based solely on any drug or alcohol dependence.

i. The definition provided above for persons with disabilities is the proper definition for determining program qualifications. However, the definition of a person with disabilities contained in section 504 of the Rehabilitation Act of 1973 and its implementing regulations must be used for purposes of reasonable accommodations.

18. *Program* means the HOPE VI Main Street Program.

19. *Recognized Developer* means the Local Government applicant or a legal entity that has an agreement with the Local Government applicant to seek financing for, rehabilitate and/or construct housing units, and to provide Community and Supportive Services (if required), for a HOPE VI Main Street grantee.

e. For a non-complex development, the applicant may choose not to use a developer, and instead directly procure a design/build construction contractor and accountant.

20. *Site Control* means the Local Government applicant, or its developer, has the legal authority to commit the owner of the property to the rehabilitation to be performed with HOPE VI Main Street grant funds. Some examples of site control are:

e. The local government owns the property outright;

f. The private owner of the property and the applicant have signed a developer agreement and the private owner is the developer;

g. The government- or private-owner has signed a developer agreement with a separate developer and the agreement gives the developer control;

h. The applicant or developer has an option to purchase the property that covers a time period sufficient to obtain grant funds for purchase (at least 180 days after award), and is contingent only upon: (1) Receipt of a grant from this NOFA; and (2) satisfactory compliance with this NOFA's environmental review requirements;

i. An owner-entity partnership was formed between the original owner and the applicant or the developer (or both) and possibly a third-party investor (Tax Credits) and the developer is the General Partner; etc.

21. *Unit of Local Government*: See "Local Government" under this section.

22. *Very Low-Income Family* means a family (resident) with an income equal to or less than 50 percent of median income for the local area, adjusted for family size, in accordance with section 3(b)(2) of the United States Housing Act of 1937, as amended. HUD may establish a level higher or lower than 50 percent because of prevailing construction costs or unusually high or low family incomes in the area. HUD prescribed income limits are stated at *http://www.huduser.org/datasets/il/IL05/Section8_IncomeLimits_2005.doc*. Local area is defined as the PMSA/MSA or nonmetropolitan county/parish, as prescribed by HUD, in which the low-income family resides.

E. *General Section Reference.* The subsection entitled "Funding Opportunity Description" in Section I. of the General Section is hereby incorporated by reference.

III. Award Information

A. *Available Funds.* A total of $5 million is available for funding. $2.5 million is appropriated for FY 2005 and must be obligated before September 30, 2006; $2.5 million is appropriated for FY 2006 and must be obligated before September 30, 2007.

B. *Number of Awards.* This NOFA will result in approximately 10 awards.

C. *Range of Amounts of Each Award.* Each applicant may request up to $500,000.

D. *Start Date, Period of Performance.* The term of the grants that result from this NOFA will start on the date that the grant award document is signed by HUD and will continue for 30 months thereafter.

E. *Type of Instrument.* Grant Agreement.

F. *Supplementation.* Grants resulting from this NOFA do not supplement other HOPE VI grants.

IV. Eligibility Information

A. *Eligible Applicants.* Eligible applicants include, and are limited to, Local Governments, as defined in Section I.D. of this NOFA and section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302). The Local Government must:

1. Have an active Main Street rejuvenation effort within its jurisdiction;

2. Have a population of 50,000 or fewer; and

3. Not be served by a Local Government, county/parish, regional or state public housing agency (PHA) that administers more than 100 public housing units, provided that more than 100 of those units are within the Local Government applicant's jurisdiction. For example, if a Local Government is served by a county PHA that administers 180 public housing units (excluding section 8), and 90 of those units are located within the jurisdiction of the Local Government, then the Local Government is eligible to apply. On the other hand, if a Local Government is served by a county PHA that administers 180 public housing units (excluding section 8), and 103 of those units are located within the jurisdiction of the Local Government, then the Local Government is NOT eligible to apply.

B. *Cost Sharing or Match.*

1. *Match.* HUD is required by the Quality Housing and Work Responsibility Act (42 U.S.C. 1437v(c)(1)(A)) to include the requirement for matching funds for all HOPE VI-related grants. Applicants must provide matching funds in the amount of five percent of the requested grant amount from sources other than HUD HOPE VI funds. Match sources may include other federal sources, Community Development Block Grant (CDBG) funds (which are statutorily considered local funds), any state or local government sources, any private contributions, the value of any donated material or building, the value of any lease on a building, the value of the time and services contributed by volunteers, and the value of any other in-kind services provided. The match may include funds already spent on, or funds committed to, the Main Street Affordable Housing Project, provided that they were or shall be used only for carrying out eligible affordable housing activities.

e. Match donations must be *firmly committed.* "Firmly committed" means that the amount of match resources and their dedication to Main Street-related affordable housing activities must be explicit, in writing, and signed by a person authorized to make the commitment. The commitment must be in place at the time of award.

f. The applicant may propose to use the applicant's own funds to meet the match requirement, provided that the match funds do not originate from HOPE VI funds.

g. The applicant's staff time is not an eligible cash or in-kind match.

h. See Section IV.B. of this NOFA for the requirements for documentation of match resources.

C. *Other.*

1. *Eligible Uses of Grant Funds.* Main Street grant funds may be expended on the following activities:

e. New construction and rehabilitation of Main Street-related affordable rental and homeownership housing;

f. Architectural and Engineering activities, surveys, permits, and other planning and implementation costs related to the construction and rehabilitation of Main Street-related affordable housing;

g. Tax credit syndication costs;

h. Funding of moving expenses for low-income residents displaced as a result of construction or rehabilitation of the Project, in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and Handbook CPD 02–08, Guidance on the Application of the Uniform Relocation Assurance and Real Property Acquisition Policies Act of

1970 (URA), as amended in HOPE VI Projects;

i. Management improvements necessary for the proper development and management of Main Street-related affordable housing, similar to and including, but not limited to:

(1) Staff training (including travel) related to affordable housing development and management and public housing property management;

(2) Staff time and materials or contractor services to revise or develop:

(a) Procedure manuals;

(b) Accounting systems, excluding accounting services;

(c) Lease documents;

(d) Resident screening procedures; and

(e) Data processing systems.

j. *Leveraging non-HOPE VI funds and in-kind services.* See the definition of "Leverage" in Section I.D. of this NOFA;

k. *Community and Supportive Services.* See Funding Restrictions in Section IV.E. of this NOFA.

2. *Thresholds.*

e. *Match.* Applicants must provide matching funds in the amount of five percent of the requested grant amount from sources other than HUD HOPE VI funds. See, "Cost Sharing or Match," Section III.B. of this NOFA. If the applicant does not demonstrate that there will be matching funds of at least five percent (5%) of the requested grant amount, the application will not be eligible for funding through this NOFA.

f. *Main Street Area.* The applicant must have within its jurisdiction a Main Street Area. See Section I.D. of this NOFA for the definition of a Main Street Area. If the applicant's jurisdiction does not have a Main Street Area, the application will not be eligible for funding through this NOFA.

g. *Prior Existence of Main Street Rejuvenation Master Plan.* The Main Street Plan must have been in existence prior to the publication date of this NOFA, that is, the Main Street Plan must demonstrate that, prior to this date, written documentation existed that fulfilled the definition of a Main Street Plan as defined in Section I.D. of this NOFA. If the applicant's Main Street Rejuvenation Master Plan was not in existence before the publication date of this NOFA, the application will not be eligible for funding through this NOFA.

h. *Main Street Affordable Housing Project ("Project").* The targeted affordable housing project must conform to this NOFA's requirements for a Main Street Affordable Housing Project, as defined in "Program Requirements," Section III.C. of this NOFA. If the targeted affordable housing project does not conform to this NOFA's requirements of a project, the application will not be eligible for funding through this NOFA.

i. *Inclusion of Affordable Housing.* Affordable housing must have been included in the applicant's Main Street Plan on or before the application deadline date for this NOFA. If affordable housing was not included in the applicant's Main Street Plan on or before the application deadline date for this NOFA, the application will not be eligible for funding through this NOFA.

j. *Zoning.* Zoning for residential housing, or mixed-use zoning that includes residential housing, must be in place on all project sites on or before the application deadline date. If zoning for residential housing, or mixed-use zoning that includes residential housing, is not in place on all project sites on or before the application deadline date, the application will not be eligible for funding through this NOFA.

k. *Leverage for the Main Street Rejuvenation Effort.* The applicant must provide leverage funds/in-kind services that are firmly committed to the Main Street rejuvenation effort that is described in the Main Street Rejuvenation Master Plan. According to the authorizing statute, the targeted housing project must be part of an existing Main Street rejuvenation effort. Existence of Main Street leverage donations that are not connected to the targeted housing project helps to demonstrate that there is a wider-scaler rejuvenation effort in progress. These leverage funds/in-kind services must be from sources other than HUD HOPE VI funds, and the amount must be in excess of 50 percent of the requested grant amount.

(1) As explained in the above section, leverage for this threshold does not include, and HUD will not count, funds/in-kind services that are limited to use in the development of the affordable housing project that the applicant has targeted for this NOFA.

(2) See rejuvenation effort leverage documentation requirements for form HUD–52861, "HOPE VI Main Street Application Data Sheet," attached to this NOFA.

(3) If the applicant provides Main Street Area rejuvenation effort leverage funds/in-kind services of an amount less than 50 percent of the requested grant amount, the application will not be eligible for funding through this NOFA.

l. *One Main Street Area.* The applicant must only apply for assistance in support of one Main Street Area under this NOFA, that is, if the Local Government's jurisdiction includes two neighborhoods, each with a traditional commercial/social center, the application must contain only one of those traditional commercial/social centers. However, the applicant's Main Street Affordable Housing Project may consist of several scattered sites within that one Main Street Area. If the applicant applies for assistance for more than one Main Street Area through this NOFA, the application will not be eligible for funding through this NOFA.

m. *Code of Conduct.*

(1) The applicant must have developed and must maintain a written code of conduct (see 24 CFR 84.42 and 85.36(b)(3)). The applicant must provide, or have provided, documentation that demonstrates that it has a written code of conduct.

(2) If the applicant does not provide a copy of the code of conduct, and its implementation methodology, in the application, or is not listed by HUD as having already submitted such documentation, the application will not be eligible for funding through this NOFA.

(3) See "Threshold Documentation," Section IV.B. of this NOFA, and Section III.C. of the General Section.

n. The following sub-sections of Section III of the General Section are hereby incorporated by reference. The applicant must comply with each of the incorporated threshold requirements in order to be eligible for funding, including:

(1) Ineligible Applicants;

(2) Dun and Bradstreet Data Universal Numbering System (DUNS) Number Requirement;

(3) Compliance with Fair Housing and Civil Rights Laws;

(4) Conducting Business In Accordance with Core Values and Ethical Standards;

(5) Delinquent Federal Debts;

(6) Pre-Award Accounting System Surveys;

(7) Name Check Review;

(8) False Statements;

(9) Prohibition Against Lobbying Activities; and

(10) Debarment and Suspension.

3. *Certification of Certain Thresholds.*

e. *Certification by Application.* The SF–424, "Application for Federal Assistance," is the cover sheet to the application. By manually or electronically signing the SF–424, the applicant certifies that the following thresholds have been met:

(1) All Match resources included in the application are "firmly committed." See the definition of "firmly committed" in Section I.D. of this NOFA;

(2) The Main Street Rejuvenation Master Plan that is included as part of

this application existed prior to the publication date of this NOFA;

(3) The Main Street Plan contained affordable housing prior to the application deadline date of this NOFA;

(4) All project sites have zoning that allows for residential development;

(5) All leverage resources included in the application are "firmly committed." See the definition of "firmly committed" in Section I.D. of this NOFA;

(6) Historic preservation requirements in section 106 of the *National Historic Preservation Act of 1966 (NHPA)* will be fulfilled, where applicable;

(7) Environmental requirements stated in the NOFA will be fulfilled;

(8) Building standards stated in the NOFA will be fulfilled; -

(9) Relocation requirements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) will be fulfilled; and

(10) Fair Housing, Civil Rights, and section 3 requirements will be followed and fulfilled.

f. *Information for the Applicant's Certifying Official.*

(1) Application documentation that is included for the sole purpose of supporting certified thresholds is not necessary, and will not improve the applicant's chances of receiving a grant through this NOFA.

(2) Because of other NOFA requirements, the applicant may already have included documentation in the application that happens to also support a certified threshold. For example, the applicant includes the Main Street Plan to respond to the Rating Factors. It also contains documentation that is related to several thresholds.

(3) For the benefit of the applicant's certifying official, this information will help prevent accidental misrepresentation by providing evidence that these thresholds have been met. For the applicant certifying official's further benefit, viewing of documents similar to the following may help prevent accidental misrepresentation of certifications for thresholds with no related application documentation:

(a) Main Street Plan Existence. Any document dated prior to the publication of this NOFA that demonstrates the applicant intended to rejuvenate a Main Street Area, or the applicant acknowledged that a local Main Street organization intended to rejuvenate a Main Street Area;

(b) Inclusion of Affordable Housing. Documentation in the Main Street Plan that demonstrates that the concept of including development of affordable housing in the Main Street commercial area is included in the rejuvenation strategy;

(c) Zoning. Zoning approvals or a certification from the appropriate local official documenting that all required zoning approvals have been secured; and

(d) Main Street Area Leverage. Main Street Area leverage may include, but is not limited to, any public or private sector salaries paid for Main Street related services or physical improvements made to the Main Street Area, such as the cost of developing a Main Street Plan, salaries of people promoting the Main Street Plan, building construction or rehabilitation, site or infrastructure improvements, etc. Documentation of these expenditures may include, but is not limited to: Tax returns, typical accounting ledgers kept by the Local Government applicant, non-profit organization or private property owners; reports to government agencies; and summary reports or other publications produced by interested parties. Leverage includes past expenditures, current cash-on-hand, and letters of commitment for future cash/in-kind services to be donated to the Main Street Area rejuvenation effort.

4. *Program Requirements.*

e. *Main Street Area Recognition by HUD.* The applicant must have, within the applicant's jurisdiction, a HUD-recognized Main Street Area rejuvenation effort that involves affordable housing. In order to be recognized by HUD, a Main Street Area rejuvenation effort must:

(1) Be located within a definable Main Street Area (See Section I.D. of this NOFA);

(2) Have as its purpose the rejuvenation or redevelopment of a historic or traditional commercial area;

(3) Involve investment or other participation by both the local government and locally located private entities;

(4) Comply with historic preservation requirements as directed by the cognizant State Historic Preservation Officer ("SHPO") or, if such historic preservation requirements are not applicable, to preserve significant traditional, architectural, and design features in the project structures or Main Street Area; and

(5) Have been described in a Main Street Plan that existed prior to the publication date of this NOFA.

f. *Main Street Affordable Housing Project (Project).* The "Main Street Affordable Housing Project" is the collection of affordable housing units that are rejuvenated or developed in the Main Street Area using funds obtained through this NOFA. The project must:

(1) Involve the construction or rehabilitation of affordable housing units. The number of units that will be developed through this NOFA must at least equal the number of units stated in form HUD–52861, "HOPE VI Main Street Application Data Sheet," on the "Unit Mix and Accessibility Summary, Post-Revitalization" page.

(2) Be located within the boundaries of the applicant's Main Street Area;

(3) Be located within the jurisdiction of the applicant; and

(4) Have been included as part of a Main Street Rejuvenation Master Plan before the application deadline date of this NOFA; and

(5) Be constructed in accordance with Building and Fair Housing standards stated in this Section III C., including Universal Design and Accessibility standards.

g. *Main Street Plan.* The Main Street Rejuvenation Master Plan must, at a minimum:

(1) Currently or in the past, have an architect, land planner, or qualified planning professional involved in Plan preparation. Participation as a principal preparer or an advisor, in any part of its preparation, is acceptable. This professional may be, or may have been, employed by the applicant, been on the applicant's Team, or been an independent third party. This professional should have knowledge of universal design and section 504 accessible design requirements.;

(2) Describe the proposed Main Street Area rejuvenation strategies and actions;

(3) Include the development of affordable housing;

(4) Include a map that indicates the Main Street Area and the Main Street Affordable Housing Project site(s); and

(5) Include a list of sites where affordable housing will be rehabilitated or developed. The list of sites must have been included in the Main Street Plan on or before the application deadline date.

(6) Include promotion and marketing.

(a) Affirmative fair housing marketing should be included in the listing of affordable housing promotion and marketing activities. For affirmative fair housing marketing, the applicant should identify the population least likely to apply for affordable housing developed through this NOFA before commencing with marketing for that housing."

h. *Requirements During the Initial Occupancy Period.*

(1) Initial residents of affordable rental units and initial resident purchasers of affordable homeownership units must be subject to the same rules regarding occupant contribution toward rent or purchase,

and terms of rental or purchase, as residents of public housing units in a HOPE VI development, i.e., site-based waiting lists, resident job or training requirements, and other occupancy requirements that are allowed under section 24 of the of the U.S. Housing Act of 1937 (1937 Act) may be applied to the units.

(2) The project owner entity is not required to develop most mandatory PHA documentation, e.g., the PHA Plans as described in 24 CFR part 903, etc. However, before the project is initially rented, the ownership entity must develop a written statement of its rent determination and occupancy policies.

(3) Public housing rental requirements that are contained in 24 CFR 903.7(d) and 24 CFR 903.7(f) are not mandatory, but may be used as examples for such policies.

i. *HOPE VI Homeownership.* The initial sale of an affordable homeownership unit to a third-party, low-income purchaser must take place in accordance with section 24 of the 1937 Act.

j. *Use Restrictions.* Project units must be maintained as affordable housing only for the period of initial rental occupancy or the initial resident's ownership. The applicant may elect to apply Use Restrictions for a longer period, or in excess, of this requirement.

k. *Leveraging Other Resources.* This NOFA states that each applicant must obtain non-HOPE VI leverage resources for use in the Main Street Affordable Housing Project (see "Match," Section III.B. and, "Rating Factor 4," SectionV.A. of this NOFA) and, separately, for use in the Main Street Area effort as a whole (see "Thresholds," Section III.C of this NOFA). Main Street grant funds may be used to maximize the amount of leverage, i.e., leveraged funds and in-kind services, that the applicant can obtain from sources other than the HOPE VI program. In this capacity, grant funds may be used: (1) To collateralize municipal bonds or private-sector loans for affordable housing uses; and (2) As affordable housing "seed money" to attract Main Street Affordable Housing Project or Main Street Area leverage.

(1) Uses of Leverage. Leverage funds and in-kind services may be used for eligible activities listed in "Eligible Uses of Grant Funds," Section III.C. of this NOFA and, in addition, for related activities may not be eligible uses of grant funds, but that are necessary for the development of the Main Street Affordable Housing Project. Such activities include, but are not limited to:

(a) For Main Street Affordable Housing Project Leverage:

(i) The acquisition of existing housing units that will become affordable housing, but do not require rehabilitation, including associated costs, such as appraisals, surveys, tax settlements, broker fees, and other closing costs;

(ii) Off-site site improvements that are contiguous to the site;

(iii) Demolition;

(iv) Restoration of the Main Street Affordable Housing Project facade when facade rehabilitation is not an integral part of the project's rehabilitation;

(v) Rehabilitation of retail space in the Main Street Affordable Housing Project, even if this rehabilitation is not an integral part of the rehabilitation of the rental areas of the Project;

(vi) Funding of Reserves, e.g., Initial Operating Reserve necessary for financial viability during the initial affordable housing occupancy period, Replacement Reserves, etc.;

(vii) Legal and administrative fees and costs directly related to the Main Street Affordable Housing Project;

(viii) Homeownership financial assistance, e.g., write-down of homeownership unit development costs and down payment assistance; and

(ix) Other uses that relate directly to the Main Street Affordable Housing Project.

(b) For Main Street Area Leverage:

(i) Rehabilitation of retail space;

(ii) Site improvements, e.g., repaving streets or upgrading streets or sidewalks with brick or cobblestone, adding "boulevard" islands, etc.;

(iii) Legal and administrative fees and costs; and

(iv) Other uses that do not relate directly to the Main Street Affordable Housing Project, but do relate to the Main Street Area rejuvenation effort described in the Main Street Plan.

l. *Transfer of Title for Tax Credits.* The original owner entity of Main Street Affordable Housing Project properties may transfer title to, or commit to a long-term lease with, an owner entity partnership that includes the original owner, the applicant, an equity partner and, when appropriate, other partners, for the purpose of obtaining Low Income or Historic Tax Credit equity as a leverage resource. See Section IV.E. of this NOFA for limits on sale of real property.

m. Section 106 Historic Preservation Requirements. Grantees may not commit HUD funds until HUD has completed the historic preservation review and consultation process under section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f) and its implementing regulation, 36 CFR part 800, as applicable, in accordance with environmental review requirements under 24 CFR part 50. See *http://www.achp.gov/* for details on the section 106 review process.

n. *Environmental Requirements.*

(1) HUD's notification of award to a selected applicant constitutes a preliminary approval by HUD, subject to HUD's completion of an environmental review, of proposed sites in accordance with 24 CFR part 50. Selection for participation (preliminary approval) does not constitute approval of the proposed site(s).

(2) Your application constitutes a certification that you, the applicant, will supply HUD with all available, relevant information necessary for HUD to perform any environmental review required by 24 CFR part 50 for each property; will carry out mitigating measures required by HUD or, if mitigation is not feasible, select alternate eligible property; and will not acquire, rehabilitate, convert, demolish, lease, repair, or construct property, nor commit or expend HOPE VI, other HUD or other non-HUD funds for these program activities with respect to any eligible property, until you receive written HUD approval of the property.

(3) Each proposal will be subject to a HUD environmental review, in accordance with 24 CFR part 50, and the proposal may be modified or the proposed sites rejected as a result of that review.

(4) Phase I and Phase II Environmental Site Assessments. If you are selected for funding, you must have a Phase I environmental site assessment completed in accordance with the ASTM Standards E 1527–05, as amended, for each affected site. The results of the Phase I assessment must be included in the documents that must be provided to HUD for the environmental review. If the Phase I assessment recognizes environmental concerns or if the results are inconclusive, a Phase II environmental site assessment will be required.

(5) Mitigating and remedial measures. You must carry out any mitigating/remedial measures required by HUD. If a remediation plan, where required, is not approved by HUD and a fully-funded contract with a qualified contractor licensed to perform the required type of remediation is not executed, HUD reserves the right to determine that the grant is in default.

(6) Your application constitutes a certification that there are not any environmental or public policy factors such as sewer moratoriums that would

preclude development in the requested Main Street Area.

(7) Note that environmental requirements for this NOFA are found in 24 CFR part 50, which requires HUD environmental approval. Please note that 24 CFR part 58, which allows State and local governments to assume Federal environmental responsibilities, is not applicable.

(8) HUD's Environmental Web site is located at *http://www.hud.gov/offices/cpd/energyenviron/environment/index.cfm.*

o. *Building Standards.*

(1) Building Codes. All activities that include construction, rehabilitation, lead-based paint removal, and related activities must meet or exceed local building codes. The applicant is encouraged to read the policy statement and Final Report of the HUD Review of Model Building Codes that identifies the variances between the design and construction requirements of the Fair Housing Act and several model building codes. That report can be found on the HUD Web site at *http://www.hud.gov/fhe/modelcodes.*

(2) Deconstruction. HUD encourages the applicant to design programs that incorporate sustainable construction and demolition practices, such as the dismantling or "deconstruction" of housing units, recycling of demolition debris, and reusing salvage materials in new construction. "A Guide to Deconstruction" can be found at *http://www.hud.gov/deconstr.PDF.*

(3) Partnership for Advancing Technology in Housing ("PATH"). HUD encourages the applicant to use PATH technologies in the construction and delivery of affordable housing. PATH is a voluntary initiative that seeks to accelerate the creation and widespread use of advanced technologies to radically improve the quality, durability, environmental performance, energy efficiency, and affordability of our nation's housing.

(a) The goal of PATH is to achieve dramatic improvement in the quality of American housing by the year 2010. PATH encourages leaders from the home building, product manufacturing, insurance, and financial industries, and representatives from Federal agencies dealing with housing issues to work together to spur housing design and construction innovations. PATH will provide technical support in design and cost analysis of advanced technologies to be incorporated in project construction.

(b) Applicants are encouraged to employ PATH technologies to exceed prevailing national building practices by:

(i) Reducing costs;

(ii) Improving durability;

(iii) Increasing energy efficiency;

(iv) Improving disaster resistance; and

(v) Reducing environmental impact.

(c) More information, including a list of technologies, the latest PATH Newsletter, results from field demonstrations, and descriptions of PATH projects can be found at *http://www.pathnet.org.*

(4) Energy Efficiency.

(a) New construction and rehabilitation that is started on or before September 30, 2006 must comply with HUD Minimum property standards, which incorporates by reference the Council of American Building Officials (CABO) Model Energy Code, 1992 edition. Construction of multifamily high-rises (having a height of four or more stories above grade) must comply with ASHRAE 90.1 1989. New construction and rehabilitation that is started after September 30, 2006 must comply with the 2003 International Energy Conservation Code (IECC 2003), which incorporates ASHRAE 90.1 2001 by reference for high-rise multifamily housing.

(i) IECC 2003 Administrative Guidance. IECC 2003 applies to all construction and rehabilitation of residential and commercial property. The standard contains exceptions that allow for its reasonable application to Main Street NOFA activities.

(A) IECC 2003 Section "101.2.2.3 Historic buildings. The provisions of this code * * * shall not be mandatory for existing buildings or structures specifically identified and classified as historically significant by the state or local jurisdiction, listed in The National Register of Historic Places, or which have been determined to be eligible for such listing."

(B) IECC 2003 Section "101.2.3 Mixed occupancy. [For mixed-use buildings,] * * * each portion of the building shall conform to the requirements for the occupancy housed therein. Buildings [with more than two housing units] with a height of four or more stories above grade shall be considered commercial buildings * * * regardless of the number of floors that are classified as residential." That is, if there is a store in the building, that part of the building is considered commercial. The rest of the building would incorporate low-rise residential requirements.

(C) IECC 2003 Section "101.2.2.2 Additions, alterations or repairs. Additions [and rehabilitation of a building or portion of a building] * * * shall conform to the provisions of this code * * * without requiring the unaltered portions(s) of the existing system to comply with all of the requirements of this code. Additions[or rehabilitation] shall not cause any one of the aforementioned and existing systems to become unsafe, hazardous or overloaded."

(b) Where local or State energy related building codes exceed the above standards, new construction and rehabilitation must comply with those local or State standards.

(c) In HOPE VI new construction and gut-rehabilitation, HUD encourages the applicant to set higher energy and water efficiency standards than the Model Energy Code contains. Such higher standards can achieve utility savings of 30 to 50 percent with minimal extra cost. To achieve higher levels of energy efficiency, development costs can be financed through leverage grants from non-HOPE VI sources, *e.g.*, CDBG, HOME, Weatherization Assistance, Energy Star rebates, etc. Increased development costs are typically offset by reduced utility expenses.

(d) The applicant is encouraged to negotiate with its local utility company to obtain lower utility rates. Utility rates and tax laws vary widely throughout the country. In some areas, local governments are exempt or partially exempt from utility rate taxes. Some local governments have paid unnecessarily high utility rates because they were billed using an incorrect rate classification.

(e) Local utility companies may be able to provide grant funds to assist in energy efficiency activities. States may also have programs that will assist in energy efficient building techniques.

(f) The applicant must use new technologies that will conserve energy and decrease operating costs where cost effective. Examples of such technologies include:

(i) Geothermal heating and cooling;

(ii) Placement of buildings and size of eaves that take advantage of the directions of the sun throughout the year;

(iii) Photovoltaics (technologies that convert light into electrical power);

(iv) Extra insulation;

(v) Smart windows; and

(vi) Energy Star appliances.

(5) Universal Design. HUD encourages the applicant to incorporate the principles of universal design in the construction or rehabilitation of housing, retail establishments, and community facilities, and when communicating with community residents at public meetings or events. Universal Design is the design of products and environments to be usable by all people, to the greatest extent possible, without the need for

adaptation or specialized design. The intent of Universal Design is to simplify life for everyone by making products, communications, and the built environment more usable by as many people as possible at little or no extra cost. Universal Design benefits people of all ages and abilities. Examples include designing wider doorways, installing levers instead of doorknobs, and putting bathtub/shower grab bars in all units. Computers and telephones can also be set up in ways that enable as many residents as possible to use them. The Department has a publication that contains a number of ideas about how the principles of Universal Design can benefit persons with disabilities. To order a copy of *Strategies for Providing Accessibility and Visitability for HOPE VI and Mixed Finance Homeownership,* go to the publications and resource page of the HOPE VI Web site at *http://www.huduser.org/publications/pubasst/strategies.html.*

(6) Energy Star. The Department of Housing and Urban Development has adopted a wide-ranging energy action plan for improving energy efficiency in all program areas. As a first step in implementing the energy plan, HUD, the Environmental Protection Agency (EPA) and the Department of Energy (DoE) have signed a partnership to promote energy efficiency in HUD's affordable housing efforts and programs. The purpose of the Energy Star partnership is to promote energy efficiency of the affordable housing stock, but also to help protect the environment. Applicants constructing, rehabilitating, or maintaining housing or community facilities are encouraged to promote energy efficiency in design and operations. They are urged especially to build to Energy Star qualifications and to purchase and use Energy Star-labeled products. Applicants providing housing assistance or counseling services are encouraged to promote Energy Star building to homebuyers and renters. Program activities can include developing Energy Star promotional and information materials, outreach to low- and moderate-income renters and buyers on the benefits and savings when using Energy Star products and appliances, and promoting the designation of community buildings and homes as Energy Star compliant. For further information about Energy Star, see *http://www.energystar.gov* or call 1–888 STAR–YES (1–888–782–7937) or for the hearing-impaired, 1–888–588–9920 TTY.

(7) All buildings must be in compliance with design and construction requirements of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and section 109 of the Housing and Community Development Act of 1974.

p. *Lead-Based Paint.* The applicant must comply with lead-based paint evaluation and reduction requirements as provided for under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*), the EPA's Pre-Renovation Education Rule (40 CFR part 745, subpart E), HUD's Lead Safe Housing Rule (24 CFR part 35, subparts B–R), and theLead Disclosure Rule (24 CFR part 35, subpart A), which regulates documents provided to pre-1978 housing owners regarding lead paint or hazard testing or lead hazard reduction activities, , as they may be amended or revised from time to time. The applicant will be responsible for lead-based paint evaluation and reduction activities for housing constructed prior to 1978. The National Lead Information Hotline is 1–800–424–5323.

q. *Labor Standards.*

(1) If other federal programs are used in connection with the applicant's HOPE VI Main Street activities, Davis-Bacon requirements apply to the extent required by the other federal programs.

(2) If an applicant provides Main Street grant funds to a PHA to construct, rehabilitate, or otherwise assist affordable housing under this NOFA, Davis-Bacon wage rates will apply to laborers and mechanics (other than volunteers under 24 CFR part 70) employed in the development of such units, and HUD-determined wage rates will apply to laborers and mechanics (other than volunteers) employed in the operation of such units.

r. *Relocation Requirements.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1979 (42 U.S.C. 4601–4655), implementing regulations at 49 CFR part 24, and "Handbook CPD 02–08, Guidance on the Application of the Uniform Relocation Assurance and Real Property Acquisition Policies Act of 1970 (URA), as amended in HOPE VI Projects" apply to anyone who is displaced as a result of acquisition, rehabilitation, or demolition due to a HUD-assisted activity.

s. *Fair Housing and Equal Opportunity Requirements.*

Fair Housing and Equal Opportunity requirements stated in Section III.C. of the General Section apply as referenced in this NOFA. In addition, the following requirement applies:

(1) Accessibility Requirements.

(a) All "multifamily" HOPE VI developments, defined as projects with more than five units, are subject to the accessibility requirements contained in several federal laws, as implemented in 24 CFR part 8. PIH Notice 2003–31, available at *http://www.hud.gov/offices/pih/publications/notices/,* and subsequent updates, provides an overview of all pertinent laws and implementing regulations pertaining to HOPE VI.

(b) Generally, for substantial rehabilitation of projects with more than 15 housing units, or new construction of a multifamily project, at least 5 percent of the units, or one unit, whichever is greater, must be accessible to persons with mobility impairments. An additional 2 percent, but not less than one unit, must be made accessible for persons with hearing or vision impairment.

See, in particular, 24 CFR 8.20 through 8.32.

(c) In addition, under the Fair Housing Act, all new construction of covered multifamily buildings must contain certain features of accessible and adaptable design. The relevant accessibility requirements are provided in HUD's FHEO Web site at *http://www.hud.gov/groups/fairhousing.cfm.* Units covered are all those in elevator buildings with four or more units and all ground floor units in buildings without elevators. See also "program accessibility" at *http://www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor263905.* This section is in addition to, and does not replace, other non-HUD accessibility requirements that the applicant local government may be subject to.

5. *General Section References.* The following subsections of Section III of the General Section are hereby incorporated by reference:

e. Additional Nondiscrimination and Other Requirements;

(1) Civil Rights Laws, including the Americans with Disabilities Act of 1990 (42 U.S.C. 1201 *et seq.*);

(2) The Age Discrimination Act of 1974 (42 U.S.C. 6101 *et seq.*); and

(3) Title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681 *et seq.*)

f. Affirmatively Furthering Fair Housing;

g. Economic Opportunities for Low- and Very Low-Income Persons (Section 3);

h. Ensuring the Participation of Small Businesses, Small Disadvantaged Businesses, and Women-Owned Businesses;

i. Relocation;

j. Executive Order 13166, Improving Access to Services for Persons With Limited English Proficiency (LEP);

k. Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations;

l. Accessible Technology;
m. Procurement of Recovered Materials;
n. Participation in HUD-Sponsored Program Evaluation;
o. Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects;
p. Salary Limitation for Consultants;
q. OMB Circulars and Government-wide Regulations Applicable to Financial Assistance Programs;
r. Drug-Free Workplace; and
s. Safeguarding Resident/Client Files.

IV. Application and Submission Information

A. *Addresses to Request Application Package:* This section describes how you may obtain application forms, additional information about the General Section of this NOFA, and technical assistance.

1. Copies of this published NOFA and related application forms may be downloaded from the grants.gov Web site at *http://www.grants.gov/FIND.* If you have difficulty accessing the information, you may receive customer support from grants.gov by calling the help line at (800) 518–GRANTS or by sending an email to *support@grants.gov.* The operators will assist you in accessing the information. If you do not have Internet access and need to obtain a copy of this NOFA, you can contact HUD's NOFA Information Center toll-free at (800) HUD–8929. Persons with hearing or speech impairments may call toll-free at (800) HUD–22091.

2. The published **Federal Register** document is the official document that HUD uses to evaluate applications. Therefore, if there is a discrepancy between any materials published by HUD in its **Federal Register** publications and other information provided in paper copy, electronic copy, or at *http://www.grants.gov,* the **Federal Register** publication prevails. Please be sure to review the application submission against the requirements in the **Federal Register** file of this NOFA.

B. Content and Form of Application Submission

1. *Number of Applications Permitted.* Each applicant may submit only one application.

2. *Joint Applications.* Joint applications are not permitted. However, the applicant may enter into subgrant agreements with procured developers, other partners, nonprofit organizations, state governments, or other local governments to perform the activities proposed under the application.

3. *General Format and Length of Application.*

e. *Applicant Name.* The applicant's official name is the name that is submitted to grants.gov on the SF–424.

f. *Electronic Format.*

(1) General.

(a) Sections of the application are as listed in Section IV.B. of this NOFA.

(b) In accordance with instructions on grants.gov and in the General Section, section submissions may be submitted through PureEdge fill-in forms that are part of the grants.gov Application Package, in electronic files attached to the grants.gov Application Package, or (if the applicant encounters a problem submitting some part of the application electronically to grants.gov) via Facsimile. Note that applicants must use form HUD 96011, as the cover page to the facsimile and that applications submitted entirely by facsimile will not be accepted by HUD.

(c) More than one Section's submission may be combined in one file, provided that each Section's submission is clearly labeled and is separately identifiable by a HUD reviewer.

(2) File Names.

(a) The name of each submission file should include the information below so that a HUD reviewer will be able to identify it as part of the application:

(i) Short version of applicant's name, e.g., town, city, county/parish, etc., and state; and

(ii) The word "Narratives" or "Attachment," as applicable, and the Section letter(s) (A through U) that are included in the file, as listed in Section IV.B. of this NOFA;

(b) Examples of file names are, "Atlanta GA Narratives ABC.doc," and, "New York NY Attachments KL.pdf"

(3) Narrative Files.

(a) Each narrative submission file must be formatted so it can be read by MS Word 2000 (.DOC).

(b) To be included in the application, each file must be entered into the grants.gov "Project Narrative Attachment Form" located in the Mandatory Documents area of the "Grant Application Package."

(i) After the form is open, enter your first file as the "Mandatory Project Narrative File. Add subsequent files, if any, as "Optional Project Narrative Files" by clicking on "Attach" in the Attachments window.

(4) Attachment Files.

(a) In the grants.gov Grant Application Package, certain form Attachments have been converted into PureEdge documents for completion by the applicant on the screen. The applicant must simply fill these forms in and submit them. Other Attachments are part of grants.gov's Application Instructions. The following instructions apply to those Attachments.

(b) Each Attachment file must be formatted so it can be read by MS Word (.DOC), MS Excel (.XLS) or Adobe Acrobat (.PDF). See the General Section for format version specifications.

(c) Downloaded files, e.g., forms HUD–52861 and HUD–52825A, should be submitted in their original format.

(d) Existing and third-party documents, e.g., Main Street Plan, maps and drawings, should be submitted in Adobe Acrobat (PDF) format.

(e) You must complete these Attachments in stand-alone applications, such as MS Excel. To include these downloaded Attachments in the application, you must enter each Attachment's file into the grants.gov "Other Attachments Form," which is located in the Mandatory Documents area of the Grant Application Package.

(i) After the form is open, enter your first file as the "Mandatory Other Attachment." Add subsequent files, if any, as "Optional Other Attachments" by clicking on "Attach" in the Attachments window.

g. *Maximum Length of Application.* There is no overall maximum application length. However, there are maximum page limits for specific parts of the application. Pages beyond the below listed limits will not be reviewed. Page limits are as follows:

(a) The Executive Summary is limited to a maximum of two pages;

(b) All of the Narrative Sections' responses together, including the Rating Factor responses, are limited to a maximum of 20 pages;

(c) The Program Schedule is limited to a maximum of one page;

(d) The Main Street Area Map, including identification of all project the sites, is limited to a maximum of one page. The map must be approximately to scale and must be of sufficient quality to be legible at 11″ x 17″ printed size;

(e) Each different Main Street Affordable Housing Project unit layout is limited to a maximum of one page. One page may contain up to four layouts; and

(f) The Main Street Plan is limited to a maximum of 20 pages. In order to meet the size limitation, the applicant may submit only the portions of the Main Street Plan that pertain to the "Thresholds" and "Program Requirements," in Section III.C., and the Rating Factors in Section V.A. of this NOFA.

(g) The Evaluation Plan is limited to a maximum of three pages.

(h) Applicant Team Resumes are limited to a maximum of 5 pages. More than one resume may be placed on each page.

(2) Page Definition and Layout.

(a) A page is the electronic equivalent of an 8 ½" x 11" paper page, with one inch top, bottom, left and right margins.

(b) For DOC files, a "page" contains a maximum of 23 double-spaced lines. The length of each line is limited to 6 ½ inches. The font must be 12-point Times New Roman. Each page must be numbered. The page numbers may be within the bottom one inch of the page, beyond the 23 lines, e.g., in the footer area.

(c) Third-party and existing documents converted into PDF format may retain their original page layout. They must not be shrunk to fit more than one original page on each application page. To add page numbers to PDF files using Adobe Acrobat 6, click on Document; Add Headers & Footers; Footer; Align Right; Insert Page Number.

(d) Pages of HUD forms and certification formats furnished by HUD must remain as numbered by HUD.

h. *List of Application Sections and Related Documents.*

(1) Summary Information:

(a) Section A: Application for Federal Assistance, form SF–424;

(b) Section B: Executive Summary;

(2) Rating Factor Responses:

(a) Section C: Rating Factor 1, Capacity, Narrative Response;

(b) Section D: Rating Factor 3, Appropriateness of Main Street Plan;

(c) Section E: Rating Factor 4, Appropriateness of the Main Street Affordable Housing Project;

(d) Section F: Rating Factor 5, Program Administration and Fiscal Management;

(e) Section G: Rating Factor 6, Incentive Criteria on Regulatory Barrier Removal (information required by form HUD–27300);

(3) Attachments:

(a) Section H: Program Schedule;

(b) Section I: HOPE VI Main Street Application Data Sheet, form HUD–52861;

(c) Section J: HOPE VI Budget, form HUD–52825A;

(d) Section K: 5-Year Cash Flow Proforma;

(e) Section L: Map of Main Street Area;

(f) Section M: Housing Unit Layout;

(g) Section N: Main Street Rejuvenation Master Plan (Main Street Plan);

(h) Section O: America's Affordable Communities Initiative, form HUD–27300, and related documentation;

(i) Section P: Certification of Consistency with the RC/EZ/EC–IIs Strategic Plan, form HUD–2990, if applicable;

(j) Section Q: Logic Model, form HUD–96010, including:

(i) Indicators, outcomes and related items obtained from the grants.gov Grant Application Package Logic Model drop-down menu, and

(ii) The grant Evaluation Plan;

(k) Section R: Code of Conduct (including distribution methodology);

(l) Section S: Applicant/Recipient Disclosure/Update Report, form HUD–2880, if applicable;

(m) Section T: Disclosure of Lobbying Activities, Standard Form LLL, if applicable; and

(n) Section U: Applicant Team Resumes.

4. *Threshold Documentation.*

e. *Code of Conduct.*

(1) The applicant must submit a copy of its code of conduct as part of the application if its code of conduct is not already on file with HUD. See 24 CFR 84.42 and 85.36(b)(3).

(2) Unless the applicant is listed on HUD's Web site at *http://www.hud.gov/offices/adm/grants/codeofconduct/cconduct.cfm* and the information has not been revised, the applicant is required to submit:

(a) A copy of its code of conduct;

(b) A description of the methods it will use to ensure that all officers, employees, and agents of its organization are aware of its code of conduct; and

(c) The following information, as it is stated on the SF–424:

(i) DUNS;

(ii) EIN;

(iii) Applicant Legal Name;

(iv) Address (Street, P.O. Box, City, State, and Zip);

(d) Authorized Official's information (Name, Title, Phone, and e-mail)

(3) The code of conduct must prohibit real and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees, or agents for their personal benefit in excess of minimal value; and outline administrative and disciplinary actions available to remedy violations of such standards.

(4) See the General Section, III.C., for more detailed information and instructions if the applicant needs to submit their code of conduct to HUD via facsimile.

5. *Summary and Attachment Documentation.*

e. *Executive Summary.*

(1) Provide an Executive Summary, not to exceed two pages. Describe your affordable housing plan. State whether: (1) You have procured (or will procure) a developer, (2) you will act as your own developer, or (3) you will not use a developer because your housing project is not complex enough to warrant one. Briefly describe:

(a) The type of housing, e.g., walk-up above retail space, detached house, etc.;

(b) The number of units and buildings;

(c) The specific plans for the Main Street Area that surrounds the Main Street Affordable Housing Project. Include income mix, basic features (such as restoration of streets), and a general description of mixed-use and non-housing Main Street rejuvenation components.

(d) The number of homeownership units in your proposal, if any;

(e) The amount of HOPE VI funds you are requesting. See Section IV.E. of this NOFA for funding limits; and

(f) A list of major non-HOPE VI funding sources for the Main Street Affordable Housing Project, if any.

f. *Program Schedule.* The application requires a Program Schedule for the applicant's Project. The Program Schedule must reflect the Reasonable Time-Frame and Development Proposal time requirements stated in Section VI.B. of this NOFA.

g. *HOPE VI Main Street Application Data Sheet, form HUD–52861, in MS Excel format (.XLS).*

(1) This form consists of several Excel worksheets. Each worksheet requires information that is necessary for the applicant to meet thresholds, obtain rating points, or determine the maximum grant amount. Instructions for completing the data worksheets are located in the left-hand worksheet, with the tab name, "Instructions." The worksheets should be completed from the left-most tab toward the right. In this way, the information that the applicant provides will automatically be inserted to the right into other worksheets as needed.

(2) Unit Mix. This worksheet will be HUD's primary source of information on the Main Street Affordable Housing Project's unit number and type. This information also feeds into the calculations for maximum grant amount.

(3) Construction Sources and Uses. This worksheet contains the planned costs and funding resources that will exist during the construction period. That is, if a construction loan will be obtained, it would be included here along with other financing that will be

expended during the construction period, including grant funds used in construction. A permanent mortgage would not be included here.

(4) Permanent Sources and Uses. This worksheet contains the planned costs and long-term financing that will be used to develop the Main Street Affordable Housing Project. Tax credit equity, permanent mortgages, grant funds that will be used in construction, rent-up, developer fee, etc., would be included here.

(5) TDC. The maximum amount of the grant must be based on HUD's Total Development Cost per unit developed. The applicant must choose an applicable city and state. HUD developed TDCs for larger cities, metropolitan statistical areas and primary metropolitan statistical areas (MSA/PMSA), not for small, rural cities. Therefore, the applicant must determine which listed city or MSA/PMSA is most applicable to it.

(6) Match and Housing Resources. In order to meet HOPE VI's 5% Match, and to obtain rating points for Main Street Affordable Housing Project leverage, the applicant must enter funding sources, amounts, the leverage and related information in this worksheet. If a source is not listed in this worksheet, the amount will not be included in HUD's review and rating. Allowable resources may be cash contributions or contributions of in-kind services THAT WILL BE EXPENDED ON THE MAIN STREET AFFORDABLE HOUSING PROJECT ONLY.

(7) Main Street Area Rejuvenation Effort Leverage Resources. In order to meet the 50% Main Street Area leverage threshold, the applicant must enter funding sources, amounts and related information in this worksheet. Allowable resources may be cash contributions or contributions of in-kind services that have been expended, or are committed to, the Main Street Area rejuvenation effort as a whole, EXCLUDING THE MAIN STREET AFFORDABLE HOUSING PROJECT. If a source is not listed in this worksheet, the amount will not be included in HUD's review and rating.

(8) For each of the applicant's Match and leverage resources, the applicant must include:

(i) The name of the entity providing the resource;

(ii) The name of a contact for the entity providing the resource that is familiar with the contribution toward this application;

(iii) The telephone number of a contact for the resource who is familiar with the contribution toward this application;

(iv) The leverage amount;

(v) Whether the leverage amount is cash or in-kind services; and

(vi) The period in which the leverage resource was expended or will be received, e.g., expended during 2005, or, for a future leverage resource, the period in which it will be furnished, e.g., over the next two years.

h. *HOPE VI Budget.* Enter the amount you are requesting through this NOFA. In "Part I: Summary," in the "PHA" space, enter the applicant's name as stated on the SF–424. Also complete the column entitled, "Revised Overall HOPE VI Budget for All Project Phases." It is not necessary to fill in the other columns. In "Part II: Supporting Pages," in the "PHA" space, enter the applicant's name as stated on the SF–424 and complete only columns 2 and 3.

i. *Cash Flow Proforma.* The applicant must include a five-year estimate of project income, expenses, and cash flow ("proforma") that shows that the project will be financially viable over the long term. In the proforma, the applicant should assume that the initial occupancy period is a minimum of two years. Note that initial funding of reserves with grant funds is NOT an allowable use of funds from this NOFA. Reserves may be funded through leverage resources. Viability must be shown for the entire project, i.e., all buildings that include affordable housing units that are partially or wholly funded with HOPE VI funds. The applicant may include one proforma for the entire project, or several proformas, broken out for the various portions of the project, as fits the circumstances best. For example, separate proformas may be included for:

(1) All buildings together;

(2) Separately for each building in the project; or

(3) Separately for each owner entity in the project.

j. *Map of Main Street Area.* The drawing must denote the boundaries of a Main Street Area and denote each housing site that is included in the applicant's project. The map should be grayscale for printing on a black-and-white printer. Boundaries and site(s) should be delineated with black lines. The boundaries may include streets, highways, railroad tracks, etc., and natural boundaries such as streams, hills, and ravines, etc.

k. *Housing Unit Layout.* The applicant must include one unit layout drawing for each of the different size and type affordable housing units that are planned. The drawings do not need to be blueprint quality, but should be approximately to scale. Up to four layouts may be included on each page. The layouts should be in grayscale, for printing on a black-and-white printer.

l. *Main Street Rejuvenation Master Plan (Main Street Plan).* The applicant's Main Street Rejuvenation Master Plan must address, at a minimum, the six subjects listed in "Main Street Rejuvenation Master Plan," in "Definitions," Section I.D. of this NOFA. The Main Street Plan should include amendments that occurred during the publication period of this NOFA, e.g., inclusion of affordable housing, Main Street Affordable Housing Project site address. It is not necessary to include a market analysis to demonstrate that affordable housing is needed in the Main Street Area. It is also not necessary to include nominations to the National Register of Historic Places (NRHP). The applicant may submit only the portions of the Main Street Plan that pertain to subjects that are listed in Section III.C. of this NOFA, under "Thresholds," "Program Requirements," and the Rating Factors in Section V.A. of this NOFA.

m. *America's Affordable Communities Initiative, form HUD–27300.* The applicant must complete and include this form, and accompanying documentation, in the application in order to receive rating points. See the General Section.

n. *Certification of Consistency with the RC/EZ/EC–IIs Strategic Plan, form HUD–2990.* If the applicant is eligible for, and desires, this NOFA's RC/EZ/EC–II bonus points, the applicant must complete, sign, and include this certification form in the application in order to receive the rating points. The certification must also meet the requirements stated in the General Section.

o. *Logic Model.* The applicant must complete the form HUD–96010, "Logic Model," in accordance with the "Logic Model Instructions" part of the form and Section VI.B. of the General Section. The Logic Model is included in the "Application Instructions" of the application on grants.gov. The Logic Model has self-contained instructions for its use. HUD suggests that you read those instructions first and then complete the Logic Model, selecting the applicable responses for your proposed program from the drop down selections. After completing the Logic model, save it and attach it to your electronic application submission using the "Other Attachments Form" found in the Mandatory Documents block of the grants.gov Application Package.

6. *Rating Factor Format.* The narrative portion of the application includes the executive summary and all of the

applicant's responses to the Rating Factors. To ensure proper credit for information applicable to each Rating Factor, the applicant should include references to application Sections, as listed in Section IV.B. of this NOFA, and to pages of the Main Street Plan, as appropriate for Rating Factor responses. The applicant's Rating Factor responses should be as descriptive as possible, ensuring that every requested item is addressed. The applicant should make sure to include all information requested in this NOFA. Although information from all parts of the application will be taken into account in rating the various factors, if supporting information cannot be found by the reviewer, it cannot be used to support a factor's rating.

7. *Rating Factor Documentation.*

e. *References to the Main Street Rejuvenation Master Plan.*

(1) The purpose of referencing the Main Street Rejuvenation Master Plan is to decrease the amount of Rating Factor narrative that the applicant finds necessary to achieve its maximum rating. It is NOT necessary to repeat in the Rating Factor narratives the information that the applicant included in its Main Street Plan.

(2) Each reference to the Main Street Plan should be specific, including the page number of the Main Street Plan where the information can be found and a reference to identify its location on the page. More than one specific reference to the Main Street Plan may be included for any one subject or Rating Factor narrative.

f. *Team Experience and Key Personnel Knowledge.* Documentation that demonstrates knowledge and experience may include, but is not limited to:

(1) A list and short description of affordable housing projects that the members of the applicant's team have completed;

(2) A list and short description of contracts or grants completed by the members of the applicant's team for similar housing development or services;

(3) Third-party evaluation reports;

(4) Résumés of key personnel; and

(5) Other documentation showing knowledge and experience of affordable housing development or construction.

g. *Need for Affordable Housing.* It is not necessary for the applicant to include documentation for this Rating Factor in the application. HUD reviewers will derive the need for affordable housing is based on a comparison of HUD's Fair Market Rent (FMR) for the applicant's Primary Metropolitan Statistical Area/ Metropolitan Statistical Area ("PMSA/ MSA") or nonmetropolitan county/ parish and the maximum amount of rent that a very low-income family living in that PMSA/MSA or nonmetropolitan county/parish can afford to pay. In performing the comparison, HUD will compare the FMR for a three-bedroom unit to the rent that would be paid by a four-person very low-income family.

(1) PMSA/MSAs and nonmetropolitan counties/parishes are as listed in HUD's document titled "FY 2005 State List of Counties (and New England Towns) Identified by Metropolitan and Nonmetropolitan Status" at *http://www.huduser.org/datasets/il/IL05/Definitions05.doc*

(2) The FMRs are listed at *http://www.huduser.org/datasets/fmr/fmr2006F/FY2006F_SCHEDULE_B.doc*

h. The maximum, affordable very low-income rent is based on HUD's Income Limits, as listed at *http://www.huduser.org/datasets/il/IL05/Section8_IncomeLimits_2005.docfor* very low-income families. The initial occupant must not pay more in rent than a public housing resident at a HOPE VI development, which is 30% of one twelfth of the listed income limit for a very low-income family Readiness and Appropriateness of the Main Street Affordable Housing Project.

(1) *Site Control.* See the definition of Site Control in Section I.D. of this NOFA.

Section (3). A minimal Section (3) plan must include at least general methods that the applicant will use to comply with implementing regulations at 24 CFR part 135 and give job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns. A Section (3) plan that exceeds this may contain more specific information, e.g., goals by age group, types of jobs, and other opportunities to be furnished; plans for tracking and evaluation of goals. To include Logic Model Section (3) information in the Section (3) plan, the applicant should make reference to such information in the Section (3) Narrative.

i. Program Administration and Fiscal Management.

(1) Documentation that demonstrates program administration and fiscal management MUST include:

(a) A list of any findings issued or material weaknesses found by HUD or other federal or state agencies. A description of how the applicant addressed the findings and/or weaknesses. If no findings or material weaknesses were exposed or existed on or before the publication date of this NOFA, include a statement to that effect in the narrative; and

(b) An Evaluation Plan. The plan should include the applicant's indicators, outcomes and evaluation methodology in prose format. The plan should include those indicators, outcomes, and methodologies included in the applicant completed Logic Model. The plan must include the methodology to be used to measure progress toward grant completion, and the return on investment (ROI) that the grant has achieved. The Evaluation Plan may contain indicators, outcomes and methodologies in addition to those stated in the Logic Model.

(2) Documentation that demonstrates program administration and fiscal management should include

(a) A description of the procurement system structure that the applicant has in place, including internal controls. Note that procurement system information will be included in the narrative page limit;

(b) A description of the fiscal management structure that the applicant has in place, including fiscal controls and internal controls;

(c) A summary of the results of the last available annual external, independent audit, including findings, if any;

(d) A description of the applicant's management control structure, including management roles and responsibilities and evidence that the applicant's management is results-oriented, *e.g.*, existing production, rental, and maintenance goals.

j. *Incentive Criteria on Regulatory Barrier Removal.*

(1) The applicant must include the completed form HUD–27300 in the application, along with background documentation where required by the form, if it wants to receive up to 2 policy priority points for removal of barriers to affordable housing. See Section IV. of the General Section.

k. *RC/EZ/EC–IIs.*

(1) To receive up to two bonus points for performing the NOFA activities in a RC/EZ/EC–II area, the applicant must complete, sign, and submit the "Certification of Consistency with RC/EZ/EC Strategic Plan" (form HUD–2990) as part of the application and meet the requirements of the General Section.

C. *Submission Dates and Times*

1. *Application deadline date.* Electronic applications must be received and validated by Grants.gov by 11:59:59 p.m. eastern time on the application deadline of July 10, 2006. Paper copy applications submitted if a waiver to the electronic submission is granted, must be received by the application deadline

date of July 10, 2006. See the General Section.

2. *No Facsimiles or Videos.* HUD will not accept for review, evaluation, or funding, any entire application sent by facsimile (fax). However, third-party documents or other materials sent by facsimile in compliance with the instructions under Section IV. of the General Section, and that are received by the application deadline date will be accepted. Also, videos submitted as part of an application will not be viewed.

D. *Intergovernmental Review*

1. *Executive Order 12372, Intergovernmental Review of Federal Programs.* Executive Order 12372 was issued to foster intergovernmental partnership and strengthen federalism by relying on state and local processes for the coordination and review of Federal financial assistance and direct Federal development. HUD implementing regulations are published in 24 CFR part 52. The executive order allows each state to designate an entity to perform a state review function. The official listing of State Points of Contact (SPOCs) for this review process can be found at *http://www.whitehouse.gov/omb/grants/spoc.html.* States not listed on the website have chosen not to participate in the intergovernmental review process and, therefore, do not have a SPOC. If the applicant's state has a SPOC, the applicant should contact it to see if it is interested in reviewing the application prior to submission to HUD. The applicant should allow ample time for this review process when developing and submitting the applications. If the applicant's state does not have a SPOC, the applicant may send applications directly to HUD.

E. *Funding Restrictions*

1. Grant funds must only be used to provide assistance to carry out eligible affordable housing activities, as stated in Section III.C. of this NOFA.

2. HOPE VI funds may not be used to meet the Match requirement.

3. *Non-allowable Costs and Activities.*

e. Grant funds awarded through this NOFA must not be expended on:

f. Total demolition of a building (including where a building foundation is retained);

g. Sale or lease of the Main Street Affordable Housing Project site (excluding lease or transfer of title for the purposes of obtaining tax credits, provided that the recipient owner entity of the title or lease includes the applicant, and excluding purchase of property for rehabilitation);

h. Funding of project reserves of any type;

i. Payment of the applicant's administrative costs;

j. Payment of any and all legal fees;

k. Development of public housing replacement units (defined as units that replace disposed of or demolished public housing);

l. Housing Choice Vouchers;

m. Transitional security activities;

n. Main Street technical assistance consultants or contracts; and

o. Costs incurred prior to grant award, including the cost of application preparation.

4. Main Street Affordable Housing Project Leverage. Excluding the Match amount, Main Street Affordable Housing Project Leverage resources may be used to fund non-allowable expenditures, provided that these expenditures support the development of affordable housing.

5. *Cost Controls*

e. The total amount of HOPE VI funds expended shall not exceed the Total Development Cost ("TDC"), as published by HUD in NOTICE PIH 2005–26 (HA), "Public Housing Development Cost Limits," for the number of affordable housing units that will be developed through this NOFA. The TDC limits can be found at on HUD's HOPE VI Main Street Web site, *http://www.hud.gov/offices/pih/programs/ph/hope6/grants/mainstreet/* or at *http://www.hudclips.org/sub_nonhud/cgi/nph-brs.cgi?d=PIHN&s1=total+development+cost&op1=AND&l=100&SECT1=TXT&_HITS&SECT5=HEHB&u=./hudclips.cgi&p=1&r=4&f=G.*

f. Cost Control Safe Harbors apply. Grantees must comply with HOPE VI Main Street Cost Control and Safe Harbor Standards as follows:

(1) Developer Fee Safe Harbor. The HOPE VI Main Street Safe Harbor for the developer fee is 9% or less of total Main Street Affordable Housing Project costs that are funded by grant funds or leverage funds included in the NOFA application (less the total amount of all reserve accounts and less the developer fee, itself.) The maximum developer fee is 12% of total Main Street Affordable Housing Project costs that are funded by grant funds or leverage funds included in the NOFA application. Any fee above the 9% safe harbor must be justified and approved by HUD in advance. Possible justifications for exceeding the 9% safe harbor include:

(a) Developer independently obtains project financing, including tax credits. The more sources of financing, the greater the justification for a higher developer fee;

(b) Developer obtains site control from an entity other than the Grantee. The more sites acquired the greater the justification for a higher developer fee;

(c) The project is complex (*e.g.*, in financial, legal, environmental and/or political terms.)

(d) The developer bears more than 25% of the predevelopment costs;

(e) The developer fee is deferred or paid out of positive cash flow from the project;

(f) The developer guarantee(s) is for a large dollar amount in proportion to the project size and/or the guarantee(s) is for a long term.

(2) General Contractor Fee. The HOPE VI Main Street Safe Harbor for the general contractor fee is as follows:

(a) General Requirements: 6% of hard-costs (including contingency and bond premium);

(b) Overhead: 2% of hard-costs plus General Requirements;

(c) Profit: 6% of hard-costs, General Requirements and Overhead;

(d) The maximum Safe Harbor for these combined costs is 14%, unless adequate justification is provided to HUD.

6. *Community and Supportive Services ("CSS").* Furnishing CSS to residents is voluntary, except for homeownership counseling when the application includes development of homeownership units. If the applicant chooses to furnish CSS, expenditures are limited to 15 percent of the grant amount.

7. *Statutory time limit for award, obligation, and expenditure.*

e. The estimated award date will be 60 days after the application deadline date of July 10, 2006.

f. Funds available through this NOFA must be obligated on or before September 30, 2006.

g. In accordance with 31 U.S.C. 1552 (Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 935; Pub. L. 101–510, div. A, title XIV, Sec. 1405(a)(1), Nov. 5, 1990, 104 Stat. 1676.), all HOPE VI funds that were appropriated in FY 2005 must be expended by September 30, 2011, and all HOPE VI funds that were appropriated in FY 2006 must be expended by September 30, 2012. Any funds that are not expended by these dates will be cancelled and recaptured by the Treasury, and thereafter will not be available for obligation or expenditure for any purpose.

8. *Withdrawal of Funding.* If a grantee under this NOFA does not proceed within a reasonable time frame, HUD shall withdraw any grant amounts that have not been obligated. HUD shall redistribute any withdrawn amounts to one or more other applicants eligible for assistance.

9. *Transfer of Funds.* HUD has the discretion to transfer funds available

through this NOFA to any other HOPE VI program.

10. *Limitation on Eligible Expenditures.* Expenditures on services, equipment, and physical improvements must directly relate to project activities allowed under this NOFA.

11. *Pre-Award Activities.* Award funds shall not be used to reimburse pre-award expenses.

F. Other Submission Requirements.

1. Application Submission and Receipt Procedures. See Section IV.F. of the General Section.

2. Timely Receipt Requirements and Proof of Timely Submission.

e. *Electronic* Submission. *All electronic applications must be received and verified by http://www.grants.gov by 11:59:59 p.m. eastern time on or before the deadline date established for this NOFA.*

An electronic time stamp is generated within the system when the application is successfully received by grants.gov and again when the application is successfully validated by grants.gov. The applicant will receive an acknowledgement of receipt and a tracking number from grants.gov with the successful transmission of the application. Applicants should print these receipts and save them, along with facsimile receipts for information provided by fax, as proof of timely submission. When HUD successfully retrieves the application from grants.gov, HUD will provide an electronic acknowledgment of receipt to the e-mail address provided on the SF–424. Proof of Timely Submission shall be the date and time that grants.gov receives and validates your application submittal and the date HUD receives those portions of your application submitted by fax. All fax transmissions must be received by the application deadline date and time.

Applications received and validated by grants.gov, after the established due date for the program, will be considered late and will not be considered for funding by HUD. Similarly, applications will be considered late if information submitted by facsimile as part of the application is not received by HUD by the established deadline date and time. Please take into account the transmission time required for submitting your application via the Internet and the time required to submit any related documents via electronic facsimile. HUD suggests that applicants submit their applications early (see the General Section) and during the operating hours of the grants.gov Support Desk, so that if there are questions concerning transmission, operators will be available to walk you through the process. Submitting your application during the Support Desk hours will also ensure that you have sufficient time for the application to complete its transmission prior to the application deadline and ask any questions should you have any concerns in trying to submit your application.

Applicants using dial-up connections should be aware that transmission should take some time before grants.gov receives it. Grants.gov will provide either an error or a successfully received transmission message. The grants.gov Support Desk reports that some applicants abort the transmission because they think that nothing is occurring during the transmission process. Please be patient and give the system time to process the application. Uploading and transmitting many files, particularly electronic forms with associated XML schemas, will take some time to be processed. However, applicants are advised to use the Internet Explorer or Netscape browsers for submitting the application as they have been tested on Grants.gov and have a proven track record. Applicants are also advised that applications that take 1 hour or more to upload may be timed out by their Internet Service provider. To avoid such issues applicants should zip their files to shrink the size of the transmissions and make sure that you are uploading the application from the desktop and other applications have been closed. Following these simple procedures will help speed the upload.

f. Applications Receiving Waivers to Submit a Paper Copy Application. See the Section IV. of the General Section. Applicants granted a wavier to the electronic submission requirement must be submitted in their entirety to the applicable HUD office by the application deadline date. Written notification of waiver approval will include information on mailing instructions and timely receipt of the application by HUD.

g. No Facsimiles of Entire Application. HUD will not accept fax transmissions from applicants who receive a waiver to submit a paper copy application. Paper applications must be complete and submitted, in their entirety, on or before the application deadline date.

3. *General Section References. Section IV of the General Section is hereby incorporated by reference.*

4. Forms. The following HUD standard forms are not required as part of the application for this NOFA:

e. Grant Application Detailed Budget (HUD–424–CB);

f. Grant Application Detailed Budget Worksheet (HUD–424–CBW);

V. Application Review Information

A. Selection Criteria (Rating Factors)

1. Rating Factor 1: Capacity (up to 30 points)

This factor addresses whether the Applicant Team has the capacity and organizational resources necessary to successfully implement the proposed activities within the grant period.

a. *Past Experience (up to 15 points).*

(1) The applicant will earn a maximum of 15 points if the applicant demonstrates that the applicant's team has extensive experience of affordable housing development and historic preservation requirements, and is on schedule in implementing the Main Street Plan, that is, the applicant's team has developed or rehabilitated more than 5 affordable housing projects and 3 NRHP or traditional architecture projects over the past three years.

(2) The applicant will earn a maximum of 10 points if the applicant demonstrates that the applicant's team has adequate experience of affordable housing development and historic preservation requirements, and is on schedule in implementing the Main Street Plan. That is, the applicant's team has developed or rehabilitated more than 2 affordable housing projects and 1 NRHP or traditional architecture projects over the past three years.

(3) The applicant will earn a maximum of 5 points if the applicant demonstrates that the applicant team has extensive experience, gained over the past three years, of affordable housing development and historic preservation requirements, but is behind schedule in implementing the Main Street Plan.

(4) The applicant will earn a maximum of 0 points if the applicant cannot demonstrate that its team has at least adequate experience of housing development and historic preservation requirements, whether implementation of the Main Street Plan is on schedule or not.

b. *Knowledge of Key Personnel (up to 10 points).*

(1) The applicant will earn a maximum of 10 points if the applicant demonstrates that its key personnel have extensive knowledge, gained over the past three years, of affordable housing development and historic preservation requirements.

(2) The applicant will earn a maximum of 5 points if the applicant demonstrates that the applicant team's key personnel have adequate knowledge, gained over the past three years, of affordable housing development and historic preservation requirements.

(3) The applicant will earn a maximum of 0 points if the applicant cannot demonstrate that its key personnel have at least adequate knowledge, gained over the past three years, of housing development and historic preservation requirements.

c. *Tracking and Reporting System for Production Milestones (up to 5 points).*

(1) The applicant will earn a maximum of 5 points if the applicant demonstrates that a tracking and reporting system for key production milestones has existed and has been in use continuously for the Main Street Area rejuvenation effort, and the applicant demonstrates how the tracking and reporting system will be used to implement a grant awarded through this NOFA.

(2) The applicant will earn a maximum of 3 points if a tracking and reporting system exists as of the application deadline date (i.e., was developed as a result of this NOFA), but has not been used on the Main Street Area rejuvenation effort, provided that the applicant demonstrates how it will be used to implement a grant awarded through this NOFA.

(3) The applicant will receive 0 points if:

(a) A tracking and reporting system does not exist; or

(b) The applicant does not demonstrate how one will be used to implement a grant awarded through this NOFA.

2. Rating Factor 2: Need for Affordable Housing (up to 10 points)

a. For the applicant's PMSA/MSA or nonmetropolitan county/parish, if the ratio of the maximum affordable rent for a 3-person very low-income family to the FMR of a 2-bedroom size unit (affordable rent divided by FMR) is equal to or less than 1.1, the applicant will receive 10 points. Affordable rent is 30% of the Income Limit for a very low-income family, divided by 12 (months per year).

b. For the applicant's PMSA/MSA or nonmetropolitan county/parish, if the ratio of the maximum affordable rent for a 3-person family to the FMR of a 2-bedroom size unit (affordable rent divided by FMR) is greater than 1.1, the applicant will receive 0 points. Affordable rent is 30% of the Income Limit for a very low-income family, divided by 12 (months per year).

3. Rating Factor 3: Appropriateness of the Main Street Plan (up to 20 points)

a. *Main Street Plan Requirements (up to 3 points).*

(1) The Main Street Plan should at a minimum:

(a) Have had an architect, land planner, or qualified planning professional involved in Plan preparation.

(b) Describe the proposed Main Street Rejuvenation redevelopment strategies;

(c) Describe the proposed Main Street Rejuvenation redevelopment actions;

(d) Include a map that indicates the Main Street Area and the Main Street Affordable Housing Project sites;

(e) Include a narrative that refers to the map and describes the various planned redevelopment actions; and

(f) Include a list of properties where affordable housing will be rehabilitated or developed. The list of properties must have been included in the Main Street Plan on or before the application deadline date. The properties must be described by lot/block number, street address, legal description, or other exact description.

(2) Scoring:

(a) The applicant will receive 3 points if the application demonstrates that the Main Street Plan includes either 5 or 6 of the elements listed above.

(b) The applicant will receive 2 points if the application demonstrates that the Main Street Plan includes either 3 or 4 of the elements listed above.

(c) The applicant will receive 0 points if the application does not demonstrate that the Main Street Plan includes at least 3 of the elements listed above.

b. *Main Street Plan Qualities (up to 17 points).*

(1) Commitment to Historic or Traditional Architecture.

(a) The applicant will receive 5 points if the applicant's Main Street Plan demonstrates a strong commitment to the preservation of historic or traditional architecture.

(b) The applicant will receive 3 points if the applicant's Main Street Plan addresses the preservation of historic or traditional architecture but does not convey a strong commitment to it.

(c) The applicant will receive 0 points if the applicant Main Street Plan does not address the preservation of historic or traditional architecture.

(2) Design Guidelines.

(a) The applicant will receive 4 points if the applicant's Main Street Plan contains specific design guidelines that relate to historic or traditional architecture, and that promote universal design, as described in Section III.C. of this NOFA.

(b) The applicant will receive 0 points if the Main Street Plan does not contain design guidelines.

(3) Public and Private Support.

(a) The applicant will receive 5 points if the applicant's Main Street Plan has received strong local public and private sector support demonstrated by long-term (at least two years) financial and in-kind service leverage commitments to the Main Street Area equal to or greater than 200 percent of the applicant's requested grant amount.

(b) The applicant will receive 3 points if the applicant's Main Street Plan has received strong local public and private sector support demonstrated by long-term (at least two years) financial and in-kind service leverage commitments to the Main Street Area equal to or greater than 100 percent, but less than 200 percent of the applicant's requested grant amount.

(c) The applicant will receive 0 points if the applicant's Main Street Plan has received local public and private sector support demonstrated by long-term (at least two years) financial and in-kind service leverage commitments to the Main Street Area less than 100 percent of the applicant's requested grant amount.

(4) Promotion and Marketing.

(a) The applicant will receive 3 points if the applicant's Main Street Plan SETS FORTH A PLAN to promote and market the Main Street Area rejuvenation effort to financiers, other parties that may be involved in the rejuvenation effort and to possible future residents of the Main Street Affordable Housing Project, including (in accordance with affirmative fair housing marketing requirements) the population that is least likely to apply.

(b) The applicant will receive 1 point if the applicant's Main Street Plan includes a discussion of either promotion or marketing, but not both, of the Main Street Area rejuvenation effort to parties that may be involved in the rejuvenation effort and to possible future residents of the Main Street Affordable Housing Project, including (in accordance with affirmative fair housing marketing requirements) the population that is least likely to apply.

(c) The applicant will receive 0 points if the applicant's Main Street Plan does not includes a discussion of promotion or marketing of the Main Street Area rejuvenation effort.

4. Rating Factor 4: Readiness and Appropriateness of the Main Street Affordable Housing Project (up to 25 points)

a. Site Control (up to 5 points).

(1) Site control is an indicator that the applicant is ready to move forward with the rehabilitation efforts that are included in the application and the NOFA.

(2) Scoring:

(a) The applicant will receive 5 points if the application includes

documentation that demonstrates site control over (all of) the affordable housing site(s) that comprise the Main Street Affordable Housing Project, as included in the application's Section L: Map of the Main Street Area.

(b) The applicant will receive 0 points if the application does not include documentation that demonstrates site control over the affordable housing sites that comprise the Main Street Affordable Housing Project, as included in the application's Section L: Map of the Main Street Area.

b. Main Street Affordable Housing Project Leverage (up to 10 points).

(1) In this NOFA, there are three categories of cash and in-kind contributions ("leverage"), Main Street Area Leverage, Main Street Housing Project Leverage, and match:

(a) Main Street Area Leverage includes leverage used for activities related to the Main Street Area rejuvenation effort as a whole, and does not include Main Street Affordable Housing Project leverage. Note that long-term Main Street Area Leverage is rated above in Section V.A.3.b. of this NOFA, entitled "Public and Private Support."

(b) Main Street Affordable Housing Project Leverage includes leverage that is specifically used only for development of the Main Street Affordable Housing Project.

(c) Match is a separate, statutorily required sub-group of Main Street Affordable Housing Project Leverage.

(2) This Rating Factor measures Main Street Affordable Housing Project Leverage only. The amount of Main Street Affordable Housing Project Leverage includes the match amount.

Points are assigned based on the following scale:

Leverage as percent of grant amount	Points awarded
Less than 50 percent	zero points.
Greater than or equal to 50 percent but less than 100 percent.	5 points.
100 percent or more	10 points.

c. Retention of historic or traditional architecture (up to 5 points)

(1) The applicant will receive 5 points if the application demonstrates that the buildings in the project will maintain all of the historic or traditional architecture and design features on all floors of the buildings.

(2) The applicant will receive 3 points if the application demonstrates that the buildings in the project will retain some of the historic or traditional architecture and design features on some or all of the floors of the buildings.

(3) The applicant will receive 0 points if the application does not demonstrate that the buildings in the project will retain historic or traditional architecture and design features.

d. Reservation for Very Low-Income Families (up to 3 points).

(1) The applicant will receive 3 points if the ratio of units reserved for very low-income initial residents to units reserved for low-income residents (very low-income divided by low-income) is greater than 20 percent of the total affordable housing units in the project.

(2) The applicant will receive 0 points if the ratio of units reserved for very low-income initial residents to units reserved for low-income residents (very low-income divided by low-income) is less than or equal to 20 percent of the total affordable housing units in the project.

e. Economic Opportunities for Low- and Very-Low Income Persons (Provision of Section 3) (up to 2 Points).

HOPE VI grantees must comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Economic Opportunities for Low- and Very Low-Income Persons in Connection with assisted Projects) and its implementing regulations at 24 CFR part 135. One of the purposes of the assistance is to give, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.

(1) The applicant will receive 2 points if the application includes a feasible plan to implement section 3 that not only meets the minimum requirements described in Section (1) above, but also exceeds those requirements.

The applicant will receive 0 points if the application does not include a feasible plan to implement section 3 that not only meets the minimum requirements described in Section (1) above, but also exceeds those requirements.

f. Energy Star (up to 1 point).

(1) Promotion of Energy Star compliance is a HOPE VI Main Street program goal. See "Program Requirements," Section III.C. of this NOFA.

(2) You will receive 1 point if your application demonstrates that you will:

(a) Use Energy Star-labeled products;

(b) Promote Energy Star design of affordable units; and

(c) If your application includes the development of homeownership units, include Energy Star in required homeownership counseling.

(2) You will receive 0 points if your application does not demonstrate that you will perform (a) and (b) above, and, if applicable, (c) above.

5. Rating Factor 5: Program Administration and Fiscal Management (up to 13 points)

a. Program Schedule (up to 5 points).

(1) The applicant may receive a maximum of 5 points if the applicant demonstrates that the milestones in the Program Schedule are realistic and achievable. That is, the application demonstrates that the applicant has performed the following actions and, where applicable, has obtained information that was used in developing the Program Schedule:

(a) Contacted the State Historic Preservation Officer, the local HUD Field Office, architects, materials suppliers, and other parties that milestones depend upon to ensure that the milestones can reasonably be met;

(b) Checked to see if any litigation or court orders exist that will affect the milestones; and

(c) Prepared a chart that states estimated production milestones, their relative time frames, and each milestone's time to completion, e.g., Gantt Chart.

(2) The applicant may receive a maximum of 3 points if the applicant has performed two of the three actions in (a) through (c) above, and, where applicable, has obtained information that was used in developing the Program Schedule.

(3) The applicant will receive 0 points if the applicant has not performed at least two of the three actions in (a) through (c) above.

b. Fiscal Management (up to 6 Points).

(1) If the applicant shows fiscal management controls, a procurement system, and a results-oriented management structure that are adequate to manage a grant from this NOFA, and the applicant demonstrates that their management structure and controls are results-oriented, the applicant will receive 6 points;

(2) If the applicant shows fiscal management controls, a procurement system, and management structure and controls that are adequate to manage a grant from this NOFA, but the applicant does not demonstrate that the applicant's management structure and controls are results-oriented, the applicant will receive 3 points;

(3) If the applicant does not describe its program management structure and fiscal management controls and does not show that they are adequate, the applicant will receive 0 points.

c. Evaluation (Up to 2 points).

(1) If the applicant's required Evaluation Plan demonstrates the methods that will be used, and data that will be collected, to evaluate the indicators and outcomes of this grant, including, at a minimum, the indicators and outcomes stated in the applicant's Logic Model, the applicant will receive 2 points.

(2) If the applicant's required Evaluation Plan does not demonstrate the methods that will be used, and data that will be collected, to evaluate the indicators and outcomes of this grant, including, at a minimum, the indicators and outcomes stated in the applicant's Logic Model, the applicant will receive 0 points.

6. Rating Factor 6: Incentive Criteria on Regulatory Barrier Removal—(up to 2 points)

a. Description.

(1) HUD's Notice, "America's Affordable Communities Initiative, HUD's Initiative on Removal of Regulatory Barriers: Announcement of Incentive Criteria on Barrier Removal in HUD's FY 2004 Competitive Funding Allocations," **Federal Register** Docket Number FR–4882–N–03, published on March 22, 2004, provides that most HUD competitive NOFAs will include an incentive for local and state governments to decrease their regulatory barriers to the development of affordable housing.

(2) Form HUD–27300 contains questions that explore the applicant's efforts to decrease regulatory barriers.

f. Scoring.

(1) If the applicant is considered a local unit of government with land use and building regulatory authority, an agency or department of a local unit of government, a nonprofit organization, or other qualified applicant applying for funding for a project located in the jurisdiction of the local unit of government, the applicant is invited to answer the 20 questions in Part A of form HUD–27300. For those applications in which regulatory authority is split between jurisdictions (e.g., county/parish and town), the applicant should answer the question for that jurisdiction that has regulatory authority over the issue at question.

(a) If the applicant checked Column 2 for five to ten questions from Part A, the applicant will receive 1 point in the NOFA evaluation.

(b) If the applicant checked Column 2 for 11 or more questions from Part A, the applicant will receive 2 points in the NOFA evaluation.

(2) Part B of the form is for an applicant that is a state government or an agency or department of a state government. State governments are not eligible to apply for this NOFA and, as such, Part B of the form is not applicable.

(3) In no case will an applicant receive greater than two points for barrier removal activities.

(4) An applicant must submit the documentation requested in the questionnaire or provide a website address (URL) where the documentation can be readily found, to receive the bonus points for this policy priority. See Section IV. of the General Section for documentation requirements.

7. Rating Factor 7: RC/EZ/EC-IIs—(up to 2 points)

a. RC/EZ/EC-IIs. This NOFA provides for the award of two bonus points for eligible activities/projects that the applicant proposes to locate in federally designated Empowerment Zones (EZs), Renewal Communities (RCs), or Enterprise Communities, designated by the United States Department of Agriculture in round II (EC-IIs), that are intended to serve the residents of these areas, and that are certified to be consistent with the area's strategic plan or RC Tax Incentive Utilization Plan (TIUP). (For ease of reference in this notice, all of the federally designated areas are collectively referred to as "RC/EZ/EC-IIs" and residents of any of these federally designated areas as "RC/EZ/EC-II residents.") This NOFA contains a certification, "Certification of Consistency with RC/EZ/EC Strategic Plan" (form HUD–2990), that must be completed for the applicant to be considered for RC/EZ/EC-II bonus points. A list of RC/EZ/EC-IIs can be obtained from HUD's webpage at *http://www.hud.gov/cr*. Applicants can determine if their program/project activities are located in one of these designated areas by using the locator on HUD's Web site at *http://www.hud.gov/crlocator*.

B. Review and Selection Process

1. HUD's selection process is designed to ensure that grants are awarded to eligible local governments with the most meritorious applications.

2. Application Screening

a. HUD will screen each application to determine if:

(1) It meets the threshold criteria listed in Section III.C. of this NOFA; and

(2) It is deficient, i.e., contains any technical deficiencies.

b. Corrections to Deficient Applications. The subsection entitled, "Corrections to Deficient Applications," in Section V.B. of the General Section applies. Clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within 14 calendar days of the date of receipt of the HUD notification.

c. Applications that will not be rated or ranked.

(1) HUD will not rate or rank applications that are deficient at the end of a 14 calendar day cure period, as described in Section V.B. above and the General Section.

(2) HUD will not rate or rank applications that have not met the thresholds described in Section III.C. of this NOFA. Such applications will not be eligible for funding.

3. Preliminary Rating and Ranking

a. Rating.

(1) HUD staff will preliminarily rate each eligible application, SOLELY on the basis of the Rating Factors described in Section V.A of this NOFA.

(2) When rating applications, HUD reviewers will not use any information included in any application submitted for another NOFA.

(3) HUD will assign a preliminary score for each Rating Factor and a preliminary total score for each eligible application.

(4) The maximum number of points for each application is 100, plus a possible 2 RC/EZ/EC-II bonus points.

(5) *Minimum Score.* Applications that do not have a preliminary score of at least 50 will not be eligible for funding.

b. Ranking.

(1) After preliminary review, applications with a minimum score of 50 or above will be ranked in score order.

4. Final Panel Review

a. A Final Review Panel made up of HUD staff will:

(1) Review the Preliminary Rating and Ranking documentation to:

(a) Ensure that any inconsistencies between preliminary reviewers have been identified and rectified; and

(b) Ensure that the Preliminary Rating and Ranking documentation accurately reflects the contents of the application.

(2) Assign a final score to each application; and

(3) Recommend for selection the most highly rated applications, subject to the amount of available funding, in accordance with the allocation of funds described in Section II of this NOFA.

5. HUD reserves the right to make reductions in funding for any ineligible items included in an applicant's proposed budget.

6. In accordance with the FY 2005 HOPE VI appropriation, HUD may not use HOPE VI funds, including HOPE VI

Main Street funds, to grant competitive advantage in awards to settle litigation or pay judgments.

7. Tie Scores

If two or more applications have the same score and there are insufficient funds to select all of them, HUD will select for funding the application(s) with the highest score for the Main Street Plan Qualities Rating Factor. If a tie remains, HUD will select for funding the application(s) with the highest score for the Capacity Rating Factor. HUD will select further tied applications with the highest score for the Need Rating Factor.

8. Remaining Funds

a. HUD reserves the right to reallocate remaining funds from this NOFA to other eligible activities under section 24 of the Act.

(1) If the total amount of funds requested by all applications found eligible for funding under Section V.B. of this NOFA is less than the amount of funds available from this NOFA, all eligible applications will be funded and those funds in excess of the total requested amount will be considered remaining funds.

(2) If the total amount of funds requested by all applications found eligible for funding under Section V.B. of this NOFA is greater than the amount of funds available from this NOFA, eligible applications will be funded until the amount of non-awarded funds is less than the amount required to feasibly fund the next eligible application. In this case, the funds that have not been awarded will be considered remaining funds.

9. The following sub-sections of Section V. of the General Section are hereby incorporated by reference:

a. HUD's Strategic Goals;

b. Policy Priorities;

c. Threshold Compliance;

d. Corrections to Deficient Applications;

e. Rating; and

f. Ranking.

VI. Award Administration Information

A. Award Notices

1. *Initial Announcement.* The HUD Reform Act prohibits HUD from notifying the applicant as to whether or not the applicant has been selected to receive a grant until HUD has announced all grant recipients. If the application has been found to be ineligible or if it did not receive enough points to be funded, the applicant will not be notified until the successful applicants have been notified. HUD will provide written notification to all applicants, whether or not they have been selected for funding.

2. *Authorizing Document.* The notice of award signed by the Assistant Secretary for Public and Indian Housing (grants officer) is the authorizing document. This notice will be delivered via the United States Postal Service to the applicant's authorized signatory at the applicant's address, as stated on the SF–424.

3. *Applicant Debriefing.* For a period of at least 120 days, beginning 30 days after the awards for assistance are announced publicly, HUD will provide a debriefing to an application that requests one. All debriefing requests must be made in writing by the authorized official whose signature appears on the SF–424 or his/her successor in office, and submitted to the person or organization identified for "Technical Assistance" in Section VII.B. of this NOFA. Information provided during a debriefing will include, at a minimum, the final score you received for each Rating Factor.

4. *General Section References.* The following sub-sections of Section VI.A. of the General Section are hereby incorporated by reference:

a. Adjustments to Funding.

B. Administrative and National Policy Requirements

1. Administrative Requirements

a. *Grant Agreement Execution.* The grantee must execute the Grant Agreement within 90 days after HUD mails the Grant Agreement to the grantee.

b. *Grant term.* The time period for completion shall not exceed 30 months from the date the NOFA award is executed.

c. *Sub-Grants and Contracts.* Grant funds may be expended directly by the applicant or they may be granted or loaned by the applicant to a third-party procured developer who is undertaking the development of the Project.

d. *Reasonable Time Frame.* Grantees must proceed within a reasonable time frame to complete the following milestone activities:

(1) *Development Proposal.* Grantees must submit a development proposal for the project within 6 months after the grant award date or, if State Historic Preservation Officer approval is necessary, 9 months after the grant award date.

(a) Development proposals must include the following information:

(i) Identification of parties to the project development;

(ii) Activities and relationships of parties, e.g., Party A will loan $50,000 to Party C via a hard loan with an interest rate of 6 percent, with a 30-year amortization and a 15-year term.

(iii) Financing, i.e., Sources and Uses in the form HUD–52861 format;

(iv) Unit description, i.e., unit number and sizes.

(v) Site locations, i.e., lot and block, street address, or legal description;

(vi) Development construction cost estimate; and

(vii) Certification that open competition will be used by the grantee to select a development partner and/or owner entity, if applicable.

(2) *First Construction Start.* Grantees must start housing unit construction within 12 months after the grant award date or, if SHPO approval is necessary, 15 months after grant award date.

(3) *Last Construction Completion.* Grantees must complete construction (receive Certificates of Occupancy for all units) within 30 months from the grant award date.

(4) In determining reasonableness of such time frame, HUD will take into consideration those delays caused by factors beyond the applicant's control.

(5) In accordance with the threshold requirement in Section III.C. of this NOFA and the threshold documentation in Section IV.B. of this NOFA, the above time frames must be stated in a Program Schedule that includes the following milestones, at a minimum:

(a) Grant Award Date (assume two months after application deadline date);

(b) Grant Agreement Execution Date (the Grant Agreement will be mailed to the grantee within one month after notice of award. The grantee will be given a maximum of 90 days to execute the Agreement);

(c) Development Plan Submission Date;

(d) Date of closing of financing of the first phase. If the applicant plans not to have a financial closing, it must state so in the Schedule;

(e) Date of the start of construction of the first housing unit; and

(f) Date of the completion of construction of the last housing unit.

e. *Preliminary Environmental Approval Only.* HUD's notification of award to a selected applicant constitutes a preliminary approval by HUD subject to the completion of an environmental review of the proposed sites in accordance with 24 CFR part 50. See Section III.C. of this NOFA for information about environmental requirements.

f. *Flood Insurance.* In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), the application may not propose to provide financial assistance for acquisition or

construction (including rehabilitation) of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(2) Where the community is participating in the National Flood Insurance Program, flood insurance is obtained as a condition of execution of a Grant Agreement.

g. *Coastal Barrier Resources Act.* In accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501), the application may not target properties in the Coastal Barrier Resources System.

2. National Policy Requirements

a. See references to the General Section in Section III of this NOFA.

3. Reporting

a. *Quarterly Administrative and Compliance Checkpoints Report (Quarterly Report).*

(1) If the applicant is selected for funding, the applicant must submit a Main Street Quarterly Report to HUD. The report will be completed on-line. The Grantee will enter into the Quarterly Progress Report:

(a) On a quarterly basis:

(i) Administrative and production milestones, called "Checkpoints,";

(ii) Financial status, by Budget Line Item as listed on form HUD–52825–A, "HOPE VI Budget," including the grant budget, amounts authorized by HUD for expenditure, and amounts expended to date; and

(iii) A short status narrative.

(b) On an annual basis, the Total real estate tax assessment for the census tract that includes the Main Street Area.

(2) HUD will provide training and technical assistance on the filing and submitting of Main Street Quarterly Progress Reports.

(3) Filing of Quarterly Progress Reports is mandatory for all grantees, and failure to do so within the required quarterly time frame will result in suspension of grant funds until the report is filed and approved by HUD.

(4) Grantees will be held to the milestones that are reported in the Quarterly Progress Report, as approved by HUD.

4. *LOCCS.* Grantees must report all obligations and expenditures in HUD's Line of Credit Control System (LOCCS), or its successor system, on a quarterly basis.

5. *Logic Model Reporting.* The grantee's Logic Model will be based upon the Logic Model included in the application. Provided that the Logic Model complies with the requirements of this NOFA, the General Section and the Grant Agreement, HUD will approve the Logic Model's outputs and outcomes at the time of approval of the Development Proposal. Beginning after HUD approval, at a minimum, the grantee will be required to submit a completed Logic Model showing outputs and outcomes achieved quarterly. Responses to the management questions and the ROI Statement in the Logic model for the Main Street program must be submitted annually. See Logic Model reporting in the General Section.

6. *Information for Research and Evaluation Studies.* As a condition of the receipt of financial assistance under a HUD Program NOFA, all successful applicants will be required to cooperate with all HUD staff or contractors performing HUD-funded research and evaluation studies.

7. *Final Audit.* Grantees are required to obtain a complete final closeout audit of the grantee financial statements for the grant funds. The audit must be completed by a certified public accountant (CPA) in accordance with generally accepted government audit standards, if the Grantee expends $500,000 or more in a calendar or program year. A written report of the audit must be forwarded to HUD within 60 days of issuance. Grant recipients must comply with the requirements of 24 CFR part 84 or 24 CFR part 85 as stated in OMB Circulars A–110, A–87, and A–122, as applicable.

8. *Final Report.*

a. Within 30 days after the grantee obtains the results of the Final Audit, the grantee shall submit a final report. The final report will include a financial report, a narrative evaluating overall performance against its HOPE VI Main Street application and Main Street Quarterly Progress Report, and a completed Logic Model, form HUD–96010, including responses to the management questions and the ROI Statement. Grantees shall use quantifiable data to measure performance against goals and objectives outlined in its application. The financial report shall contain a summary of all expenditures made from the beginning of the grant agreement to the end of the grant agreement and shall include any unexpended balances.

b. Racial and Ethnic Data. HUD requires that funded recipients collect racial and ethnic beneficiary data. It has adopted the Office of Management and Budget's Standards for the Collection of Racial and Ethnic Data. In view of these requirements, you should use form HUD–27061, Racial and Ethnic Data Reporting Form (instructions for its use), found on *http://www.HUDclips.org*; a comparable program form; or a comparable electronic data system.

c. The final narrative, financial report, closeout documentation as required by HUD, and Logic Model shall be due to HUD 90 days after either the full expenditure of funds, or when the grant term expires, whichever comes first.

VII. Agency Contacts

A. Technical Corrections to the NOFA

1. Technical corrections to this NOFA will be posted to the grants.gov Web site.

2. Any technical corrections will also be published in the **Federal Register**.

3. The applicant is responsible for monitoring these sites during the application preparation period. Applicants may sign up for the grants.gov notification service. Applicants signed up for the service will receive notification from grants.gov if HUD issues any modifications to the NOFA, Application Package, or Application Instructions.

B. Technical Assistance

Before the application deadline date, HUD staff will be available to provide the applicant with general guidance and technical assistance on this NOFA. However, HUD staff is not permitted to assist in preparing the application. If the applicant has a question or needs clarification, the applicant may call Lar Gnessin at (202) 708–0614, ext. 2676, send an e-mail to *lawrence_gnessin@hud.gov*, or the applicant may contact Ms. Dominique Blom, Acting Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410–5000; telephone (202) 401–8812; fax (202) 401–2370 (these are not toll-free numbers). Persons with hearing and/or speech impairments may access these telephone numbers via text telephone (TTY) by calling the toll-free Federal Information Relay Service at (800) 877–8339. For technical support about downloading an application, registering with grants.gov, and submitting an application, please call grants.gov Customer Support at 800–518–GRANTS (This is a toll-free number) or e-mail grants.gov at *support@grants.*

C. General Information

General information about HUD's HOPE VI programs can be found on the

Internet at *http://www.hud.gov/offices/pih/programs/ph/hope6/*. General information specifically about HUD's HOPE VI Main Street Program can be found on the Internet at *http://www.hud.gov/offices/pih/programs/ph/hope6/grants/mainstreet/*.

VIII. Other Information

A. *General Section References.* The following sub-sections of Section VIII. of the General Section are hereby incorporated by reference:

1. Executive Order 13132, Federalism;
2. Public Access, Documentation and Disclosure;
3. Section 103 of the HUD Reform Act; and
4. The FY 2005 HUD NOFA Process and Future HUD Funding Processes.

B. *Environmental Impact.* A "Finding of No Significant Impact" (FONSI) with respect to the environment has been made for this notice in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The FONSI is available for public inspection between 8 a.m. and 5 p.m. in the Office of the General Counsel, Regulations Division, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

C. *Paperwork Reduction Act Statement.* The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2577–0208. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. Public reporting burden for the collection of information is estimated to average 68 hours per annum per respondent for the application and grant administration. This includes the time for collecting, reviewing, and reporting the data for the application, quarterly reports, and final report. The information will be used for grantee selection and monitoring the administration of funds. Response to this request for information is required in order to receive the benefits to be derived.

[FR Doc. 06–3431 Filed 4–6–06; 12:33 pm]

BILLING CODE 4210–01–P

Federal Register

Tuesday,
April 11, 2006

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20
Migratory Bird Hunting—Proposed 2006–07 Migratory Game Bird Hunting Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AU42

Migratory Bird Hunting; Proposed 2006–07 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals and Requests for 2007 Spring/Summer Migratory Bird Subsistence Harvest Proposals in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2006–07 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule, describes the proposed regulatory alternatives for the 2006–07 duck hunting seasons, requests proposals from Indian tribes that wish to establish special migratory game bird hunting regulations on Federal Indian reservations and ceded lands, and requests proposals for the 2007 spring/summer migratory bird subsistence season in Alaska. Migratory game bird hunting seasons provide hunting opportunities for recreation and sustenance; aid Federal, State, and tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory game bird population status and habitat conditions.

DATES: You must submit comments on the proposed regulatory alternatives for the 2006–07 duck hunting seasons by May 15, 2006. Following later **Federal Register** Notices, you will be given an opportunity to submit comments for proposed early-season frameworks by July 30, 2006, and for proposed late-season frameworks and subsistence migratory bird seasons in Alaska by August 30, 2006. Tribes must submit proposals and related comments by June 1, 2006. Proposals from the Co-management Council for the 2007 spring/summer migratory bird subsistence harvest season must be submitted to the Flyway Councils and the Service by June 15, 2006.

ADDRESSES: Send your comments on the proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 4107, Arlington Square Building, 4501 North Fairfax Drive, Arlington, Virginia. Proposals for the 2007 spring/summer migratory bird subsistence season in Alaska should be sent to the Executive Director of the Co-management Council, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503, or fax to (907) 786–3306 or e-mail to *ambcc@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, at: Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358–1714. For information on the migratory bird subsistence season in Alaska, contact Fred Armstrong, (907) 786–3887, or Donna Dewhurst, (907) 786–3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

SUPPLEMENTARY INFORMATION:

Background and Overview

Migratory game birds are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Secretary of the Interior is authorized to determine when "hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any * * * bird, or any part, nest, or egg" of migratory game birds can take place, and to adopt regulations for this purpose. These regulations are written after giving due regard to "the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds' and are updated annually (16 U.S.C. 704(a)). This responsibility has been delegated to the U.S. Fish and Wildlife Service (Service) of the Department of the Interior as the lead Federal agency for managing and conserving migratory birds in the United States.

The Service develops migratory game bird hunting regulations by establishing the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. Acknowledging regional differences in hunting conditions, the Service has administratively divided the nation into four Flyways for the primary purpose of managing migratory game birds. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State and Province in that Flyway. The Flyway Councils, established through the International Association of Fish and Wildlife Agencies (IAFWA), also assist in researching and providing migratory game bird management information for Federal, State, and Provincial Governments, as well as private conservation agencies and the general public.

The process for adopting migratory game bird hunting regulations, located at 50 CFR part 20, is constrained by three primary factors. Legal and administrative considerations dictate how long the rulemaking process will last. Most importantly, however, the biological cycle of migratory game birds controls the timing of data-gathering activities and thus the dates on which these results are available for consideration and deliberation.

The process includes two separate regulations-development schedules, based on early and late hunting season regulations. Early hunting seasons pertain to all migratory game bird species in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; migratory game birds other than waterfowl (*i.e.*, dove, woodcock, etc.); and special early waterfowl seasons, such as teal or resident Canada geese. Early hunting seasons generally begin prior to October 1. Late hunting seasons generally start on or after October 1 and include most waterfowl seasons not already established.

There are basically no differences in the processes for establishing either early or late hunting seasons. For each cycle, Service biologists gather, analyze, and interpret biological survey data and provide this information to all those involved in the process through a series of published status reports and presentations to Flyway Councils and other interested parties. Because the Service is required to take abundance of migratory game birds and other factors into consideration, the Service undertakes a number of surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, and State and Provincial wildlife-management agencies. To determine the appropriate frameworks for each species, we consider factors such as population size and trend, geographical distribution, annual breeding effort, the condition of breeding and wintering habitat, the

number of hunters, and the anticipated harvest.

After frameworks, or outside limits, are established for season lengths, bag limits, and areas for migratory game bird hunting, migratory game bird management becomes a cooperative effort of State and Federal Governments. After Service establishment of final frameworks for hunting seasons, the States may select season dates, bag limits, and other regulatory options for the hunting seasons. States may always be more conservative in their selections than the Federal frameworks but never more liberal.

Notice of Intent To Establish Open Seasons

This notice announces our intent to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 2006–07 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20.

For the 2006–07 migratory game bird hunting season, we will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). We describe these proposals under Proposed 2006–07 Migratory Game Bird Hunting Regulations (Preliminary) in this document. We published definitions of waterfowl flyways and mourning dove management units, as well as a description of the data used in and the factors affecting the regulatory process in the March 14, 1990, **Federal Register** (55 FR 9618).

Regulatory Schedule for 2006–07

This document is the first in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations. We will publish additional supplemental proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available. Because of the late dates when certain portions of these data become available, we anticipate abbreviated comment periods on some proposals. Special circumstances limit the amount of time we can allow for public comment on these regulations.

Specifically, two considerations compress the time for the rulemaking process: the need, on one hand, to establish final rules early enough in the summer to allow resource agencies to select and publish season dates and bag limits prior to the beginning of hunting seasons and, on the other hand, the lack of current status data on most migratory game birds until later in the summer. Because the regulatory process is strongly influenced by the times when information is available for consideration, we divide the regulatory process into two segments: early seasons and late seasons (further described and discussed under the Background and Overview section).

Major steps in the 2006–07 regulatory cycle relating to open public meetings and **Federal Register** notifications are illustrated in the diagram at the end of this proposed rule. All publication dates of **Federal Register** documents are target dates.

All sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
   - A. General Harvest Strategy
   - B. Regulatory Alternatives
   - C. Zones and Split Seasons
   - D. Special Seasons/Species Management
   - i. September Teal Seasons
   - ii. September Teal/Wood Duck Seasons
   - iii. Black ducks
   - iv. Canvasbacks
   - v. Pintails
   - vi. Scaup
   - vii. Youth Hunt
2. Sea Ducks
3. Mergansers
4. Canada Geese
   - A. Special Seasons
   - B. Regular Seasons
   - C. Special Late Seasons
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Later sections of this and subsequent documents will refer only to numbered items requiring your attention. Therefore, it is important to note that we will omit those items requiring no attention, and remaining numbered items will be discontinuous and appear incomplete.

We will publish final regulatory alternatives for the 2006–07 duck hunting seasons in early June. We will publish proposed early season frameworks in mid-July and late season frameworks in mid-August. We will publish final regulatory frameworks for early seasons on or about August 18, 2006, and those for late seasons on or about September 15, 2006.

Request for 2007 Spring/Summer Migratory Bird Subsistence Harvest Proposals in Alaska

Background

The 1916 Convention for the Protection of Migratory Birds between the United States and Great Britain (for Canada) established a closed season for the taking of migratory birds between March 10 and September 1. Residents of northern Alaska and Canada traditionally harvested migratory birds for nutritional purposes during the spring and summer months. The governments of Canada, Mexico, and the United States recently amended the 1916 Convention and the subsequent 1936 Mexico Convention for the Protection of Migratory Birds and Game Mammals. The amended treaties provide for the legal subsistence harvest of migratory birds and their eggs in Alaska and Canada during the closed season.

On August 16, 2002, we published in the **Federal Register** (67 FR 53511) a final rule that established procedures for incorporating subsistence management into the continental migratory bird management program. These regulations, developed under a new co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives, established an annual procedure to develop harvest guidelines for implementation of a spring/summer migratory bird subsistence harvest. Eligibility and inclusion requirements necessary to participate in the spring/summer migratory bird subsistence season in Alaska are outlined in 50 CFR part 92.

This proposed rule calls for proposals for regulations that will expire on August 31, 2007, for the spring/summer subsistence harvest of migratory birds in Alaska. Each year, seasons will open on or after March 11 and close prior to September 1.

Alaska Spring/Summer Subsistence Harvest Proposal Procedures

We will publish details of the Alaska spring/summer subsistence harvest proposals in later **Federal Register** documents under 50 CFR part 92. The

general relationship to the process for developing national hunting regulations for migratory game birds is as follows:

(a) *Alaska Migratory Bird Co-Management Council.* Proposals may be submitted by the public to the Co-management Council during the period of November 1—December 15, 2006, to be acted upon for the 2007 migratory bird subsistence harvest season. Proposals should be submitted to the Executive Director of the Co-management Council, listed above under the caption **ADDRESSES.**

(b) *Flyway councils.* (1) Proposed 2007 regulations recommended by the Co-management Council will be submitted to all Flyway Councils for review and comment. The Council's recommendations must be submitted prior to the Service Regulations Committee's last regular meeting of the calendar year in order to be approved for spring/summer harvest beginning March 11 of the following calendar year.

(2) Alaska Native representatives may be appointed by the Co-management Council to attend meetings of one or more of the four Flyway Councils to discuss recommended regulations or other proposed management actions.

(c) *Service regulations committee.* Proposed annual regulations recommended by the Co-management Council will be submitted to the Service Regulations Committee (SRC) for their review and recommendation to the Service Director. Following the Service Director's review and recommendation, the proposals will be forwarded to the Department of the Interior for approval. Proposed annual regulations will then be published in the **Federal Register** for public review and comment, similar to the annual migratory game bird hunting regulations. Final spring/summer regulations for Alaska will be published in the **Federal Register** in the preceding fall.

Because of the time required for review by us and the public, proposals from the Co-management Council for the 2007 spring/summer migratory bird subsistence harvest season must be submitted to the Flyway Councils and the Service by June 15, 2006, for Council comments and Service action at the late-season SRC meeting.

Review of Public Comments

This proposed rulemaking contains the proposed regulatory alternatives for the 2006–07 duck hunting seasons. This proposed rulemaking also describes other recommended changes or specific preliminary proposals that vary from the 2005–06 final frameworks (see August 30, 2005, **Federal Register** (70 FR 51522) for early seasons and September 22, 2005, **Federal Register** (70 FR 55666) for late seasons) and issues requiring early discussion, action, or the attention of the States or tribes. We will publish responses to all proposals and written comments when we develop final frameworks for the 2006–07 season. We seek additional information and comments on the recommendations in this proposed rule.

Consolidation of Notices

For administrative purposes, this document consolidates the notice of intent to establish open migratory game bird hunting seasons, the request for tribal proposals, and the request for Alaska migratory bird subsistence seasons with the preliminary proposals for the annual hunting regulations-development process. We will publish the remaining proposed and final rulemaking documents separately. For inquiries on tribal guidelines and proposals, tribes should contact the following personnel:

Region 1 (California, Idaho, Nevada, Oregon, Washington, Hawaii, and the Pacific Islands)—Brad Bortner, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; (503) 231–6164.

Region 2 (Arizona, New Mexico, Oklahoma, and Texas)—Jeff Haskins, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103; (505) 248–7885.

Region 3 (Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin)—Steve Wilds, U.S. Fish and Wildlife Service, Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056; (612) 713–5432.

Region 4 (Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico/Virgin Islands, South Carolina, and Tennessee)—David Vicker, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; (404) 679–4000.

Region 5 (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia)—Diane Pence, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; (413) 253–8576.

Region 6 (Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming)—John Cornely, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Building, Denver, Colorado 80225; (303) 236–8145.

Region 7 (Alaska)—Robert Leedy, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; (907) 786–3423.

Requests for Tribal Proposals

Background

Beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to tribal requests for our recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, tribal regulations established under the guidelines must be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Convention). The guidelines are applicable to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also may be applied to the establishment of migratory game bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting, or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory game bird hunting by nonmembers on Indian-owned reservation lands, subject to our approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians,

especially when the surrounding States have established or intend to establish regulations governing migratory bird hunting by non-Indians on these lands. In such cases, we encourage the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands. It is incumbent upon the tribe and/or the State to request consultation as a result of the proposal being published in the **Federal Register**. We will not presume to make a determination, without being advised by either a tribe or a State, that any issue is or is not worthy of formal consultation.

One of the guidelines provides for the continuation of tribal members' harvest of migratory game birds on reservations where such harvest is a customary practice. We do not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory game bird resource. Since the inception of these guidelines, we have reached annual agreement with tribes for migratory game bird hunting by tribal members on their lands or on lands where they have reserved hunting rights. We will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

Tribes should not view the guidelines as inflexible. We believe that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while also ensuring that the migratory game bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 2006–07 migratory game bird hunting season should submit a proposal that includes:

(1) The requested migratory game bird hunting season dates and other details regarding the proposed regulations;

(2) Harvest anticipated under the proposed regulations;

(3) Methods that will be employed to measure or monitor harvest (mail-questionnaire survey, bag checks, *etc.*);

(4) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would seriously impact the migratory game bird resource; and

(5) Tribal capabilities to establish and enforce migratory game bird hunting regulations.

A tribe that desires the earliest possible opening of the migratory game bird season for nontribal members should specify this request in its proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit for nontribal members, the proposal should request the same daily bag and possession limits and season length for migratory game birds that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

Tribal Proposal Procedures

We will publish details of tribal proposals for public review in later **Federal Register** documents. Because of the time required for review by us and the public, Indian tribes that desire special migratory game bird hunting regulations for the 2006–07 hunting season should submit their proposals as soon as possible, but no later than June 1, 2006.

Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed above under the caption Consolidation of Notices. Tribes that request special migratory game bird hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments Solicited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. We invite interested persons to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES**.

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 address from the rulemaking record, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's Division of Migratory Bird Management office in room 4107, 4501 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date in any final rules.

NEPA Consideration

NEPA considerations are covered by the programmatic document "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the address indicated under the caption **ADDRESSES**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement for the migratory bird hunting program. Public scoping meetings are scheduled for the spring of 2006 and are detailed in a

March 9, 2006, **Federal Register** (71 FR 12216).

Endangered Species Act Consideration

Prior to issuance of the 2006–07 migratory game bird hunting regulations, we will comply with provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, updated in 1998 and updated again in 2004. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 2004 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $734 to $1,064 million, with a mid-point estimate of $899 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov.*

Executive Order 12866 also requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2004 Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $481 million and $1.2 billion at small businesses in 2004. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov.*

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the surveys associated with the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 2/29/2008). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Survey and assigned clearance number 1018–0023 (expires 11/30/2007). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of the harvest, and the portion it constitutes of the total population. Lastly, OMB has approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska. The OMB control number for the information collection is 1018–0124 (expires 10/31/2006).

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply,

distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2006–07 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: March 16, 2006.

Matt Hogan,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Proposed 2006–07 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific regulatory proposals. At this time, we are proposing no changes from the final 2005–06 frameworks established on August 30 and September 22, 2004 (70 FR 51522 and 55666). Other issues requiring early discussion, action, or the attention of the States or tribes are contained below:

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. Only those containing substantial recommendations are discussed below.

A. General Harvest Strategy

We propose to continue use of adaptive harvest management (AHM) to help determine appropriate duck-hunting regulations for the 2006–07 season. AHM is a tool that permits sound resource decisions in the face of uncertain regulatory impacts, as well as providing a mechanism for reducing that uncertainty over time. The current AHM protocol is used to evaluate four alternative regulatory levels based on the population status of mallards (special hunting restrictions are enacted for species of special concern, such as canvasbacks, scaup, and pintails).

The prescribed regulatory alternative for the Mississippi, Central, and Pacific Flyways would be based on the status of mallards and breeding-habitat conditions in central North America (Federal survey strata 1–18, 20–50, and 75–77, and State surveys in Minnesota, Wisconsin, and Michigan). We propose to continue the constraint on closed seasons enacted in 2003. This constraint explicitly excludes from consideration closed hunting seasons in the Mississippi, Central, and Pacific Flyways whenever the mid-continent mallard population is at least 5.5 million. Closed seasons targeted at particular species or populations could still be necessary in some situations regardless of the status of mallards.

The prescribed regulatory alternative for the Atlantic Flyway would be based on the population status of mallards breeding in eastern North America (Federal survey strata 51–54 and 56, and State surveys in New England and the mid-Atlantic region) and, thus, may differ from that in the remainder of the country.

We will propose a specific regulatory alternative for each of the Flyways during the 2006–07 season after survey information becomes available in late summer. More information on AHM is located at *http://migratorybirds.fws.gov/mgmt/ahm/ahm-intro.htm.*

B. Regulatory Alternatives

The basic structure of the current regulatory alternatives for AHM was adopted in 1997. The alternatives remained largely unchanged until 2002, when we (based on recommendations from the Flyway Councils) extended framework dates in the "moderate" and "liberal" regulatory alternatives by changing the opening date from the Saturday nearest October 1 to the Saturday nearest September 24, and changing the closing date from the Sunday nearest January 20 to the last Sunday in January. These extended dates were made available with no associated penalty in season length or bag limits. At that time we stated our desire to keep these changes in place for 3 years to allow for a reasonable opportunity to monitor the impacts of framework-date extensions on harvest distribution and rates of harvest prior to considering any subsequent use (67 FR 12501).

For 2006–07, we are proposing to maintain the same regulatory alternatives that were in effect last year (see accompanying table for specifics of the proposed regulatory alternatives). Alternatives are specified for each Flyway and are designated as "RES" for the restrictive, "MOD" for the moderate, and "LIB" for the liberal alternative. We will announce final regulatory alternatives in early June. Public comments will be accepted until May 15, 2006, and should be sent to the address under the caption **ADDRESSES**.

C. Zones and Split Seasons

In 1990, because of concerns about the proliferation of zones and split seasons for duck hunting, a cooperative review and evaluation of the historical use of zone/split options was conducted. This review did not show that the proliferation of these options had increased harvest pressure; however, the ability to detect the impact of zone/split configurations was poor because of unreliable response variables, the lack of statistical tests to differentiate between real and perceived changes, and the absence of adequate experimental controls. Consequently, guidelines were established to provide a framework for controlling the proliferation of changes in zone/split options. The guidelines identified a limited number of zone/split configurations that could be used for duck hunting and restricted the frequency of changes in these configurations to 5-year intervals. In 1996, the guidelines were revised to

provide States greater flexibility in using their zone/split arrangements. Open seasons for changes occurred in 1991, 1996, and 2001. The fourth open season will occur this year when zone/split configurations will be established for the 2006–2010 period.

For the 2006–2010 period, the following guidelines will be used to guide zone/split selections:

Guidelines for Duck Zones and Split Seasons

The following zone/split-season guidelines apply only for the *regular* duck season:

a. A zone is a geographic area or portion of a State, with a contiguous boundary, for which independent dates may be selected for the regular duck season.

b. Consideration of changes for management-unit boundaries is not subject to the guidelines and provisions governing the use of zones and split seasons for ducks.

c. Only minor (less than a county in size) boundary changes will be allowed for any grandfather arrangement, and changes are limited to the open season.

d. Once a zone/split option is selected during an open season, it must remain in place for the following 5 years.

Any State may continue the configuration used in the previous 5-year period. If changes are made, the zone/split-season configuration must conform to one of the following options:

1. Three zones with no splits,

2. Split seasons (no more than 3 segments) with no zones, or

3. Two zones with the option for 2-way (2-segment) split seasons in one or both zones.

Grandfathered Zone/Split Arrangements

When the zone/split guidelines were first implemented in 1991, several States had completed experiments with zone/split arrangements different from Options 1–3 above. Those States were offered a one-time opportunity to continue those arrangements, with the stipulation that only minor changes could be made to zone boundaries; and if they ever wished to change their zone/split arrangement, the new arrangement would have to conform to one of the 3 options identified above. If a grandfathered State changes its zoning arrangement, it cannot go back to the grandfathered arrangement it previously had in place.

We request that by May 1, 2006, States notify us whether or not they plan to change their zone/split configurations for the next 5-year period (2006–2010). Those States wishing to change their configuration should submit a proposal for the change by this date.

D. Special Seasons/Species Management

iii. Black Ducks

We conducted an assessment of the harvest potential of black ducks over the last two years based on population models constructed by Conroy *et al.* (2002. Wildlife Monographs No. 150. 64 pp.). We are using the findings of that assessment to help provide context for current harvest rates and to help guide regulatory decisions for black ducks.

Past harvest rates of black ducks generally have been consistent with an objective to balance harvest opportunity with maintenance of the population near the North American Waterfowl Management Plan goal of 385,000 black ducks in the midwinter survey. Both observed harvest rates and those that would be optimal under this management objective have declined over time.

However, observed harvest rates have not declined as fast as optimal rates, and recent harvest rates have often exceeded optimal rates. These findings do not take into account an apparent range-wide decline in productivity that may have further reduced the harvest potential of black ducks. Therefore, we believe that a reduction in harvest pressure may be warranted.

vi. Scaup

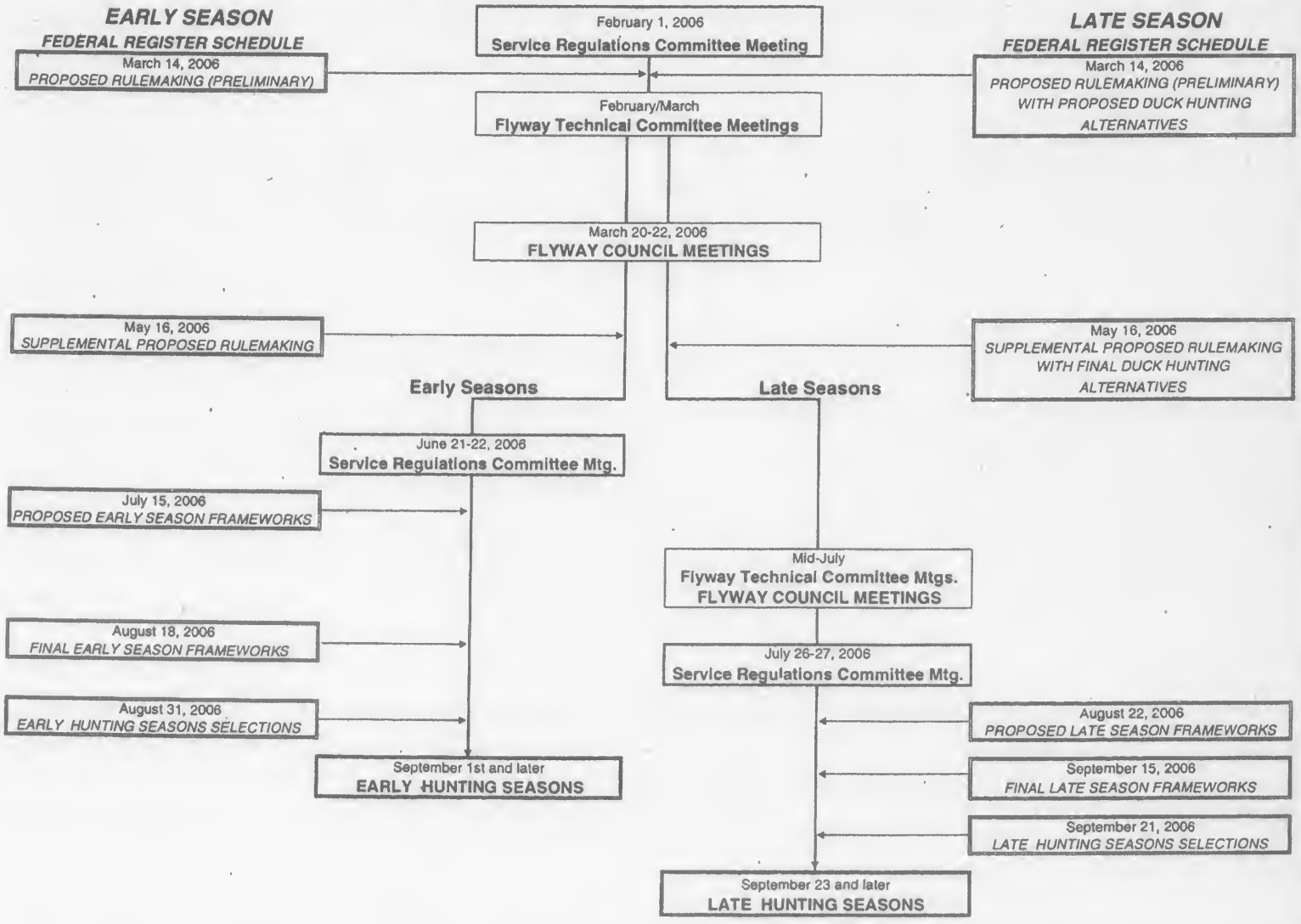
In 2005, the daily bag limit for scaup was reduced from 3 to 2 in the Atlantic, Mississippi, and Central Flyways and from 4 to 3 in the Pacific Flyway. We remain concerned that the scaup harvest may be reaching maximum sustainable levels and we may consider further restrictions if an appreciable reduction in the 2005 harvest is not realized. We are working closely with the Flyway Councils to determine appropriate scaup harvest management objectives and realistic management alternatives and remain committed to the development of a harvest strategy to guide scaup harvest management.

16. Mourning Doves

Last year, we deferred our decision on dove zoning for 1 year, and stated our willingness to work with the Flyway Councils and Dove Technical Committees to develop a consensus position on dove zoning by March 2006 (see August 30, 2005, **Federal Register**, 70 FR 51522). We are continuing our discussions with the Flyway Councils and Dove Technical Committees and look forward to development of a formal proposal in June with implementation in the 2007–08 season.

BILLING CODE 4310–55–P

2006 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS



PROPOSED REGULATORY ALTERNATIVES FOR DUCK HUNTING DURING THE 2006-07 SEASON

	ATLANTIC FLYWAY			MISSISSIPPI FLYWAY			CENTRAL FLYWAY (a)			PACIFIC FLYWAY (b)(c)		
	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB
Beginning Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24
Closing Date	Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.	Sun. nearest Jan. 20	Last Sunday in Jan.	Last Sunday in Jan.
Season Length (in days)	30	45	60	30	45	60	39	60	74	60	86	107
Daily Bag/ Possession Limit	3 6	6 12	6 12	3 6	6 12	6 12	3 6	6 12	6 12	4 8	7 14	7 14
Species/Sex Limits within the Overall Daily Bag Limit												
Mallard (Total/Female)	3/1	4/2	4/2	2/1	4/1	4/2	3/1	5/1	5/2	3/1	5/2	7/2

(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway, with the exception of season length. Additional days would be allowed under the various alternatives as follows: restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different from the remainder of the Pacific Flyway. The bag limit would be 5-7 under the restrictive alternative, and 8-10 under the moderate and liberal alternatives. Under all alternatives, season length would be 107 days and framework dates would be Sep. 1 - Jan. 26.

[FR Doc. 06-3418 Filed 4-10-06; 8:45 am]
BILLING CODE 4310-55-C

Federal Register

Tuesday,
April 11, 2006

Part VI

Department of Labor

Employment and Training Administration

Grants and Cooperative Agreements; Notice of Availability; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Fiscal Year (FY) 2006 Congressional Rescissions for Workforce Investment Act (WIA) Adults and Dislocated Workers; Program Year (PY) 2006 WIA Planning Estimates for Adult Activities and Youth Activities; PY 2006 Allotments for Dislocated Worker Activities; PY 2006 Wagner-Peyser Act Final Allotments; PY 2006 Workforce Information Grants; and FY 2006 Work Opportunity Tax Credit and Welfare-to-Work Tax Credit Allotments

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This Notice announces FY 2006 Congressional rescissions for the WIA Adult and Dislocated Worker programs; planning estimates for PY 2006 (July 1, 2006–June 30, 2007) for the WIA Youth and Adult programs; allotments for the PY 2006 for the WIA Dislocated Worker program; final allotments for Employment Service (ES) activities under the Wagner-Peyser Act for PY 2006; Workforce Information Grants for PY 2006; and Work Opportunity Tax Credit and Welfare-to-Work Tax Credit allotments for FY 2006.

The WIA allotments for states and the final allotments for the Wagner-Peyser Act are based on provisions defined in their respective statutes. The WIA allotments for the outlying areas are based on a formula determined by the Secretary. As required by WIA section 182(d), on February 17, 2000, a Notice of the discretionary formula for allocating PY 2000 funds for the outlying areas American Samoa, Guam, Northern Marianas, Palau, and the Virgin Islands) was published in the **Federal Register** at 65 FR 8236 (February 17, 2000). The rationale for the formula and methodology was fully explained in the February 17, 2000, **Federal Register** Notice. The formula methodology for PY 2006 is the same as that used for PY 2000 and is described in the section on youth allotments. The data for the outlying areas was obtained from the Bureau of the Census and was based on 2000 census surveys for those areas conducted either by the Bureau or the outlying areas. Comments are invited upon the formula used to allot funds to the outlying areas.

DATES: Comments must be received by May 12, 2006.

ADDRESSES: Submit written comments to the Employment and Training Administration, Office of Financial and Administrative Management, 200 Constitution Ave., NW., Room N–4702, Washington, DC 20210, Attention: Ms. Sherryl Bailey, 202–693–2813 (phone), 202–693–2859 (fax), e-mail: *bailey.sherryl@dol.gov*.

FOR FURTHER INFORMATION CONTACT: WIA Youth Program allotments: Haskel Lowery at 202–693–3030 or LaSharn Youngblood at 202–693–3606; WIA Adult and Dislocated Worker Employment and Training Activities allotments: Raymond Palmer at 202–693–3535; and Employment Service final allotments: Anthony Dais at 202–693–3046 (these are not toll-free numbers). Information may also be found at the Web site: *http://www.doleta.gov*.

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL or Department) is announcing WIA planning estimates for PY 2006 (July 1, 2006—June 30, 2007) for Youth Activities and Adult Activities, allotments for PY 2006 WIA Dislocated Worker Activities, and Wagner-Peyser Act PY 2006 final allotments, as well as the PY 2006 Workforce Information Grants and FY 2006 Work Opportunity Tax Credit and Welfare-to-Work Tax Credit allotments. This document provides information on the amount of funds to be available during PY 2006 to states with an approved WIA Title I and Wagner-Peyser 2-Year Strategic Plan (formally the 5-Year Strategic Plan) and information regarding allotments to the outlying areas. The allotments are based on the funds appropriated in the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2006, Public Law 109–149, December 30, 2005. The Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006, Public Law 109–148, Division B, Title III, Chapter 8 (December 30, 2005), required a government-wide reduction of 1.0 percent to all FY 2006 discretionary programs, including FY 2006 advance funds for the WIA Adult and Dislocated Worker programs appropriated in the FY 2005 appropriation. Attached are tables listing the rescissions to the FY 2006 advance funds for the WIA Adult (Attachment II–A) and Dislocated Worker (Attachment III–A) programs. Also attached are tables displaying the PY 2006 planning estimates for WIA Title I Youth Activities (Attachment I) and Adult Activities (Attachment II–B), PY 2006 allotments for Dislocated Worker Activities (Attachment III–B) and PY 2006 Wagner-Peyser Act final allotments (Attachment IV), PY 2006 Workforce Information Grants (Attachment V) and FY 2006 Work Opportunity Tax Credit and Welfare-to-Work Tax Credit allotments (Attachment VI).

Youth Activities Planning Estimates. Total funding for PY 2006 WIA Youth Activities is $940,500,000. Attachment I includes a breakdown of the Youth Activities state planning estimates for PY 2006 for all states and outlying areas. In accordance with WIA section 127, before determining the amount available for states, the amount available for the outlying areas was reserved at 0.25 percent, or $2,351,250 of the total amount appropriated for Youth Activities, and 1.5 percent, or $14,107,500, was reserved for Native Americans.

The methodology for distributing funds among outlying areas is not specified by WIA, but is at the Secretary's discretion. The methodology used is the same as that used since PY 2000, *i.e.*, funds are distributed among the remaining areas by formula based on the relative share of the number of unemployed, a 90 percent hold-harmless of the prior year share, a $75,000 minimum, and a 130 percent stop-gain of the prior year share. Data for the relative share calculation in the PY 2006 formula were from 2000 census data from all outlying areas. The Marshall Islands and Micronesia no longer receive WIA Title I funding pursuant to Public Law 108–188, *Compact of Free Association Amendments of 2003*, (December 17, 2003); instead, these areas now receive funding from the Department of Education appropriation. The Compact also provides that Palau will continue to receive funding through September 2007 under WIA Title I funding provisions.

After determining the amount for the outlying areas and Native Americans, the amount available for allotment to the states for PY 2006 is $924,041,250. The three factors required in WIA for the Youth Program state allotment formula use the following data for the PY 2006 allotments:

(1) Number of unemployed for areas of substantial unemployment (ASUs), averages for the 12-month period, July 2004 through preliminary June 2005;

(2) Number of excess unemployed individuals or the ASU excess unemployed individuals (depending on which is higher), averages for the same 12-month period used for ASU unemployed data; and

(3) Number of economically disadvantaged youth (age 16 to 21,

excluding college students and military), 2000 Census.

The computation of full state allotments for the youth program is delayed while states identify their ASU data for the PY 2006 allotments under revised guidance issued by the Employment and Training Administration (ETA). The states' initial identification of the PY 2006 ASUs was based on guidance from ETA and the Bureau of Labor Statistics (BLS) that did not allow the use of 2000 decennial census data because of problems identified by the Bureau of Census. An analysis of the initial state PY 2006 ASU data by ETA revealed a significant impact on state funding that was very likely due to the methodology rather than changes in unemployment. As a result of this analysis and consideration of concerns raised by several states, ETA has issued revised instructions to states to identify ASUs using the only data satisfactory to ETA for this purpose, the 1990 census data, albeit dated. Since revised ASU data are not available in time to compute youth allotments before the April 1, 2006, availability of funds, states are initially receiving amounts based on the minimum amounts states are guaranteed under the WIA formula minimum provisions, described below.

Since the total amount available for states in PY 2006 is below the required $1 billion threshold specified in WIA Section 127(b)(1)(C)(iv)(IV), similar to PY 2005, the WIA additional minimum provisions are not applicable. Instead, as required by WIA, the JTPA section 262(a)(3) (as amended by section 701 of the Job Training Reform Amendments of 1992) minimums of 90 percent hold-harmless of the prior year allotment percentage and 0.25 percent state minimum floor are applicable. Consistent with these minimum provisions, states will receive amounts equivalent to the higher of: 90 percent of their prior year allotment percentage applied to the PY 2006 total funds available for states, or, if higher, 0.25 percent of the PY 2006 total funds available for states. When revised ASU data are submitted by states and certified by BLS, full formula allotments for the states for the WIA Youth program will be calculated and announced in the **Federal Register**, and eligible states will receive their remaining formula funds.

Adult Employment and Training Activities Planning Estimates. The total Adult Employment and Training Activities appropriation is $864,198,640. Attachment II-B shows the PY 2006 Adult Activities planning estimates by state. Like the Youth program, the total available for the outlying areas was reserved at 0.25 percent, or $2,160,497 of the full amount appropriated for adults. As discussed in the Youth Activities paragraph, beginning in PY 2006, WIA funding for the Marshall Islands and Micronesia is no longer provided; instead, their funding is provided in the Department of Education's appropriation. The Adult program funds for grants to the remaining outlying areas, for which the distribution methodology is at the Secretary's discretion, were distributed among the areas by the same principles, formula and data as used for outlying areas for the Youth program. After determining the amount for the outlying areas, the amount available for allotments to the states is $862,038,143. The three factors for the Adult program state allotment formula use the same data as used for the Youth program formula, except that data for the number of economically disadvantaged adults (age 22 to 72, excluding college students and military) are used. As described above for the Youth program, the computation of the full state Adult program allotments is delayed while states identify their ASU data for the PY 2006 allotments under revised guidance issued by ETA. Should final allotments not be announced before July 1, ETA will initially provide amounts based on the minimum amounts states are guaranteed under the WIA formula minimum provisions, described below.

Since the total amount available for the Adult program for states in PY 2006 is below the required $960 million threshold specified in WIA Section 132(b)(1)(B)(iv)(IV), similar to PY 2005, the WIA additional minimum provisions are not applicable. Instead, as required by WIA, the JTPA section 202(a)(3) (as amended by section 701 of the Job Training Reform Amendments of 1992) minimums of 90 percent hold-harmless of the prior year allotment percentage and 0.25 percent state minimum floor are applicable. Consistent with these minimum provisions, states will receive amounts based on the higher of: 90 percent of their prior year allotment percentage applied to the PY 2006 total funds available for states, or, if higher, 0.25 percent of the total PY 2006 funds available for states. When revised ASU data are submitted by states and certified by BLS, full formula allotments for the states for the WIA Adult program will be calculated and announced in the **Federal Register**, and eligible states will receive their remaining formula funds.

Dislocated Worker Employment and Training Activities Allotments. The total Dislocated Worker appropriation is $1,471,903,360. The total appropriation includes $1,189,811,360 in formula funds for the states and $282,092,000 for the National Reserve for the National Emergency Grants, technical assistance and training, demonstration projects (including Community-Based Job Training Grants), the outlying areas' Dislocated Worker allotments, and additional assistance to eligible states. Attachment III–B shows the PY 2006 Dislocated Worker Activities fund allotments by state. Like the Youth and Adult programs, the total available for the outlying areas was reserved at 0.25 percent, or $3,679,758 of the full amount appropriated for Dislocated Worker Activities. WIA funding for the Marshall Islands and Micronesia is no longer provided, as discussed above. The Dislocated Worker program funds for grants to outlying areas, for which the distribution methodology is at the Secretary's discretion, were distributed among the remaining areas by the same pro rata share as the areas received for the PY 2006 WIA Adult Activities program, the same methodology used in PY 2005. For the state distribution of formula funds, the three formula factors required in WIA use the following data for the PY 2006 allotments:

(1) Number of unemployed, averages for the 12-month period, October 2004 through September 2005;

(2) Number of excess unemployed, averages for the 12-month period, October 2004 through September 2005; and

(3) Number of long-term unemployed, averages for calendar year 2004.

Since the Dislocated Worker program formula has no floor amount or hold-harmless provisions, funding changes for states directly reflect the impact of changes in the number of unemployed.

Wagner-Peyser Act Final Allotments. The Employment Service program involves a Federal-state partnership between the U.S. Department of Labor and the state workforce agencies. Under the Wagner-Peyser Act, funds are allotted to each state to administer core employment and workforce information services that respond to the needs of the state's employers and workers through the One-Stop service delivery system established by the state. Total funds appropriated for the Employment Service program allotments is $815,882,860. Attachment IV shows the Wagner-Peyser Act final allotments for PY 2006 for states and outlying areas. These final allotments have been produced using the formula set forth at Section 6 of the Wagner-Peyser Act, 29 U.S.C. 49e. They are based on averages of the civilian labor force (CLF) and unemployment for Calendar Year 2005.

State planning estimates reflect $18 million being withheld from distribution to states to finance postage costs associated with the conduct of employment services for PY 2006. The Secretary of Labor is required to set aside up to three percent of the total available funds to assure that each state will have sufficient resources to maintain statewide Employment Service activities, as required under section 6(b)(4) of the Wagner-Peyser Act. In accordance with this provision, the three percent set-aside funds are included in the total planning estimate. The set-aside funds are distributed in two steps to states that have lost in relative share of resources from the previous year. In Step 1, states that have a CLF below one million and are also below the median CLF density are maintained at 100 percent of their relative share of prior year resources. All remaining set-aside funds are distributed on a pro-rata basis in Step 2 to all other states losing in relative share from the prior year but not meeting the size and density criteria for Step 1. Under section 7 of the Wagner-Peyser Act, ten percent of the total sums allotted to each state shall be reserved for use by the Governor to provide performance incentives for ES offices; services for groups with special needs; and for the extra costs of exemplary models for delivering job services.

Workforce Information Grants. Total PY 2006 funding for Workforce Information Grants to states is $33,180,000. The allotment figures for each state are listed in Attachment V. Funds are distributed by administrative formula, with a reserve of $962,200 for postage and $177,323 for Guam and the Virgin Islands. The remaining funds are distributed to the states with 40 percent distributed equally to all states and 60 percent distributed on each state's share of CLF for the 12 months ending September 2005.

Work Opportunity Tax Credit and Welfare-to-Work Tax Credit Programs: Grants to States. Total funding for FY 2006 is $17,677,440. Attachment VI shows the PY 2006 Work Opportunity Tax Credit and Welfare-to-Work Tax Credit (WOTC/WtW) grants by state. After reserving $512,646 for postage and $20,000 for the Virgin Islands, funds are distributed to states by administrative formula with a $64,000 minimum allotment and a 95 percent stop-loss/120 percent stop-gain from the prior year allotment share percentage. The allocation formula is as follows:

(1) 50 percent based on each state's relative share of total FY 2005 certifications issued for the WOTC/WtW Tax Credit programs;

(2) 30 percent based on each state's relative share of the CLF for twelve months ending September 2005; and

(3) 20 percent based on each state's relative share of the adult recipients of Temporary Assistance for Needy Families (TANF) for FY 2004.

Signed at Washington, DC, this 6th day of April, 2006.

Mason M. Bishop,

Deputy Assistant Secretary for Employment and Training.

BILLING CODE 4510–30–P

Attachment I

U.S. Department of Labor
Employment and Training Administration
WIA Youth Activities
PY 2006 Planning Estimates

State	PY 2006
Total	$849,505,013
Alabama	12,648,643
Alaska	2,705,325
Arizona	14,279,214
Arkansas	8,196,812
California	116,547,249
Colorado	11,952,681
Connecticut	7,450,182
Delaware	2,310,103
District of Columbia	2,759,551
Florida	32,232,987
Georgia	15,888,881
Hawaii	3,020,792
Idaho	2,878,030
Illinois	39,463,315
Indiana	15,166,794
Iowa	5,141,305
Kansas	6,268,592
Kentucky	11,653,493
Louisiana	15,045,629
Maine	2,856,169
Maryland	8,750,271
Massachusetts	15,842,725
Michigan	35,734,216
Minnesota	9,555,360
Mississippi	9,454,546
Missouri	14,337,088
Montana	2,310,103
Nebraska	2,434,180
Nevada	3,940,227
New Hampshire	2,310,103
New Jersey	19,806,031
New Mexico	6,065,188
New York	61,193,201
North Carolina	23,951,523
North Dakota	2,310,103
Ohio	34,491,233
Oklahoma	9,005,339
Oregon	14,815,322
Pennsylvania	31,303,458
Puerto Rico	30,129,697
Rhode Island	2,740,091
South Carolina	14,143,591
South Dakota	2,310,103
Tennessee	15,382,703
Texas	71,685,807
Utah	5,006,040
Vermont	2,310,103
Virginia	11,150,728
Washington	21,749,034
West Virginia	5,802,642
Wisconsin	12,049,657
Wyoming	2,310,103
State Total	833,046,263
American Samoa	133,535
Guam	1,086,941
Northern Marianas	402,222
Palau	85,480
Virgin Islands	643,072
Outlying Areas Total	2,351,250
Native Americans	14,107,500

Attachment II-A

U. S. Department of Labor
Employment and Training Administration
WIA Adult Activities
2006 Appropriation Rescission to PY 2005 State Allotments
(Applicable to FY 2006 Advance Funds Available 10/1/05)

State	Initial Allotment			FY 2006	Revised Allotment with Rescission		
	Total	7/1/2005 (PY 2005)	10/1/2005 (FY 2006)	1.0% Rescission	Total	7/1/2005 (PY 2005)	10/1/2005 (FY 2006)
Total	$896,818,144	$184,818,144	$712,000,000	($7,120,000)	$889,498,144	$184,818,144	$704,680,000
Alabama	14,088,358	2,900,863	11,187,495	(111,875)	13,976,483	2,900,863	11,075,620
Alaska	2,951,668	607,763	2,343,905	(23,439)	2,928,229	607,763	2,320,466
Arizona	15,594,617	3,211,009	12,383,608	(123,836)	15,470,781	3,211,009	12,259,772
Arkansas	8,822,509	1,818,599	7,005,910	(70,059)	8,752,450	1,816,599	6,935,851
California	128,964,901	26,554,518	102,410,385	(1,024,106)	127,940,795	26,554,516	101,386,279
Colorado	10,765,006	2,216,568	8,548,438	(85,484)	10,679,522	2,216,568	8,462,954
Connecticut	7,539,555	1,552,432	5,987,123	(59,871)	7,479,684	1,552,432	5,927,252
Delaware	2,235,941	460,391	1,775,550	(17,755)	2,218,186	460,391	1,757,795
District of Columbia	2,698,080	555,548	2,142,532	(21,425)	2,678,655	555,548	2,121,107
Florida	37,171,188	7,653,733	29,517,455	(295,175)	36,876,013	7,653,733	29,222,280
Georgia	17,011,669	3,502,787	13,508,882	(135,089)	18,878,580	3,502,787	13,373,793
Hawaii	3,371,642	694,238	2,677,404	(26,774)	3,344,868	694,238	2,650,630
Idaho	2,824,174	581,512	2,242,662	(22,427)	2,801,747	581,512	2,220,235
Illinois	41,778,880	8,602,480	33,176,400	(331,764)	41,447,116	8,602,480	32,844,636
Indiana	15,082,094	3,105,478	11,976,616	(119,766)	14,962,328	3,105,478	11,856,850
Iowa	4,292,563	883,860	3,408,703	(34,087)	4,258,478	883,860	3,374,616
Kansas	6,014,471	1,238,410	4,778,061	(47,781)	5,966,710	1,238,410	4,728,300
Kentucky	14,100,076	2,903,278	11,196,800	(111,968)	13,988,108	2,903,276	11,084,832
Louisiana	16,634,698	3,425,167	13,209,531	(132,095)	16,502,603	3,425,167	13,077,436
Maine	3,094,355	637,143	2,457,212	(24,572)	3,069,783	837,143	2,432,640
Maryland	9,526,346	1,961,522	7,564,824	(75,648)	9,450,698	1,961,522	7,489,176
Massachusetts	15,420,508	3,175,159	12,245,349	(122,453)	15,298,055	3,175,159	12,122,896
Michigan	37,954,938	7,815,111	30,139,827	(301,398)	37,653,540	7,815,111	29,838,429
Minnesota	9,300,981	1,915,118	7,385,863	(73,859)	9,227,122	1,915,118	7,312,004
Mississippi	9,965,928	2,052,034	7,913,894	(79,139)	9,886,789	2,052,034	7,834,755
Missouri	15,085,479	3,106,175	11,979,304	(119,793)	14,965,686	3,106,175	11,859,511
Montana	2,582,274	531,703	2,050,571	(20,506)	2,561,768	531,703	2,030,065
Nebraska	2,235,941	460,391	1,775,550	(17,755)	2,218,186	460,391	1,757,795
Nevada	4,488,585	924,222	3,564,063	(35,644)	4,452,941	924,222	3,528,719
New Hampshire	2,235,941	460,391	1,775,550	(17,755)	2,218,186	460,391	1,757,795
New Jersey	22,589,247	4,651,239	17,938,006	(179,380)	22,409,867	4,651,239	17,758,628
New Mexico	6,643,971	1,368,027	5,275,944	(52,759)	6,591,212	1,368,027	5,223,185
New York	68,925,986	14,192,204	54,733,782	(547,338)	68,378,648	14,192,204	54,186,444
North Carolina	25,432,702	5,236,720	20,195,982	(201,960)	25,230,742	5,236,720	19,994,022
North Dakota	2,235,941	460,391	1,775,550	(17,755)	2,218,186	460,391	1,757,795
Ohio	36,505,610	7,516,687	28,988,923	(289,889)	36,215,721	7,516,687	28,699,034
Oklahoma	9,896,917	1,996,644	7,700,273	(77,003)	9,619,914	1,996,644	7,623,270
Oregon	15,878,573	3,269,477	12,609,096	(126,091)	15,752,482	3,269,477	12,483,005
Pennylvania	32,733,798	6,740,052	25,993,746	(259,937)	32,473,861	6,740,052	25,733,809
Puerto Rico	33,826,254	6,964,994	26,861,260	(268,813)	33,557,841	6,964,994	26,592,647
Rhode Island	2,573,429	529,882	2,043,547	(20,435)	2,552,994	529,882	2,023,112
South Carolina	15,233,141	3,136,582	12,096,559	(120,960)	15,112,175	3,136,582	11,975,593
South Dakota	2,235,941	460,391	1,775,550	(17,755)	2,218,186	460,391	1,757,795
Tennessee	17,165,906	3,534,546	13,631,360	(136,314)	17,029,592	3,534,546	13,495,046
Texas	77,097,549	15,874,770	61,222,779	(612,226)	76,485,321	15,874,770	60,610,551
Utah	4,496,453	925,842	3,570,611	(35,706)	4,460,747	925,842	3,534,905
Vermont	2,235,941	460,391	1,775,550	(17,755)	2,218,186	460,391	1,757,795
Virginia	11,634,102	2,395,520	9,238,582	(92,386)	11,541,716	2,395,520	9,146,196
Washington	22,992,788	4,734,330	18,258,458	(182,585)	22,810,203	4,734,330	18,075,873
West Virginia	6,538,268	1,346,262	5,192,006	(51,920)	8,486,348	1,346,282	5,140,086
Wisconsin	11,634,775	2,395,858	9,239,117	(92,391)	11,542,384	2,395,658	9,146,726
Wyoming	2,235,941	460,391	1,775,550	(17,755)	2,218,188	460,391	1,757,795
State Total	894,378,599	184,156,599	710,220,000	(7,102,199)	887,274,400	184,156,599	703,117,801
American Samoa	122,101	25,141	96,960	(970)	121,131	25,141	95,990
Guam	857,409	176,545	680,864	(6,809)	850,600	176,545	874,055
Northern Marianas	364,691	75,092	289,599	(2,896)	361,795	75,092	286,703
Palau	103,365	21,283	82,082	(821)	102,544	21,283	81,261
Virgin Islands	793,979	163,484	630,495	(6,305)	787,674	163,484	624,190
Outlying Areas Total	2,241,545	461,545	1,780,000	(17,801)	2,223,744	461,545	1,762,199

Attachment II-B

U.S. Department of Labor
Employment and Training Administration
WIA Adult Activities
PY 2006 Planning Estimates

State	PY 2006
Total	$779,503,392
Alabama	12,221,062
Alaska	2,560,449
Arizona	13,527,679
Arkansas	7,653,158
California	111,871,863
Colorado	9,338,193
Connecticut	6,540,249
Delaware	2,155,095
District of Columbia	2,340,472
Florida	32,244,452
Georgia	14,756,912
Hawaii	2,924,759
Idaho	2,449,853
Illinois	36,241,433
Indiana	13,083,086
Iowa	3,723,619
Kansas	5,217,302
Kentucky	12,231,227
Louisiana	14,429,905
Maine	2,684,224
Maryland	8,263,707
Massachusetts	13,376,646
Michigan	32,924,323
Minnesota	8,068,212
Mississippi	8,645,026
Missouri	13,086,023
Montana	2,240,015
Nebraska	2,155,095
Nevada	3,893,660
New Hampshire	2,155,095
New Jersey	19,595,228
New Mexico	5,763,367
New York	59,790,413
North Carolina	22,061,806
North Dakota	2,155,095
Ohio	31,667,091
Oklahoma	8,411,670
Oregon	13,773,999
Pennsylvania	28,395,202
Puerto Rico	29,342,862
Rhode Island	2,232,342
South Carolina	13,214,113
South Dakota	2,155,095
Tennessee	14,890,706
Texas	66,878,902
Utah	3,900,485
Vermont	2,155,095
Virginia	10,092,097
Washington	19,945,283
West Virginia	5,671,674
Wisconsin	10,092,681
Wyoming	2,155,095
State Total	777,342,895
American Samoa	113,735
Guam	925,771
Northern Marianas	342,582
Palau	89,665
Virgin Islands	688,744
Outlying Areas Total	2,160,497

Attachment III-A

U. S. Department of Labor
Employment and Training Administration
WIA Dislocated Worker Activities
2006 Appropriation Rescissions to PY 2005 State Allotments
(Applicable to FY 2006 Advance Funds Available 10/1/05)

State	Initial Allotment			FY 2006	Revised Allotment with Rescission		
	Total	7/1/2005 (PY 2005)	10/1/2005 (FY 2006)	1.0% Rescission *	Total	7/1/2005 (PY 2005)	10/1/2005 (FY 2006)
Total	$1,476,063,648	$416,063,648	$1,060,000,000	($134,350,000)	$1,341,713,648	$416,063,648	$925,650,000
Alabama	16,300,995	5,295,282	13,005,713	(130,057)	18,170,936	5,295,282	12,875,656
Alaska	4,502,548	1,302,785	3,199,763	(31,998)	4,470,550	1,302,785	3,167,765
Arizona	15,130,307	4,377,863	10,752,444	(107,524)	15,022,783	4,377,863	10,644,920
Arkansas	10,597,841	3,066,421	7,531,420	(75,314)	10,522,527	3,066,421	7,456,106
California	182,835,332	52,902,299	129,933,033	(1,299,330)	181,536,002	52,902,299	128,633,703
Colorado	17,818,464	5,155,665	12,662,799	(126,628)	17,691,836	5,155,665	12,536,171
Connecticut	11,067,112	3,202,202	7,864,910	(78,649)	10,988,463	3,202,202	7,786,261
Delaware	1,815,691	467,490	1,146,201	(11,482)	1,604,209	467,490	1,136,719
District of Columbia	4,117,569	1,191,394	2,926,175	(29,262)	4,068,307	1,191,394	2,896,913
Florida	40,851,017	11,819,995	29,031,022	(290,310)	40,560,707	11,819,995	28,740,712
Georgia	20,072,811	5,807,947	14,264,864	(142,649)	19,930,162	5,807,947	14,122,215
Hawaii	2,158,542	624,561	1,533,981	(15,340)	2,143,202	624,561	1,518,641
Idaho	3,398,915	983,456	2,415,459	(24,155)	3,374,760	983,456	2,391,304
Illinois	66,920,949	19,363,172	47,557,777	(475,578)	66,445,371	19,363,172	47,082,199
Indiana	20,716,584	5,994,218	14,722,366	(147,224)	20,569,360	5,994,218	14,575,142
Iowa	5,851,685	1,693,150	4,158,535	(41,585)	5,810,100	1,693,150	4,116,950
Kansas	7,651,181	2,213,823	5,437,358	(54,374)	7,596,807	2,213,823	5,382,984
Kentucky	15,174,784	4,390,732	10,784,052	(107,841)	15,066,943	4,390,732	10,876,211
Louisiana	18,229,091	5,274,477	12,954,614	(129,546)	18,099,545	5,274,477	12,825,068
Maine	3,233,868	935,700	2,298,168	(22,982)	3,210,886	935,700	2,275,186
Maryland	11,411,244	3,301,775	8,109,469	(81,095)	11,330,149	3,301,775	8,028,374
Massachusetts	25,829,346	7,415,697	18,213,649	(182,137)	25,447,209	7,415,897	18,031,512
Michigan	62,582,469	18,107,859	44,474,610	(444,746)	62,137,723	18,107,859	44,029,864
Minnesota	13,235,184	3,829,515	9,405,649	(94,057)	13,141,107	3,829,515	9,311,592
Mississippi	11,210,085	3,243,570	7,966,515	(79,665)	11,130,420	3,243,570	7,886,850
Missouri	19,937,612	5,768,828	14,168,784	(141,688)	19,795,924	5,768,828	14,027,096
Montana	1,920,594	555,712	1,364,882	(13,649)	1,906,945	555,712	1,351,233
Nebraska	3,263,747	950,132	2,313,615	(23,336)	3,260,411	950,132	2,310,279
Nevada	4,725,377	1,367,259	3,358,118	(33,581)	4,691,796	1,367,259	3,324,537
New Hampshire	2,801,408	810,570	1,990,838	(19,908)	2,781,500	810,570	1,970,930
New Jersey	31,288,708	9,053,199	22,235,509	(222,355)	31,066,353	9,053,199	22,013,154
New Mexico	7,395,867	2,139,949	5,255,918	(52,559)	7,343,308	2,139,949	5,203,359
New York	95,415,077	27,607,776	67,807,301	(678,073)	94,737,004	27,607,778	67,129,228
North Carolina	35,655,022	10,316,585	25,338,457	(253,385)	35,401,837	10,318,565	25,085,072
North Dakota	1,012,281	292,897	719,384	(7,194)	1,005,087	292,897	712,190
Ohio	53,062,694	15,353,370	37,709,324	(377,093)	52,685,601	15,353,370	37,332,231
Oklahoma	9,667,175	2,797,139	6,870,036	(68,700)	9,598,475	2,797,139	6,801,336
Oregon	25,222,100	7,297,862	17,924,238	(179,242)	25,042,858	7,297,862	17,744,996
Pennsylvania	44,740,544	12,945,406	31,795,138	(317,951)	44,422,593	12,945,406	31,477,187
Puerto Rico	31,498,277	9,113,836	22,384,441	(223,844)	31,274,433	9,113,836	22,160,597
Rhode Island	3,954,620	1,144,245	2,810,375	(28,104)	3,926,516	1,144,245	2,782,271
South Carolina	23,006,992	6,656,934	16,350,058	(163,501)	22,843,491	6,656,934	16,186,557
South Dakota	1,158,688	335,259	823,429	(8,234)	1,150,454	335,259	815,195
Tennessee	18,722,605	5,417,273	13,305,332	(133,053)	18,589,552	5,417,273	13,172,279
Texas	102,134,470	29,551,992	72,582,478	(725,825)	101,408,645	29,551,992	71,856,853
Utah	5,903,570	1,708,162	4,195,408	(41,954)	5,861,616	1,708,162	4,153,454
Vermont	1,229,990	355,890	874,100	(8,741)	1,221,249	355,890	865,359
Virginia	13,034,020	3,771,315	9,262,705	(92,827)	12,941,393	3,771,315	9,170,078
Washington	35,786,962	10,354,741	25,432,221	(254,322)	35,532,640	10,354,741	25,177,899
West Virginia	6,216,292	1,798,647	4,417,645	(44,178)	6,172,118	1,798,647	4,373,469
Wisconsin	19,310,036	5,587,242	13,722,794	(137,228)	19,172,808	5,587,242	13,585,566
Wyoming	865,294	250,368	614,928	(6,149)	859,145	250,368	608,777
State Total	1,193,263,816	345,263,616	848,000,000	(6,480,000)	1,184,783,616	345,263,616	839,520,000
American Samoa	201,009	50,323	150,686	(1,507)	199,502	50,323	149,179
Guam	1,411,516	353,379	1,058,137	(10,580)	1,400,936	353,379	1,047,557
Northern Marianas	600,375	150,306	450,069	(4,501)	595,874	150,306	445,568
Palau	170,165	42,602	127,563	(1,278)	168,889	42,602	128,287
Virgin Islands	1,307,094	327,235	979,859	(9,799)	1,297,295	327,235	970,060
Outlying Areas Total	3,690,159	923,845	2,766,314	(27,663)	3,662,496	923,845	2,738,651
National Reserve *	279,109,673	69,876,187	209,233,686	(125,842,337)	153,267,536	69,876,187	83,391,349

* Includes seperate $125,000,000 rescission of Community-Based Job Training Grants in the National Reserve for FY 2006

Attachment III-B

U.S. Department of Labor
Employment and Training Administration
WIA Dislocated Worker Activities State Allotments
Comparison of PY 2006 vs PY 2005

State	PY 2005* (* Incl 1% rescission in FY06 Approp)	PY 2006	Difference	% Difference
Total	$1,341,713,648	$1,471,903,360	$130,189,712	9.70%
Alabama	18,170,938	13,331,553	(4,839,385)	-26.63%
Alaska	4,470,550	4,597,753	127,203	2.85%
Arizona	15,022,783	13,747,699	(1,275,084)	-8.49%
Arkansas	10,522,527	9,887,425	(635,102)	-6.04%
California	181,536,002	162,375,543	(19,160,459)	-10.55%
Colorado	17,691,836	17,871,983	180,147	1.02%
Connecticut	10,988,463	11,850,543	862,080	7.85%
Delaware	1,604,209	1,654,547	50,338	3.14%
District of Columbia	4,088,307	5,371,044	1,282,737	31.38%
Florida	40,560,707	35,931,495	(4,829,212)	-11.41%
Georgia	19,930,162	29,404,826	9,474,664	47.54%
Hawaii	2,143,202	1,669,881	(473,321)	-22.08%
Idaho	3,374,760	2,648,810	(725,950)	-21.51%
Illinois	66,445,371	68,530,595	2,085,224	3.14%
Indiana	20,569,360	24,288,613	3,719,253	18.08%
Iowa	5,810,100	8,143,832	2,333,732	40.17%
Kansas	7,596,807	11,122,106	3,525,299	46.41%
Kentucky	15,066,943	14,247,753	(819,190)	-5.44%
Louisiana	18,099,545	22,270,187	4,170,642	23.04%
Maine	3,210,886	3,678,276	467,390	14.56%
Maryland	11,330,149	11,485,963	155,814	1.38%
Massachusetts	25,447,209	18,894,232	(6,752,977)	-26.54%
Michigan	62,137,723	78,072,257	15,934,534	25.64%
Minnesota	13,141,107	12,163,257	(977,850)	-7.44%
Mississippi	11,130,420	20,237,178	9,106,758	81.82%
Missouri	19,795,924	27,603,673	7,807,749	39.44%
Montana	1,906,945	2,119,723	212,778	11.16%
Nebraska	3,260,411	3,341,532	81,121	2.49%
Nevada	4,691,796	4,373,088	(318,708)	-6.79%
New Hampshire	2,781,500	2,331,231	(450,269)	-16.19%
New Jersey	31,066,353	20,080,014	(10,986,339)	-35.36%
New Mexico	7,343,308	8,090,966	747,658	10.18%
New York	94,737,004	71,965,542	(22,771,462)	-24.04%
North Carolina	35,401,637	33,446,393	(1,955,244)	-5.52%
North Dakota	1,005,087	995,319	(9,768)	-0.97%
Ohio	52,685,601	65,100,062	12,414,461	23.56%
Oklahoma	9,598,475	7,617,556	(1,980,919)	-20.64%
Oregon	25,042,858	25,628,060	583,202	2.33%
Pennsylvania	44,422,593	46,129,639	1,707,046	3.84%
Puerto Rico	31,274,433	37,710,686	6,436,253	20.58%
Rhode Island	3,926,516	3,413,306	(513,210)	-13.07%
South Carolina	22,843,491	28,062,297	5,218,806	22.85%
South Dakota	1,150,454	1,192,398	41,944	3.65%
Tennessee	18,589,552	25,956,878	7,367,326	39.63%
Texas	101,408,645	96,371,584	(5,037,061)	-4.97%
Utah	5,861,616	6,463,425	601,809	10.27%
Vermont	1,221,249	993,509	(227,740)	-18.65%
Virginia	12,941,393	13,571,565	630,172	4.87%
Washington	35,532,640	30,948,550	(4,586,090)	-12.91%
West Virginia	6,172,116	5,514,593	(657,523)	-10.65%
Wisconsin	19,172,808	16,723,298	(2,449,510)	-12.78%
Wyoming	859,145	793,122	(66,023)	-7.68%
State Total	1,184,783,616	1,189,811,360	5,027,744	0.42%
American Samoa	199,502	193,712	(5,790)	-2.90%
Guam	1,400,936	1,576,774	175,838	12.55%
Northern Marianas	595,874	583,486	(12,388)	-2.08%
Palau	168,889	152,717	(16,172)	-9.58%
Virgin Islands	1,297,295	1,173,069	(124,226)	-9.58%
Outlying Areas Total	3,662,496	3,679,758	17,262	0.47%
National Reserve	153,267,536	278,412,242	125,144,706	81.65%

* Incl 1% across-the-board FY 2006 rescission and $125 M rescission for Community-Based Job Training Grants in National Reserve

Attachment IV

U. S. Department of Labor
Employment and Training Administration
Employment Service (Wagner-Peyser)
PY 2006 Final vs PY 2005 Final Allotments

State	Final PY 2005	Final PY 2006	Difference	% Difference
Total	$746,301,440	$715,882,860	($30,418,580)	-4.08%
Alabama	10,242,761	9,518,047	(724,714)	-7.08%
Alaska	7,916,984	7,586,320	(330,664)	-4.18%
Arizona	12,422,025	11,900,417	(521,608)	-4.20%
Arkansas	5,996,331	5,760,123	(236,208)	-3.94%
California	85,114,497	80,512,528	(4,601,969)	-5.41%
Colorado	11,432,109	10,940,068	(492,041)	-4.30%
Connecticut	7,992,973	7,695,536	(297,437)	-3.72%
Delaware	2,034,273	1,949,309	(84,964)	-4.18%
District of Columbia	2,976,875	2,765,765	(211,110)	-7.09%
Florida	36,303,665	34,575,494	(1,728,171)	-4.76%
Georgia	18,930,767	19,895,080	964,313	5.09%
Hawaii	2,849,696	2,647,605	(202,091)	-7.09%
Idaho	6,596,257	6,320,755	(275,502)	-4.18%
Illinois	30,798,078	29,345,833	(1,452,245)	-4.72%
Indiana	14,124,883	14,044,856	(80,027)	-0.57%
Iowa	7,053,558	6,873,400	(180,158)	-2.55%
Kansas	6,619,274	6,337,808	(281,466)	-4.25%
Kentucky	9,370,177	9,112,675	(257,502)	-2.75%
Louisiana	10,162,468	10,058,961	(103,507)	-1.02%
Maine	3,922,731	3,758,892	(163,839)	-4.18%
Maryland	12,733,369	12,106,453	(626,916)	-4.92%
Massachusetts	15,479,421	14,670,250	(809,171)	-5.23%
Michigan	25,167,719	24,180,860	(986,859)	-3.92%
Minnesota	12,693,219	12,068,119	(625,100)	-4.92%
Mississippi	6,616,615	6,799,986	183,371	2.77%
Missouri	13,867,428	13,266,457	(600,971)	-4.33%
Montana	5,390,495	5,165,353	(225,142)	-4.18%
Nebraska	6,478,316	6,207,740	(270,576)	-4.18%
Nevada	5,100,944	4,882,445	(218,499)	-4.28%
New Hampshire	3,019,126	2,880,256	(138,870)	-4.60%
New Jersey	19,943,118	18,876,142	(1,066,976)	-5.35%
New Mexico	6,049,083	5,796,434	(252,649)	-4.18%
New York	44,216,001	41,840,762	(2,375,239)	-5.37%
North Carolina	20,031,176	19,088,555	(942,621)	-4.71%
North Dakota	5,489,137	5,259,875	(229,262)	-4.18%
Ohio	27,668,611	26,664,750	(1,003,861)	-3.63%
Oklahoma	7,587,847	7,237,217	(350,630)	-4.62%
Oregon	9,500,546	8,963,181	(537,365)	-5.66%
Pennsylvania	28,761,211	27,367,408	(1,393,803)	-4.85%
Puerto Rico	9,131,886	8,686,564	(445,322)	-4.88%
Rhode Island	2,510,612	2,434,419	(76,193)	-3.03%
South Carolina	9,995,912	9,911,509	(84,403)	-0.84%
South Dakota	5,073,224	4,861,333	(211,891)	-4.18%
Tennessee	13,161,637	12,855,937	(305,700)	-2.32%
Texas	51,929,829	49,533,693	(2,396,136)	-4.61%
Utah	8,965,607	8,329,797	(635,810)	-7.09%
Vermont	2,376,588	2,277,326	(99,262)	-4.18%
Virginia	15,601,885	15,092,953	(508,932)	-3.26%
Washington	15,617,015	14,858,235	(758,780)	-4.86%
West Virginia	5,806,806	5,564,276	(242,530)	-4.18%
Wisconsin	13,765,276	13,082,249	(683,027)	-4.96%
Wyoming	3,936,053	3,771,658	(164,395)	-4.18%
State Total	726,526,094	696,181,664	(30,344,430)	-4.18%
Guam	340,789	326,555	(14,234)	-4.18%
Virgin Islands	1,434,557	1,374,641	(59,916)	-4.18%
Outlying Areas Total	1,775,346	1,701,196	(74,150)	-4.18%
Postage	18,000,000	18,000,000	0	0.00%

Attachment V

U. S. Department of Labor
Employment and Training Administration

Workforce Information Grants to States
PY 2006 vs PY 2005 Allotments

State	PY 2005	PY 2006	PY 2006 vs PY 2005 Difference $	PY 2006 vs PY 2005 Difference % Diff
Total	$37,696,000	$33,180,000	($4,516,000)	-11.98%
Alabama	598,930	521,838	(77,092)	-12.87%
Alaska	330,752	289,733	(41,019)	-12.40%
Arizona	684,091	606,975	(77,116)	-11.27%
Arkansas	472,110	417,532	(54,578)	-11.56%
California	2,870,475	2,517,818	(352,657)	-12.29%
Colorado	649,318	572,085	(77,233)	-11.89%
Connecticut	544,427	476,709	(67,718)	-12.44%
Delaware	342,760	301,478	(41,282)	-12.04%
District of Columbia	324,828	284,990	(39,838)	-12.26%
Florida	1,504,744	1,346,686	(158,058)	-10.50%
Georgia	931,416	818,732	(112,684)	-12.10%
Hawaii	372,899	326,854	(46,045)	-12.35%
Idaho	383,654	339,126	(44,528)	-11.61%
Illinois	1,219,024	1,072,842	(146,182)	-11.99%
Indiana	748,585	655,487	(93,098)	-12.44%
Iowa	518,946	456,141	(62,805)	-12.10%
Kansas	495,209	434,164	(61,045)	-12.33%
Kentucky	571,783	500,627	(71,156)	-12.44%
Louisiana	580,681	513,672	(67,009)	-11.54%
Maine	383,205	336,825	(46,380)	-12.10%
Maryland	712,931	619,865	(93,266)	-13.08%
Massachusetts	781,651	678,507	(103,144)	-13.20%
Michigan	1,025,327	900,341	(124,988)	-12.19%
Minnesota	714,350	625,262	(89,088)	-12.47%
Mississippi	474,261	418,105	(56,156)	-11.84%
Missouri	725,961	633,721	(92,240)	-12.71%
Montana	351,098	309,202	(41,896)	-11.93%
Nebraska	425,540	372,682	(52,858)	-12.42%
Nevada	453,146	400,960	(52,186)	-11.52%
New Hampshire	387,494	340,067	(47,427)	-12.24%
New Jersey	928,772	811,805	(116,967)	-12.59%
New Mexico	413,532	365,776	(47,756)	-11.55%
New York	1,650,619	1,448,995	(201,624)	-12.22%
North Carolina	900,247	797,071	(103,176)	-11.46%
North Dakota	331,710	291,961	(39,749)	-11.98%
Ohio	1,146,463	1,003,271	(143,192)	-12.49%
Oklahoma	530,716	467,100	(63,616)	-11.99%
Oregon	554,411	485,051	(69,360)	-12.51%
Pennsylvania	1,196,214	1,056,202	(140,012)	-11.70%
Puerto Rico	486,678	425,499	(61,179)	-12.57%
Rhode Island	364,284	319,006	(45,278)	-12.43%
South Carolina	581,783	511,426	(70,357)	-12.09%
South Dakota	342,927	301,464	(41,463)	-12.09%
Tennessee	711,195	617,744	(93,451)	-13.14%
Texas	1,893,807	1,676,453	(217,354)	-11.48%
Utah	457,340	403,414	(53,926)	-11.79%
Vermont	332,339	291,640	(40,699)	-12.25%
Virginia	843,820	743,751	(100,069)	-11.86%
Washington	749,527	665,575	(83,952)	-11.20%
West Virginia	397,324	347,927	(49,397)	-12.43%
Wisconsin	737,730	637,592	(100,138)	-13.57%
Wyoming	321540	282,908	(38,632)	-12.01%
State Total	36,452,574	32,040,457	(4,412,117)	-12.10%
Guam	99,120	93,191	(5,929)	-5.98%
Virgin Islands	88,818	84,132	(4,686)	-5.28%
Outlying Areas Total	187,938	177,323	(10,615)	-5.65%
Postage	1,055,488	962,220	(93,268)	-8.84%

Attachment VI

U. S. Department of Labor
Employment and Training Administration
Work Opportunity and Welfare-to-Work Tax Credits
FY 2006 vs FY 2005 State Allotments

State	FY 2005	FY 2006	Difference	% Difference
Total	$17,856,000	$17,677,440	($178,560)	-1.0%
Alabama	248,278	233,262	(15,016)	-6.0%
Alaska	64,000	64,000	0	0.0%
Arizona	298,769	283,087	(13,682)	-4.6%
Arkansas	270,919	254,534	(16,385)	-6.0%
California	2,039,179	1,955,447	(83,732)	-4.1%
Colorado	168,123	157,955	(10,188)	-6.0%
Connecticut	225,049	211,438	(13,611)	-6.0%
Delaware	64,000	64,000	0	0.0%
District of Columbia	64,000	64,000	0	0.0%
Florida	693,102	736,725	43,623	6.3%
Georgia	450,638	423,384	(27,254)	-6.0%
Hawaii	64,000	64,000	0	0.0%
Idaho	84,000	64,000	0	0.0%
Illinois	793,768	871,880	78,112	9.8%
Indiana	444,859	417,954	(26,905)	-6.0%
Iowa	223,928	210,385	(13,543)	-6.0%
Kansas	148,695	163,515	14,820	10.0%
Kentucky	292,311	297,436	5,125	1.8%
Louisiana	379,816	372,309	(7,507)	-2.0%
Maine	69,098	64,919	(4,179)	-6.0%
Maryland	367,893	345,643	(22,250)	-6.0%
Massachusetts	331,170	311,141	(20,029)	-6.0%
Michigan	542,072	543,406	1,334	0.2%
Minnesota	308,005	290,504	(17,501)	-5.7%
Mississippi	178,302	167,518	(10,784)	-6.0%
Missouri	392,001	465,212	73,211	18.7%
Montana	64,000	64,000	0	0.0%
Nebraska	114,244	135,580	21,336	18.7%
Nevada	102,491	105,600	3,109	3.0%
New Hampshire	64,000	66,634	2,634	4.1%
New Jersey	554,311	520,786	(33,525)	-6.0%
New Mexico	153,841	144,537	(9,304)	-6.0%
New York	961,167	973,713	12,546	1.3%
North Carolina	462,546	501,136	38,590	8.3%
North Dakota	64,000	64,000	0	0.0%
Ohio	789,302	741,565	(47,737)	-6.0%
Oklahoma	177,197	169,976	(7,221)	-4.1%
Oregon	179,638	187,567	7,929	4.4%
Pennsylvania	774,991	728,120	(46,871)	-6.0%
Puerto Rico	114,210	107,303	(6,907)	-6.0%
Rhode Island	78,581	73,828	(4,753)	-6.0%
South Carolina	202,514	190,266	(12,248)	-6.0%
South Dakota	64,000	64,000	0	0.0%
Tennessee	628,094	590,107	(37,987)	-6.0%
Texas	1,222,448	1,239,545	17,099	1.4%
Utah	99,038	100,233	1,195	1.2%
Vermont	64,000	64,000	0	0.0%
Virginia	355,257	387,743	32,486	9.1%
Washington	359,558	337,812	(21,746)	-6.0%
West Virginia	140,442	144,934	4,492	3.2%
Wisconsin	298,189	280,155	(18,034)	-6.0%
Wyoming	64,000	64,000	0	0.0%
State Total	17,336,032	17,144,794	(191,238)	-1.1%
Virgin Islands	20,000	20,000	0	0.0%
Postage	499,968	512,646	12,678	2.5%

[FR Doc. 06–3483 Filed 4–10–05; 8:45am]
BILLING CODE 4510–30–C

Federal Register

Tuesday,
April 11, 2006

Part VII

The President

Federal Register
Vol. 71, No. 69
Tuesday, April 11, 2006

Presidential Documents

Title 3—

The President

Proclamation 7999 of April 7, 2006

Pan American Day and Pan American Week, 2006

By the President of the United States of America

A Proclamation

During Pan American Day and Pan American Week, we honor the commitment to liberty and common values we share with our Pan American neighbors.

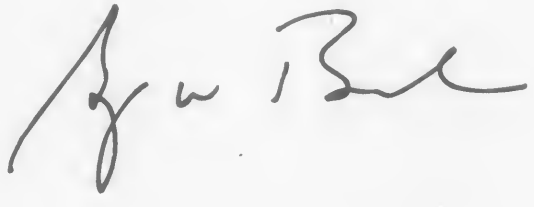
The love of freedom has deep roots in the Pan American community. Not long after the United States won independence from Britain, patriots throughout the Americas were inspired to take their own stand. Today, there are more than 30 democratic countries in the region, and through the Organization of American States, leaders in the Western Hemisphere have an opportunity to discuss shared goals, promote prosperity, and strengthen democratic governance and institutions.

One of the surest ways to make opportunity real for all our citizens is through free and fair trade. In August 2005, I signed legislation to implement the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR). Our investment and trade through the CAFTA–DR will help build a better life for our citizens, and by reducing trade barriers, we can make our region more competitive in the global economy. Strong economic ties with democracies in our hemisphere foster stability and security and help lay the foundation for peace for generations to come.

The people of the Western Hemisphere are united by history, geography, and shared ideals. We will continue our important work to build a region that lives in liberty and grows in prosperity.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 14, 2006, as Pan American Day and April 9 through April 15, 2006, as Pan American Week. I urge the Governors of the 50 States, the Governor of the Commonwealth of Puerto Rico, and the officials of other areas under the flag of the United States of America to honor these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of April, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 06–3530
Filed 4–10–05; 8:50 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 8000 of April 7, 2006

National D.A.R.E. Day, 2006

By the President of the United States of America

A Proclamation

On National D.A.R.E. Day, we honor the dedicated police officers and all those involved in the Drug Abuse Resistance Education (D.A.R.E.) program and underscore our commitment to helping young people say no to drugs and violence. By promoting positive youth development, D.A.R.E. programs across our country are helping our children make the right choices and build lives of purpose.

Since 1983, D.A.R.E. has taught young people how to recognize and resist the pressure to be involved in drugs, gangs, and violent activities. The D.A.R.E. program brings police officers into the classroom to answer tough questions about drugs and crime, teaches students how to avoid temptation, and encourages communication between young people and law enforcement. This program strengthens our communities and provides our children with a strong foundation for success.

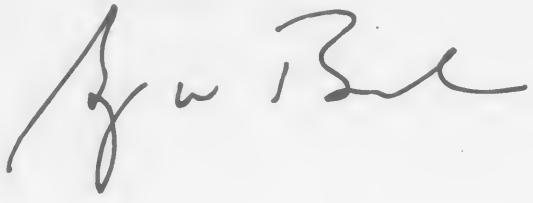
My Administration remains committed to helping our young people overcome the dangers of violence and the use of illegal substances. The Helping America's Youth initiative, led by First Lady Laura Bush, encourages local partnerships that empower families, schools, and communities to help young people reach their full potential. We are also strengthening youth drug prevention efforts on the State and local levels with the Strategic Prevention Framework and the Drug Free Communities program. These initiatives tailor prevention strategies to local needs and give community organizations the power to identify challenges and take actions to overcome them.

In 2005, the National Youth Anti-Drug Media Campaign and the Partnership for a Drug-Free America launched Above the Influence, an advertising and online campaign to encourage teens to reject drug use and other negative pressures. My Administration has also hosted a series of summits to educate community leaders and school officials on successful student drug testing.

The struggle against alcohol abuse, drugs, and violence is a national, state, and local effort. Parents, teachers, volunteers, D.A.R.E. officers, and all those who help our young people grow into responsible, successful adults are strengthening our country and contributing to a future of hope for everyone.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 11, 2006, as National D.A.R.E. Day. I call upon young people and all Americans to fight drug use and violence in our communities. I also urge our citizens to support the law enforcement officials, volunteers, teachers, health care professionals, and all those who work to help our children avoid drug use and violence.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of April, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 06–3531
Filed 4–10–06; 8:50 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 71, No. 69

Tuesday, April 11, 2006

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202–741–6000
Laws	741–6000
Presidential Documents	
Executive orders and proclamations	741–6000
The United States Government Manual	741–6000
Other Services	
Electronic and on-line services (voice)	741–6020
Privacy Act Compilation	741–6064
Public Laws Update Service (numbers, dates, etc.)	741–6043
TTY for the deaf-and-hard-of-hearing	741–6086

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives. gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, APRIL

16477–16690..... 3
16691–16972..... 4
16973–17334..... 5
17335–17690..... 6
17691–17966..... 7
17967–18160.....10
18161–18588.....11

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7992.....16685
7993.....16687
7994.....16689
7995.....16969
7996.....16971
7997.....18157
7998.....18159
7999.....18585
8000.....18587

5 CFR

213.....18161
1216.....17967

6 CFR

Proposed Rules:
5.....16519

7 CFR

330.....16973
905.....16976
916.....17970
917.....17970
922.....16979
923.....17979
930.....16982
982.....18164
985.....16986
1412.....17982

Proposed Rules:
301.....16711
868.....18231
1496.....17767

9 CFR

Proposed Rules:
390.....17384

12 CFR

201.....16991
611.....18168
612.....18168
614.....18168
615.....18168
618.....18168
619.....18168
620.....18168
630.....18168

14 CFR

23.....17335
25.....18169, 18183, 18192
39.....16477, 16691, 16992, 16994, 17691, 17694, 17696, 17698, 17700, 17983, 18194, 18197, 18199, 18201, 18205, 18207, 18210
71.....16994, 16995, 16997, 16998, 18213
97.....16999, 17342
121.....17000

Proposed Rules:
25.....18236
39.....16716, 16721, 16725, 17033, 17035, 17037, 18237, 18239, 18242, 18244, 18247, 18249, 18251, 18253
71.....17039, 17385, 17386, 17387, 17388, 17389, 18254
121.....16678, 18255

15 CFR

902.....17985

16 CFR

Proposed Rules:
305.....18023
1214.....18030

17 CFR

279.....17344

Proposed Rules:
41.....18030
240.....18030

18 CFR

342.....18411

20 CFR

405.....17990

21 CFR

510.....17701
520.....17701
524.....16481
558.....17702

Proposed Rules:
201.....18039
211.....18039
878.....17390

22 CFR

34.....16481
62.....16696

Proposed Rules:
62.....17768

23 CFR

Proposed Rules:
773.....17040

24 CFR

207.....18152

26 CFR

1.....17990
602.....17990

Proposed Rules:
1.....18053

27 CFR

1.....16918

4.....16918
5.....16918
6.....16918
7.....16918
8.....16918
9.....16918
10.....16918
11.....16918
12.....16918
13.....16918
16.....16918
17.....16918
18.....16918
19.....16918
20.....16918
21.....16918
22.....16918
24.....16918
25.....16918
26.....16918
27.....16918
28.....16918
29.....16918
30.....16918
31.....16918
40.....16918
44.....16918
45.....16918
46.....16918
53.....16918
70.....16918
71.....16918

28 CFR

Proposed Rules:
540.....16520

29 CFR

11.....16664
500.....16664
501.....16664
516.....16664
519.....16664
531.....16664
536.....16664
547.....16664
548.....16664
549.....16664
550.....16664
552.....16664
570.....16664
1910.....16669
1913.....16669
1915.....16669
1926.....16669

30 CFR

28.....16664
48.....16664
50.....16664
56.....16664
57.....16664
70.....16664
71.....16664
72.....16664
75.....16664
77.....16664
90.....16664
250.....16859

Proposed Rules:
205.....17774
942.....17682

31 CFR

500.....17345

32 CFR

578.....17276
706.....17346, 17347
2004.....18007

33 CFR

100.....16488, 17703, 18213
117.....16489, 16491, 16492, 17348, 17350

Proposed Rules:
100.....16525, 18055
117.....16527, 16529, 17394, 17397
165.....16531, 18256

36 CFR

251.....16614, 16622

Proposed Rules:
Ch. I.....16534
7.....17777

37 CFR

Proposed Rules:
1.....17399

38 CFR

20.....18008

40 CFR

18.....16699
51.....17003, 17705
52.....18216, 18219
63.....17352, 17712, 17720, 17729, 17738
80.....16492
81.....17750
82.....18219
93.....17003
180.....17009, 17014
194.....18010
260.....16862
261.....16862
264.....16862
265.....16862
266.....16862
268.....16862
270.....16862
271.....16862
761.....16703

Proposed Rules:
18.....16728
50.....16534
51.....16534, 17047
52.....17050, 18258
60.....17401
80.....16535
82.....18259, 18262
93.....17047
278.....16729
721.....18055
745.....17409

42 CFR

410.....17021

Proposed Rules:
405.....17052
412.....17052
422.....17052
489.....17052

43 CFR

10.....16500

44 CFR

64.....16704, 16708

Proposed Rules:
67.....16749

46 CFR

401.....16501

47 CFR

73.....17030, 17031, 17032

Proposed Rules:
1.....17410
90.....17786

49 CFR

523.....17566
533.....17566
537.....17566
571.....17752

Proposed Rules:
544.....16541
604.....18056

50 CFR

223.....17757
229.....17358, 17360
660.....17985, 18227
665.....17985
679.....17362, 18021, 18230

Proposed Rules:
216.....17790
17.....18456
20.....18562
622.....17062

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 11, 2006

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cherries (sweet) grown in—
Washington; published 4-10-06
Nectarines and peaches grown in—
California; published 4-10-06
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; published 4-11-06
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; published 4-11-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Export programs:
Commodities procurement for foreign donation; Open for comments until further notice; published 12-16-05 [FR E5-07460]
AGRICULTURE DEPARTMENT
Rural Housing Service
Direct single family housing loans and grants; payment assistance; comments due by 4-18-06; published 2-17-06 [FR 06-01349]
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Hawaii-based shallow-set longline fishery; comments due by 4-19-06; published 3-22-06 [FR 06-02801]
DEFENSE DEPARTMENT
Defense Acquisition Regulations System
Acquisition regulations:
Government property reports; comments due by 4-20-06; published 3-21-06 [FR E6-03993]
ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Ambient air quality standards, national—
Particulate matter; comments due by 4-17-06; published 1-17-06 [FR 06-00179]
Particulate matter; comments due by 4-17-06; published 1-17-06 [FR 06-00177]
Air quality implementation plans; approval and promulgation; various States:
Indiana; comments due by 4-21-06; published 3-22-06 [FR 06-02694]
Missouri; comments due by 4-21-06; published 3-22-06 [FR E6-04146]
Nevada; comments due by 4-21-06; published 3-22-06 [FR 06-02696]
Oregon; comments due by 4-21-06; published 3-22-06 [FR 06-02698]
Solid waste:
State underground storage tank program approvals—
Pennsylvania; comments due by 4-17-06; published 3-17-06 [FR 06-02480]
Toxic Substances:
Lead; renovation, repair, and painting program; hazard exposure reduction
Lead paint test kit development; comments due by 4-17-06; published 3-16-06 [FR E6-03824]
FARM CREDIT ADMINISTRATION
Farm credit system:
Federal Agricultural Mortgage Corporation, disclosure and reporting requirements; risk-based capital requirements; revision; comments due by 4-17-06; published 2-13-06 [FR E6-01959]
FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Kansas and Oklahoma; comments due by 4-17-06; published 3-15-06 [FR E6-03731]
FEDERAL ELECTION COMMISSION
Rulemaking petitions:
AFL-CIO, et al.; comments due by 4-17-06; published 3-16-06 [FR E6-03810]
HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Cleveland, OH; comments due by 4-21-06; published 3-22-06 [FR E6-04098]
Morehead City Harbor, NC; comments due by 4-17-06; published 3-22-06 [FR E6-04097]
Regattas and marine parades:
Dragon Boat Races; comments due by 4-20-06; published 3-21-06 [FR E6-04017]
Pepsi Americas' Sail 2006; Beaufort Harbor, NC; comments due by 4-21-06; published 3-22-06 [FR E6-04089]
INTERIOR DEPARTMENT
Fish and Wildlife Service
Marine mammals:
Incidental taking during specified activities; comments due by 4-21-06; published 3-22-06 [FR 06-02784]
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Grants:
National Historical Publications and Records Commission Program; comments due by 4-18-06; published 2-17-06 [FR E6-02303]
NUCLEAR REGULATORY COMMISSION
Contractors and subcontractors discriminating against employees in protected activities; civil penalty authority; clarification; comments due by 4-17-06; published 1-31-06 [FR E6-01211]
Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
Approved spent fuel storage casks; list; comments due by 4-20-06; published 3-21-06 [FR 06-02715]
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 4-21-06; published 3-27-06 [FR E6-04402]
Boeing; comments due by 4-21-06; published 3-7-06 [FR E6-03221]
Bombardier; comments due by 4-21-06; published 3-27-06 [FR E6-04400]
Gulfstream; comments due by 4-17-06; published 3-21-06 [FR E6-04050]
Raytheon; comments due by 4-21-06; published 3-7-06 [FR E6-03219]
Class E airspace; comments due by 4-17-06; published 3-3-06 [FR E6-03072]
TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Partnerships: treatment of controlled foreign corporation's distributive share of partnership income; guidance under subpart F; comments due by 4-17-06; published 1-17-06 [FR E6-00356]
TREASURY DEPARTMENT
Thrift Supervision Office
Federal savings association bylaws; integrity of directors; comments due by 4-17-06; published 2-14-06 [FR E6-02003]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html.* Some laws may not yet be available.

H.R. 4911/P.L. 109–212
Higher Education Extension Act of 2006 (Apr. 1, 2006; 120 Stat. 321)

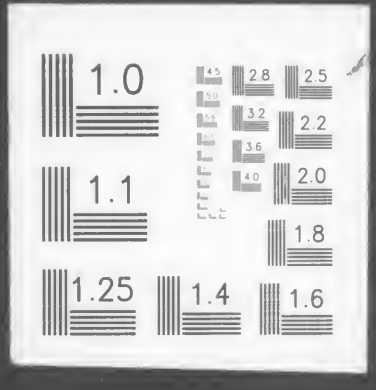
Last List March 27, 2006

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

Printed on recycled paper


1.0
1.1
1.25
1.4
1.6
1.8
2.0
2.2
2.5
2.8
3.2
3.6
4.0
4.5
5.0