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2–21–06 Tuesday
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Federal Register
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Tuesday, February 21, 2006

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 307

RIN 3064–AC93

Certification of Assumption of Deposits and Notification of Changes of Insured Status

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting a final rule which clarifies and simplifies the procedures to be used when all of the deposit liabilities of an insured depository institution have been assumed by another insured depository institution or institutions. The final regulation would modify the current rule's requirements by: Making clear that an insured institution is required to file a "certification" when all of its deposits are assumed, but no certification is required if only a portion of its deposits are assumed; and requiring that the transferring institution, or its legal successor, file the certification rather than the assuming institution. The rule also clarifies that the transferring institution's status as an insured institution automatically terminates upon the FDIC's receipt of an accurate certification stating that: All of its deposits have been assumed by an insured depository institution or institutions, and the legal authority of the transferring institution to accept deposits has been terminated contemporaneously with the deposit assumption. In such a situation, and in a situation in which the FDIC has been appointed receiver of an insured institution, little practical purpose would be served by an order terminating deposit insurance, and the final rule provides that no such order will be issued in such situations. Finally, the rule would provide more specificity concerning how notice is given to depositors when an insured depository institution voluntarily terminates its insured status without the assumption of all of its deposits by an insured institution. In sum, the revisions would make the insurance termination process somewhat easier for insured depository institutions, and somewhat more efficient for the FDIC.

DATES: This rule will be effective on March 23, 2006.

FOR FURTHER INFORMATION CONTACT: Donald R. Hamm, Review Examiner, Division of Supervision and Consumer Protection, (202) 898–3528; Thomas Nixon, Counsel, Legal Division, (202) 898–8766; Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

On October 14, 2005, the FDIC published a notice of proposed rulemaking concerning its Part 307 (12 CFR) "Notification of Changes in Insured Status." (70 FR 60015) The rule currently has two sections. Section 307.1 applies to situations where one or more insured institutions have assumed the deposit liabilities of another insured institution. Section 307.2 applies to situations where an insured institution seeks to terminate its insured status without its deposit liabilities being assumed. The FDIC received no comments in response to the notice of proposed rulemaking. The FDIC has determined to make its October 2005 proposed revision to Part 307 final. A section-by-section analysis follows.

II. Revised Caption; New Section 307.1—Scope and Purpose

The caption of the Part would be changed from "Notification of Changes of Insured Status" to "Certification of Assumption of Deposits and Notification of Changes of Insured Status" to make it more descriptive of the Part's content and alert institutions that the Part addresses deposit assumptions as well as changes in insured status.

The current Part 307 does not have a scope and purpose section. In addition, since Part 307 had not been revised since 1983, §§ 307.1 and 307.2 continued to refer to an "insured bank" rather than to an "insured depository institution," consistent with the changes made to the FDIC's responsibilities and terminology by sections 201 and 202 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.[1] The final rule adds a new § 307.1 to describe the purpose of the Part and to indicate that the Part applies to insured depository institutions as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2), FDI Act). The existing §§ 307.1 and 307.2 are redesignated as §§ 307.2 and 307.3, respectively.

III. Section 307.2—Certification of Assumption of Deposit Liabilities

The current section 307.1 implements section 8(q) of the FDI Act (12 U.S.C. 1818(q)), which states:

> Whenever the liabilities of an insured depository institution for deposits shall have been assumed by another insured depository institution or depository institutions, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract
>
> (1) The insured status of the depository institution whose liabilities are so assumed shall terminate on the date of receipt by the Corporation of satisfactory evidence of such assumption;
>
> (2) The separate insurance of all deposits so assumed shall terminate at the end of six months from the date such assumption takes effect or, in the case of any time deposit, the earliest maturity date after the six-month period * * *

All assumptions of insured deposit liabilities, whether a "total" assumption of all the transferring institution's deposits or an assumption of only a portion of its deposits (a "partial" assumption), by an insured institution are subject to the Bank Merger Act and require the prior written approval of the "responsible agency."[2] The responsible agency is the primary Federal regulator of the assuming institution.

The present section 307.1 requires the institution assuming deposits to certify to the FDIC that it has assumed the deposits. It does not specify whether a certification is required only where a total deposit assumption occurs or

[1] Pub. L. 101–73, 103 Stat. 103.

[2] FDI Act section 18(c)(2), (12 U.S.C. 1828(c)(2)), reads as follows:

> No insured depository institution shall merge or consolidate with any other insured depository institution or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured depository institution except with the prior written approval of the responsible agency * * *

whether a certification is also required for a partial deposit assumption, for example, when a single branch of an institution is sold. This rule clarifies that a certification is required only when there has been a total assumption of deposits. No certification is required in the case of a partial transfer of deposits. Clarifying that no certification is necessary for a partial assumption is consistent with the FDIC's goal of reducing regulatory burden pursuant to Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 [3] while obtaining sufficient information for the proper implementation of section 8(q) of the FDI Act.

There may be situations in which an insured depository institution disposes of all of its deposits through a series of simultaneous partial deposit assumptions involving multiple assuming institutions, rather than through a single total deposit assumption by one assuming institution. An example of this would be where all of the deposits of a transferring institution were assumed through a series of branch acquisitions by different assuming institutions that occurred on the same day. Viewed cumulatively, these partial assumptions would amount to a total assumption of the deposits of the transferring institution making certification necessary. In this situation, this final rule would require that the transferring institution file a certification.

The current section 307.1 also does not distinguish between a deposit assumption involving operating institutions versus an assumption involving an institution in default and in FDIC receivership. The FDIC plays an integral role in the transfer and assumption of deposit liabilities when it is appointed as receiver for an insured depository institution in default, and has in its possession information regarding the deposit transfer and assumption transaction. Section 307.2(a) of this final rule creates an explicit exception from the certification requirement when the deposit liabilities are being transferred from an insured depository institution in default and the FDIC has been appointed as receiver.

Who must make the certification. As noted, the current section 307.1 requires the assuming institution to provide certification to the FDIC. This final rule requires the transferring institution, or its legal successor ("transferring institution"), to make the certification. Generally, an institution transferring deposit liabilities will be in a better position than the assuming institution to know whether the transfer constitutes all of its deposits, thus triggering application of Part 307 and FDI Act section 8(q). This is particularly true in the case of an institution that transfers all of its deposit liabilities through multiple transfers to a variety of assuming institutions. In such a situation, it may be difficult for the assuming institutions to have sufficient knowledge of key facts in order to make certifications that make clear whether the transferring institution continues to hold insured deposits. In a merger or consolidation there may be only one surviving entity which is the legal successor to both the transferring and assuming institutions. In such instances, that surviving entity would provide any required certification.

Content and form of the certification. Section 307.2(b) of this final rule establishes the certification's content. The requirements are similar to the current section 307.1 but clarify certain issues, such as where certifications should be filed with the FDIC, and the need for the certification to be on the letterhead of the transferring institution or its legal successor and to be signed by an authorized official. The rule also requires an institution that is contemporaneously relinquishing its authority to engage in the business of receiving deposits to provide the date that its authority terminated (or will terminate) as well as the method of termination (*e.g.*, whether by the surrender of its charter, the cancellation of its charter or license to conduct a banking business, or otherwise). As discussed below, this information will be used by the FDIC to evaluate the need to issue an order terminating insurance. To assist the industry with compliance, the rule provides a template (Appendix A) that may be used to satisfy the section 307.2 certification requirements.

Evidence of Assumption. Similar to the current section 307.1, section 307.2(d) of this final rule states that the receipt by the FDIC of an accurate certification for a total assumption as required by paragraphs (a), (b) and (c) of section 307.2 shall constitute satisfactory evidence of such deposit assumption, as required by section 8(q) of the FDI Act, and the insured status of the transferring institution shall terminate on the date of the receipt of the certification. The term "accurate" has been included to indicate that a materially inaccurate certification will not trigger the automatic termination of the transferring institution's insured status. Section 307.2(d) allows the FDIC to consider other evidence, in addition to a certification, of a total deposit assumption to constitute satisfactory evidence of an assumption for the purposes of section 8(q).

Issuance of an Order. As noted in the October 2005 notice of proposed rulemaking, section 8(q) can be construed as automatically terminating an institution's insured status upon the FDIC's receipt of satisfactory evidence of a total assumption. The FDIC did not generally issue orders terminating the insured status of transferring institutions before 1983 when the rule was last revised, and the current section 307.1 does not discuss the issuance of such orders. In most cases of total deposit assumptions, the transferring institution's authority to engage in banking is contemporaneously cancelled. In such a situation, an FDIC order terminating insurance has no practical effect and is unnecessary. Accordingly, under this final rule no order terminating an institution's insured status will generally be issued when the transferring institution's authority to engage in banking is cancelled contemporaneously (*i.e.*, generally within five business days after all deposits have been assumed). The rule also will not require orders when deposits are transferred and assumed after a default when the FDIC has been appointed as receiver of an insured institution.

The rule does provide for the issuance of an FDIC order terminating the insured status of a transferring institution in the relatively limited circumstance in which a total transfer of deposit liabilities has occurred but the transferring institution's charter is not contemporaneously cancelled (the proposed rule had referred to this as an order confirming the termination of insurance). Absent the entry of an order terminating insured status, an institution in such a situation might attempt to resume accepting deposits sometime after the assumption transaction occurs. An institution might also attempt to sell its charter, which could allow what is in fact a new entity to conduct banking operations without FDIC review and approval.[4]

IV. Section 307.3—Notice to Depositors When Insurance Is Voluntarily Terminated and Deposits Are Not Assumed

An insured depository institution that proposes to voluntarily terminate its insured status without transferring all of its deposits to an FDIC-insured

[3] Pub. L. 104–208, Sept. 30, 1996, 12 U.S.C. 3311.

[4] Such a sale would require prior approval by the primary Federal regulator under the Bank Merger Act or the Change in Bank Control Act.

institution must obtain the FDIC's permission.[5] The current § 307.2 requires an insured bank or insured branch of a foreign bank seeking to voluntarily terminate its insured status, but whose deposits will not be assumed by another insured depository institution, to provide notice to its depositors of the date its insured status will terminate. A copy of this notice must be provided to and approved by the appropriate Regional Director of the Division of Supervision and Consumer Protection prior to the notice being distributed to the institution's depositors. This final rule clarifies that the notice must be on the institution's letterhead, signed by a duly authorized officer and sent to the depositor's last known address on the institution's books. To assist the industry with compliance, the rule provides a template (Appendix B) that may be used to satisfy the section 307.3 certification requirements.

V. Regulatory Analysis and Procedure

A. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The collection of information contained in this rule was submitted to OMB for review and was approved under control number 3064–0124, which will expire on December 31, 2008.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FDIC certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule will reduce regulatory burden by eliminating the need for a certification to be filed with the FDIC when the liability for some, but not all, of the deposits of an insured institution are transferred to another institution. A certification requires a minimal amount of time and resources since it reports information readily available to the institution making the certification.

[5] FDI Act section 18(i)(3), 12 U.S.C. 1828(i)(3). This rule does not affect the requirements for FDIC approval of voluntary deposit insurance terminations under sections 8(a) and 8(p) of the FDI Act or for prior written consent for the conversion of an insured depository institution into a noninsured bank or institution as required by section 18(i)(3).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Title II, Pub. L. 104–121) provides generally for agencies to report rules to Congress and the General Accounting Office (GAO) for review. The reporting requirement is triggered when a Federal agency issues a final rule. The FDIC will file the appropriate reports with Congress and the GAO as required by SBREFA. The Office of Management and Budget has determined that the rule does not constitute a "major rule" as defined by SBREFA.

List of Subjects in 12 CFR Part 307

Bank deposit insurance, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board of Directors of the FDIC hereby revises Part 307 of Title 12 of the Code of Federal Regulations to read as follows:

PART 307—CERTIFICATION OF ASSUMPTION OF DEPOSITS AND NOTIFICATION OF CHANGES OF INSURED STATUS

Sec.

Authority: 12 U.S.C. 1818(a)(6); 1818(q); and 1819(a) [Tenth].

§ 307.1 Scope and purpose.

(a) *Scope.* This Part applies to all insured depository institutions, as defined in section 3(c)(2) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1813(c)(2)).

(b) *Purpose.* This Part sets forth the rules governing:

(1) The time and manner for providing certification to the FDIC regarding the assumption of all of the deposit liabilities of an insured depository institution by one or more insured depository institutions; and

(2) The notification that an insured depository institution shall provide its depositors when a depository institution's insured status is being voluntarily terminated without its deposits being assumed by one or more insured depository institutions.

§ 307.2 Certification of assumption of deposit liabilities.

(a) *When certification is required.* Whenever all of the deposit liabilities of an insured depository institution are assumed by one or more insured depository institutions by merger, consolidation, other statutory assumption, or by contract, the transferring insured depository institution, or its legal successor, shall provide an accurate written certification to the FDIC that its deposit liabilities have been assumed. No certification shall be required when deposit liabilities are assumed by an operating insured depository institution from an insured depository institution in default, as defined in section 3(x)(1) of the FDI Act (12 U.S.C. 1813(x)(1)), and that has been placed under FDIC receivership.

(b) *Certification requirements.* The certification required by paragraph (a) of this section shall be provided on official letterhead of the transferring insured depository institution or its legal successor, signed by a duly authorized official, and state the date the assumption took effect. The certification shall indicate the date on which the transferring institution's authority to engage in banking has terminated or will terminate as well as the method of termination (e.g., whether by the surrender of its charter, by the cancellation of its charter or license to conduct a banking business, or otherwise). The certification may follow the form contained in Appendix A of this part. In a merger or consolidation where there is only one surviving entity which is the legal successor to both the transferring and assuming institutions, the surviving entity shall provide any required certification.

(c) *Filing.* The certification required by paragraph (a) of this section shall be provided within 30 calendar days after the assumption takes effect, and shall be submitted to the appropriate Regional Director of the FDIC's Division of Supervision and Consumer Protection, as defined in 12 CFR 303.2(g).

(d) *Evidence of assumption.* The receipt by the FDIC of an accurate certification for a total assumption as required by paragraphs (a), (b) and (c) of this section shall constitute satisfactory evidence of such deposit assumption, as required by section 8(q) of the FDI Act (12 U.S.C. 1818(q)), and the insured status of the transferring institution shall terminate on the date of the receipt of the certification. In appropriate circumstances, the FDIC, in its sole discretion, may require additional information, or may consider other evidence of a deposit assumption to

constitute satisfactory evidence of such assumption for purposes of section 8(q).

(e) *Issuance of an order.* The Executive Secretary, upon request from the Director of the Division of Supervision and Consumer Protection and with the concurrence of the General Counsel, or their respective designees, shall issue an order terminating the insured status of the transferring insured depository institution as of the date of receipt by the FDIC of satisfactory evidence of such assumption, pursuant to section 8(q) of the FDI Act and this regulation. Generally, no order shall be issued, under this paragraph, and insured status shall be cancelled by operation of law:

(1) If the charter of the transferring institution has been cancelled, revoked, rescinded, or otherwise terminated by operation of applicable state or federal statutes or regulations, or by action of the chartering authority for the transferring institution essentially contemporaneously, that is, generally within five business days after all deposits have been assumed; or

(2) If the transferring institution is an insured depository institution in default and for which the FDIC has been appointed receiver.

§ 307.3 Notice to depositors when insured status is voluntarily terminated and deposits are not assumed.

(a) *Notice required.* An insured depository institution that has obtained authority from the FDIC to terminate its insured status under sections 8(a), 8(p) or 18(i)(3) of the FDI Act without its deposit liabilities being assumed by one or more insured depository institutions shall provide to each of its depositors, at the depositor's last known address of record on the books of the institution, prior written notification of the date the institution's insured status shall terminate.

(b) *Prior approval of notice.* The insured depository institution shall provide the appropriate Regional Director of the FDIC's Division of Supervision and Consumer Protection, as defined in 12 CFR 303.2(g), a copy of the proposed notice for approval. After being approved, the notice shall be provided to depositors by the insured depository institution at the time and in the manner specified by the appropriate Regional Director.

(c) *Form of notice.* The notice to depositors required by paragraph (a) of this section shall be provided on the official letterhead of the insured depository institution, shall bear the signature of a duly authorized officer, and, unless otherwise specified by the appropriate Regional Director, may follow the form of the notice contained in Appendix B of this part.

(d) *Other requirements possible.* The FDIC may require the insured depository institution to take such other actions as the FDIC considers necessary and appropriate for the protection of depositors.

Appendix A to Part 307—Transferring Institution Letterhead

[Date]

[Name and Address of appropriate FDIC Regional Director]

SUBJECT: *Certification of Total Assumption of Deposits*

This certification is being provided pursuant to 12 U.S.C. 1818(q) and 12 CFR 307.2. On [*state the date the deposit assumption took effect*], [*state the name of the depository institution assuming the deposit liabilities*] assumed all of the deposits of [*state the name and location of the transferring institution whose deposits were assumed*]. [If applicable, state the date and method by which the transferring institution's authority to engage in banking was or will be terminated.] Please contact the undersigned, at [*telephone number*], if additional information is needed.

Sincerely,

By:

[Name and Title of Authorized Representative]

Appendix B to Part 307—Institution Letterhead

[Date]

[Name and Address of Depositor]

SUBJECT: *Notice to Depositor of Voluntary Termination of Insured Status*

The insured status of [*name of insured depository institution*], under the provisions of the Federal Deposit Insurance Act, will terminate as of the close of business on [*state the date*] ("termination date"). Insured deposits in the [*name of insured depository institution*] on the termination date, less all withdrawals from such deposits made subsequent to that date, will continue to be insured by the Federal Deposit Insurance Corporation, to the extent provided by law, until [*state the date*]. The Federal Deposit Insurance Corporation will not insure any new deposits or additions to existing deposits made by you after the termination date.

This Notice is being provided pursuant to 12 CFR 307.3.

Please contact [*name of institution official in charge of depositor inquiries*], at [*name and address of insured depository institution*] if additional information is needed regarding this Notice or the insured status of your account(s).

Sincerely,

By:

[Name and Title of Authorized Representative]

By order of the Board of Directors, at Washington, DC, on this 10th day of February, 2006.

Federal Deposit Insurance Corporation.

Robert Feldman,

Executive Secretary.

[FR Doc. 06–1568 Filed 2–17–06; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23935; Directorate Identifier 2005–NM–060–AD; Amendment 39–14492; AD 2006–04–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A321–100 Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Airbus Model A321–111, –112, and –131 series airplanes. That AD currently requires repetitive inspections to detect fatigue cracking in the area surrounding certain attachment holes of the forward pintle fittings of the main landing gear (MLG) and the actuating cylinder anchorage fittings on the inner rear spar; and repair, if necessary. The existing AD also provides for optional terminating action for the repetitive inspections. This AD adds inspections of three additional mounting holes and revises the thresholds for the currently required inspections. This AD results from manufacturer analysis of the fatigue and damage tolerance of the area surrounding certain mounting holes of the MLG. We are issuing this AD to detect and correct fatigue cracking on the inner rear spar of the wings, which could result in reduced structural integrity of the airplane.

DATES: This AD becomes effective March 8, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 8, 2006.

The incorporation by reference of Airbus Service Bulletin A320–57–1101, Revision 02, dated October 25, 2001, as listed in the regulations, was approved previously by the Director of the Federal Register as of April 21, 2004 (69 FR 17906, April 6, 2004).

The incorporation by reference of Airbus Service Bulletin A320–57–1101, dated July 24, 1997, as listed in the regulations, was approved previously by the Director of the Federal Register as of December 18, 1998 (63 FR 66753, December 3, 1998).

We must receive comments on this AD by April 24, 2006.

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

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

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

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

SUPPLEMENTARY INFORMATION:

Discussion

On March 25, 2004, we issued AD 2004–07–15, amendment 39–13559 (69 FR 17906, April 6, 2004), for certain Airbus Model A321–111, –112, and –131 series airplanes. That AD requires repetitive inspections to detect fatigue cracking in the area surrounding certain attachment holes of the forward pintle fittings of the main landing gear (MLG) and the actuating cylinder anchorage fittings on the inner rear spar; and repair, if necessary. That AD also provided for optional terminating action for the repetitive inspections. That AD resulted from a fleet survey by the manufacturer. We issued that AD to detect and correct fatigue cracking on the inner rear spar of the wings, which could result in reduced structural integrity of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2004–07–15, Airbus conducted further analysis of the fatigue and damage tolerance of the mounting holes of the inner rear spar of the wing. The results of the analysis revealed that three more mounting holes require inspection and that it is necessary to decrease the thresholds of the repetitive inspections already required by AD 2004–07–15.

Relevant Service Information

Airbus has issued Service Bulletin (SB) A320–57–1101, Revision 04, dated November 22, 2004. (AD 2004–07–15 refers to Airbus SB A320–57–1101, dated July 24, 1997; and Revision 02, dated October 25, 2001; as appropriate sources of service information for the actions required by that AD.) SB A320–57–1101, Revision 04, describes procedures for performing repetitive ultrasonic inspections for fatigue cracking in the area around certain mounting holes on the inner rear spar of the wings. The thresholds specified in SB A320–57–1101, Revision 04, have been reduced from those specified in SB A320–57–1101, Revision 02; and from those thresholds specified in Airbus SB A320–57–1101, Revision 03, dated July 30, 2003, which added three additional mounting holes to the area subject to the repetitive inspections. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, mandated SB A320–57–1101, Revision 03, and issued French airworthiness directive F–2004–166, dated October 13, 2004, to ensure the continued airworthiness of these airplanes in France. Airbus SB A320–57–1101, Revision 04—which was released after the issuance of French airworthiness directive F–2004–166—is also acceptable for accomplishing the requirements of this AD.

We have reviewed later revisions of Airbus SB A320–57–1100, dated July 28, 1997, which is designated as the appropriate source of information for accomplishing the optional terminating action specified in paragraph (b) of AD 2004–07–15. Those later revisions are Airbus SB A320–57–1100, Revision 01, dated June 4, 1999; Revision 02, dated October 25, 2001; and Revision 03, dated January 16, 2003. Though not specified in AD 2004–07–15, SB A320–57–1100 includes Appendix 01 only, while SB A320–57–1100, Revisions 01, 02, and 03 include Appendices 01 and 02. Any revision of SB A320–57–1100 is considered an acceptable source of service information for accomplishing the optional terminating action specified in paragraph (b) of AD 2004–07–15, which is restated as paragraph (g) of this AD.

FAA's Determination and Requirements of This AD

This airplane model is manufactured in France 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 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 products of this type design that are certificated for operation in the United States.

We are issuing this AD to supersede AD 2004–07–15. This new AD continues to require repetitive inspections to detect fatigue cracking in the area surrounding certain attachment holes of the forward pintle fittings of the MLG and the actuating cylinder anchorage fittings on the inner rear spar; and repair, if necessary; and additional inspections and repairs, if necessary; as specified in the service information described previously; except as discussed under "Difference Between French Airworthiness Directive and This AD" and "Differences Between This AD and Service Information."

Difference Between French Airworthiness Directive and This AD

The applicability of French airworthiness directive F–2004–166 excludes airplanes on which Airbus SB A320–57–1100 was accomplished in service. However, we have not excluded those airplanes in the applicability of this AD; rather, this AD includes a requirement to accomplish the actions specified in SB A320–57–1101, Revision 04, and provides for doing SB A320–57–1100 as an optional terminating action for the actions in SB A320–57–1101. This requirement will ensure that the actions specified in SB A320–57–1101, Revision 04, are accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this AD unless an alternative method of compliance (AMOC) is approved.

Differences Between This AD and Service Information

Airbus SB A320–57–1101, Revision 04, does not describe any method or service information to be used to repair any crack discovered during any inspection specified by the service information. Therefore, this AD requires operators to use a repair method that we

or the DGAC (or its delegated agent) approve.

Although the service bulletins describe procedures for reporting inspection findings to Airbus, this AD does not require such a report.

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.

Change to Existing AD

This AD would retain certain requirements of AD 2004–07–15. Since AD 2004–07–15 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2004–07–15	Corresponding requirement in this proposed AD
Paragraph (a)	Paragraph (f).
Paragraph (b)	Paragraph (g).
Paragraph (c)	Paragraph (h).
Paragraph (d)	Paragraph (i).
Paragraph (e)	Paragraph (j).
Paragraph (f)	Paragraph (m).

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.

Costs of Compliance

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this AD currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, we consider that this AD is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

If an affected airplane is imported and placed on the U.S. Register in the future, it would require approximately 22 work hours to accomplish the required actions at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this AD would be $1,430 per airplane.

If an operator elects to accomplish the optional terminating action provided by this AD, it would take approximately 520 work hours to accomplish, at an average labor rate of $65 per work hour. The cost of required parts would be approximately $17,540 per airplane. Based on these figures, the cost impact of the optional terminating action would be $51,340 per airplane.

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

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–2006–23935; Directorate Identifier 2005–NM–060–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13559 (69 FR 17906, April 6, 2004) and by adding the following new airworthiness directive (AD):

2006–04–11 Airbus: Amendment 39–14492. Docket No. FAA–2006–23935; Directorate Identifier 2005–NM–060–AD.

Effective Date

(a) This AD becomes effective March 8, 2006.

Affected ADs

(b) This AD supersedes AD 2004–07–15.

Applicability

(c) This AD applies to Airbus Model A321–111, –112, and –131 airplanes, certificated in any category; all manufacturer serial numbers (MSN), except MSN 364 and 365; and except for those airplanes that have received Airbus Modification 24977 in production.

Unsafe Condition

(d) This AD results from manufacturer analysis of the fatigue and damage tolerance of the area surrounding certain mounting holes of the main landing gear (MLG). The FAA is issuing this AD to detect and correct fatigue cracking on the inner rear spar of the wings, 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.

Restatement of Requirements of AD 2004–07–15

Repetitive Inspections and Corrective Actions

(f) Prior to the accumulation of 20,000 total flight cycles, or within 120 days after December 18, 1998 (the effective date of AD 98–25–05, amendment 39–10928), whichever occurs later, perform an ultrasonic inspection to detect fatigue cracking in the area surrounding certain attachment holes of the forward pintle fittings of the MLG and the actuating cylinder anchorage fittings on the inner rear spar, in accordance with Airbus Service Bulletin A320–57–1101, dated July 24, 1997; or Revision 02, dated October 25, 2001.

(1) If no cracking is detected, prior to further flight, repair the sealant in the inspected areas and repeat the ultrasonic inspections thereafter at intervals not to exceed 7,700 flight cycles, until paragraph (g), (i), or (k) of this AD is accomplished.

(2) If any cracking is detected, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated agent).

Optional Terminating Action

(g) Accomplishment of visual and eddy current inspections to detect cracking in the area surrounding certain attachment holes of the forward pintle fittings of the MLG and the actuating cylinder anchorage fittings on the inner rear spar; follow-on corrective actions, as applicable; and rework of the attachment holes; in accordance with Airbus Service Bulletin A320–57–1100, including Appendix 01, dated July 28, 1997; or Revision 03, including Appendices 01 and 02, dated January 16, 2003; constitutes terminating action for the repetitive inspection requirements of this AD. Actions accomplished in accordance with Airbus Service Bulletin A320–57–1100, Revision 01, including Appendices 01 and 02, dated June 4, 1999; or Revision 02, including Appendices 01 and 02, dated October 25, 2001; are considered acceptable for compliance with the optional terminating action specified in this paragraph. If any cracking is detected during accomplishment of any inspection described in the service bulletin, and the service bulletin specifies to contact Airbus for appropriate action: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

Repetitive Inspections for Airplanes Not Previously Inspected Per Paragraph (f)

(h) For airplanes on which the initial inspection required by paragraph (f) of this AD has not been accomplished as of April 21, 2004 (the effective date of AD 2004–07–15): Accomplish the inspection required by paragraph (f) of this AD, at the earlier of the times specified in paragraphs (h)(1) and (h)(2) of this AD. If no cracking is found, repeat the inspection thereafter at intervals not to exceed 5,500 flight cycles or 10,200 flight hours, whichever occurs first, until paragraph (g) or (k) of this AD is accomplished. Accomplishment of this paragraph eliminates the need to accomplish repetitive inspections at the intervals required by paragraph (f)(1) of this AD.

(1) Prior to the accumulation of 20,000 total flight cycles.

(2) Prior to the accumulation of 37,300 total flight hours, or within 120 days after April 21, 2004, whichever occurs later.

Repetitive Inspections for Airplanes Previously Inspected Per Paragraph (f)

(i) For airplanes on which the initial inspection required by paragraph (f) of this AD has been accomplished as of April 21, 2004, and no cracking was found: Do the next inspection at the earlier of the times specified in paragraphs (i)(1) and (i)(2) of this AD, and repeat the inspection thereafter at intervals not to exceed 5,500 flight cycles or 10,200 flight hours, whichever occurs first, until paragraph (g) or (k) of this AD is accomplished. Accomplishment of this paragraph terminates the repetitive inspections required by paragraph (f)(1) of this AD.

(1) Within 7,700 flight cycles since the most recent inspection.

(2) At the later of the times specified in paragraph (i)(2)(i) or (i)(2)(ii) of this AD:

(i) Within 5,500 flight cycles or 10,200 flight hours since the most recent inspection, whichever occurs first.

(ii) Within 120 days after April 21, 2004.

Existing Repair

(j) If any cracking is detected during any inspection required by paragraph (h) or (i) of this AD: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

New Requirements of This AD

Initial and Repetitive Inspections

(k) Within the applicable compliance times specified by paragraph (k)(1), (k)(2), or (k)(3) of this AD, perform an ultrasonic inspection for cracking of the attachment holes of the MLG pintle fittings in the inner rear spar in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1101, Revision 03, dated July 30, 2003; or Revision 04, dated November 22, 2004. If no cracking is found, repeat the inspection thereafter at intervals not to exceed 5,500 flight cycles or 10,200 flight hours, whichever occurs first, until paragraph (g) of this AD is accomplished. Accomplishment of this paragraph terminates the repetitive inspections required by paragraphs (f)(1), (h), and (i) of this AD.

(1) For airplanes that have never been inspected in accordance with Airbus Service Bulletin A320–57–1101, dated July 24, 1997; or Revision 02, dated October 25, 2001: Before the accumulation of 20,000 total flight cycles or 37,300 total flight hours, whichever occurs first; or within 120 days after the effective date of this AD; whichever occurs later.

(2) For airplanes previously inspected in accordance with Airbus Service Bulletin A320–57–1101, dated July 24, 1997; or Revision 02, dated October 25, 2001, that have accumulated less than 18,900 total flight cycles or 35,300 total flight hours as of the effective date of this AD: Within 5,500 flight cycles or 10,200 flight hours, whichever occurs first, after the previous inspection performed in accordance with Airbus Service Bulletin A320–57–1101, Revision 02, dated October 25, 2001; or within 120 days after the effective date of this AD; whichever occurs later.

(3) For airplanes previously inspected in accordance with Airbus Service Bulletin A320–57–1101, dated July 24, 1997; or Revision 02, dated October 25, 2001, that have accumulated 18,900 or more flight cycles or 35,300 or more flight hours as of the effective date of this AD: Before the accumulation of 24,400 total flight cycles or 45,600 total flight hours, whichever occurs first; or within 120 days after the effective date of this AD; whichever occurs later.

New Repair

(l) If any crack is detected during any inspection required by paragraph (k) of this AD: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

No Reporting Requirement

(m) Although Airbus Service Bulletin A320–57–1101, Revision 02, dated October 25, 2001; and Revision 04, dated November 22, 2004: describe procedures for reporting inspection findings to Airbus, this AD does not require such a report.

Alternative Methods of Compliance (AMOCs)

(n)(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 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.

Related Information

(o) French airworthiness directive F–2004–166, dated October 13, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(p) You must use the service information specified in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 1.—ALL MATERIAL INCORPORATED BY REFERENCE

Airbus service bulletin	Revision level	Date
A320–57–1100, including Appendix 01	Original	July 28, 1997.
A320–57–1100, including Appendices 01 and 02	03	January 16, 2003.
A320–57–1101	Original	July 24, 1997.
A320–57–1101	02	October 25, 2001.
A320–57–1101	03	July 30, 2003.
A320–57–1101	04	November 22, 2004.

The optional terminating action specified in paragraph (g) of this AD should be done in accordance with the service bulletins specified in Table 2 of this AD.

TABLE 2.—OPTIONAL SERVICE BULLETINS

Airbus service bulletin	Revision level	Date
A320–57–1100, including Appendix 01	Original	July 28, 1997.
A320–57–1100, including Appendices 01 and 02	03	January 16, 2003.

(1) The Director of the Federal Register approved the incorporation by reference of the service bulletins specified in Table 3 of this AD, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 3.—NEW MATERIAL INCORPORATED BY REFERENCE

Airbus service bulletin	Revision level	Date
A320–57–1100, including Appendix 01	Original	July 28, 1997.
A320–57–1100, including Appendices 01 and 02	03	January 16, 2003.
A320–57–1101	03	July 30, 2003.
A320–57–1101	04	November 22, 2004.

(2) The incorporation by reference of Airbus Service Bulletin A320–57–1101, Revision 02, dated October 25, 2001, was approved previously by the Director of the Federal Register as of April 21, 2004 (69 FR 17906, April 6, 2004).

(3) The incorporation by reference of Airbus Service Bulletin A320–57–1101, dated July 24, 1997, was approved previously by the Director of the Federal Register as of December 18, 1998 (63 FR 66753, December 3, 1998).

(4) Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on February 9, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–1504 Filed 2–17–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30481; Amdt. No. 3155]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of

new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 21, 2006. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 21, 2006.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination:

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Ave., SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

For Purchase: Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription: Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) amends Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), which is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Code of Federal Regulations. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in an FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on February 10, 2006.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC Date	State	City	Airport	FDC No.	Subject
01/30/06	CT	WINDSOR LOCKS	BRADLEY INTL	6/1141	ILS OR LOC RWY 6, ILS RWY 6 (CAT II), ILS RWY 6 (CAT III), AMDT 36.
01/30/06	CT	WINDSOR LOCKS	BRADLEY INTL	6/1142	RNAV (GPS) RWY 6, AMDT 1.
01/30/06	CT	WINDSOR LOCKS	BRADLEY INTL	6/1143	COPTER ILS OR LOC RWY 6, ORIG.
01/31/06	NJ	MORRISTOWN	MORRISTOWN MUNI	6/1202	ILS RWY 23, AMDT 9.
02/02/06	OR	PORTLAND	PORT-HILLSBORO	6/1334	ILS OR LOC RWY 12, AMDT 8.
02/03/06	LA	HOUMA	HOUMA-TERREBONNE	6/1413	VOR RWY 12, AMDT 5A.
02/06/06	FM	YAP ISLAND	YAP INTL	6/1415	NDB RWY 25, ORIG.
02/06/06	FM	YAP ISLAND	YAP INTL	6/1417	NDB/DME RWY 25, ORIG.
02/06/06	FM	YAP ISLAND	YAP INTL	6/1418	NDB/DME RWY 7, AMDT 2.
02/06/06	FM	YAP ISLAND	YAP INTL	6/1419	NDB RWY 7, AMDT 2.
02/07/06	AL	MOBILE	MOBILE DOWNTOWN	6/1544	RNAV (GPS) RWY 36, ORIG.
02/07/06	AL	MOBILE	MOBILE DOWNTOWN	6/1545	RNAV (GPS) RWY 32, ORIG.
02/08/06	PR	AGUADILLA	RAFAEL HERNANDEZ	6/1574	VOR RWY 8, AMDT 6.
02/08/06	PR	AGUADILLA	RAFAEL HERNANDEZ	6/1575	VOR/DME RWY8, AMDT 2.
02/08/06	PR	AGUADILLA	RAFAEL HERNANDEZ	6/1576	RNAV (GPS) RWY 8, ORIG.

[FR Doc. 06–1482 Filed 2–17–06; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30480; Amdt. No. 3154]

Standard Instrument Approach Procedures, Weather Takeoff Minimums; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and/or Weather Takeoff Minimums for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 21, 2006. The compliance date for each SIAP and/or Weather Takeoff Minimums is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 21, 2006.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

For Purchase—Individual SIAP and Weather Takeoff Minimums copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs and Weather Takeoff Minimums mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), establishes, amends, suspends, or revokes SIAPs and/or Weather Takeoff Minimums. The complete regulatory description of each SIAP and/or Weather Takeoff Minimums is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, 8260–5 and 8260–15A. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs and/or Weather Takeoff Minimums, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs and/or Weather Takeoff Minimums but refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP and/or Weather Takeoff Minimums contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs and/or Weather Takeoff Minimums. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each

separate SIAP and/or Weather Takeoff Minimums as contained in the transmittal. Some SIAP and/or Weather Takeoff Minimums amendments may have been previously issued by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP, and/or Weather Takeoff Minimums amendments may require making them effective in less than 30 days. For the remaining SIAPs and/or Weather Takeoff Minimums, an effective date at least 30 days after publication is provided.

Further, the SIAPs and/or Weather Takeoff Minimums contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and/or Weather Takeoff Minimums, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and/or Weather Takeoff Minimums and safety in air commerce, I find that notice and public procedure before adopting these SIAPs and/or Weather Takeoff Minimums are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs and/or Weather Takeoff Minimums effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on February 10, 2006.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, under Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and Weather Takeoff Minimums effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective 13 April 2006*

Big Lake, AK, Big Lake, RNAV (GPS) RWY 7, Orig
Big Lake, AK, Big Lake, RNAV (GPS) RWY 25, Orig
Big Lake, AK, Big Lake, VOR RWY 7, Amdt 6
Burlington, CO, Kit Carson County, RNAV (GPS) RWY 15, Orig
Burlington, CO, Kit Carson County, GPS RWY 15, Orig, CANCELLED
Greeley, CO, Greeley-Weld County, RNAV (GPS) RWY 9, Orig
Greeley, CO, Greeley-Weld County, GPS RWY 9, Orig, CANCELLED
Miami, FL, Kendall-Tamiami Executive, RNAV (GPS) RWY 27L, Orig
Wabash, IN, Wabash Muni, NDB RWY 27, Amdt 12A, CANCELLED
Oscoda, MI, Oscoda-Wurtsmith, ILS OR LOC/DME RWY 24, Amdt 2
Lewistown, MT, Lewistown Muni, RNAV (GPS) RWY 7, Amdt 1
Miles City, MT, Frank Wiley Field, RNAV (GPS) RWY 4, Amdt 1
Fort Leonard Wood, MO, Waynesville Rgnl Arpt at Forney Field, RNAV (GPS) RWY 14, Orig,
Fort Leonard Wood, MO, Waynesville Rgnl Arpt at Forney Field, RNAV (GPS) RWY 32, Orig
Fort Leonard Wood, MO, Waynesville Rgnl Arpt at Forney Field, ILS OR LOC RWY 14, Orig
Fort Leonard Wood, MO, Waynesville Rgnl Arpt at Forney Field, GPS RWY 14, Orig-A, CANCELLED
Fort Leonard Wood, MO, Waynesville Rgnl Arpt at Forney Field GPS RWY 32, Orig-A, CANCELLED
Fort Leonard Wood, MO, Waynesville Rgnl Arpt at Forney Field LOC RWY 14, Orig-A, CANCELLED
York, NE, York Municipal, RNAV (GPS) RWY 17, Orig
York, NE, York Municipal, RNAV (GPS) RWY 35, Orig
York, NE, York Municipal, NDB RWY 17, Amdt 5
York, NE, York Municipal, NDB RWY 35, Amdt 4
York, NE, York Municipal, GPS RWY 17, Orig-B, CANCELLED
York, NE, York Municipal, GPS RWY 35, Orig-A, CANCELLED
Raleigh/Durham, NC, Raleigh-Durham Intl, ILS OR LOC RWY 23L, Amdt 7
Gwinner, ND, Gwinner-Roger Melroe Field, RNAV (GPS) RWY 16, Amdt 1
Gwinner, ND, Gwinner-Roger Melroe Field, RNAV (GPS) RWY 34, Amdt 1
Brookings, SD, Brookings Muni, RNAV (GPS) RWY 12, Orig
Brookings, SD, Brookings Muni, RNAV (GPS) RWY 30, Orig
Brookings, SD, Brookings Muni, GPS RWY 12, Orig, CANCELLED
Brookings, SD, Brookings Muni, GPS RWY 30, Orig, CANCELLED
Canadian, TX, Hemphill County, NDB RWY 4, Amdt 3, CANCELLED
Canadian, TX, Hemphill County, NDB RWY 22, Amdt 3, CANCELLED
Dumas, TX, Moore County, NDB OR GPS RWY 1, Amdt 3A, CANCELLED
Mineral Wells, TX, Mineral Wells, ILS OR LOC/DME RWY 31, Orig

The FAA published an Amendment in Docket No. 30478, Amdt No. 3152 to Part 97 of the Federal Aviation Regulations (Vol 71, FR No.26, pages 6345–7; dated Feb 8, 2006) under section 97.33 effective 16 MAR 2006, which is hereby rescinded:

Gwinner, ND, Gwinner-Roger Melroe Field, RNAV (GPS) RWY 16, Amdt 1
Gwinner, ND, Gwinner-Roger Melroe Field, RNAV (GPS) RWY 34, Amdt 1

The FAA published an Amendment in Docket No. 30478, Amdt No. 3152 to Part 97 of the Federal Aviation Regulations (Vol 71, FR No.26, pages 6345–7; dated Feb 8, 2006) under section 97.33 effective 13 APR 2006, which is hereby rescinded:

Chicago, IL, Chicago-Midway Intl, VOR/DME RNAV OR GPS RWY 22L, Amdt 3B, CANCELLED
Moline, IL, Quad City Intl, NDB RWY 9, Amdt 28, CANCELLED
Boston, MA, General Edward Lawrence Logan Intl, VOR/DME RNAV RWY 4R, Amdt 1 CANCELLED
Socorro, NM, Socorro Muni, NDB–B, Orig-A, CANCELLED
Idabel, OK, McCurtain County Regional, NDB–A, Orig, CANCELLED

[FR Doc. 06–1481 Filed 2–17–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 256

[Docket No. OST–2005–20826]

RIN 2105–AD44

Display of Joint Operations in Carrier-Owned Computer Reservations Systems Regulations (Part 256)

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department is eliminating its rule that currently prohibits each airline that owns, controls, or operates a computer reservations system ("CRS" or "system") from denying system access to two or more carriers whose flights share a single designator code and discriminating against any carrier because the carrier uses the same designator code as another carrier. The Department has determined that this rule is no longer necessary. This action is consistent with the Department's decision at the end of 2003 to eliminate its comprehensive rules governing system operations, 14 CFR part 255.

DATES: This rule is effective March 23, 2006.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St., SW., Washington, DC 20590, (202) 366–4731.

Electronic Access

You can view and download this document by going to the Web site of the Department's Docket Management System (*http://dms.dot.gov/*). On that page, click on "search." On the next page, type in the last five digits of the docket number shown on the first page of this document. Then click on "search." An electronic copy of this document also may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara/ index.html.*

SUPPLEMENTARY INFORMATION:

A. Background

Travel agents rely on airline computer reservations systems ("CRSs" or "the systems") to obtain information on airline flights and fares, to book airline seats, and to issue tickets (although the systems now are also commonly called global distribution systems, or GDSs, we are referring to them as CRSs for purposes of this rulemaking). *See, e.g.*, 67 FR 69366, 69370 (November 15, 2002). Each system provides information and booking capabilities on each airline that has agreed to make their services saleable through the system and to pay the fees required for participation. Until recent years, almost every airline obtained the large majority of its revenues from bookings made by travel agents using one of the systems. Each system was originally developed by an airline, and one or more airlines controlled each system until recently.

We have had two sets of CRS rules. The principal set of rules, 14 CFR part 255, set forth comprehensive requirements that governed the systems' relationships with their airline and travel agency customers until we terminated the rules in 2004. 69 FR 976 (January 7, 2004). Those rules covered any system that was owned or marketed by an airline or airline affiliate. 14 CFR 255.2. The other set, 14 CFR part 256, concerned the systems' treatment of airlines that share the same two-symbol designator code, the code used by the systems and other sources of airline information to identify the airline offering the seats being sold (the codes for America West and Alaska Airlines, for example, are HP and AS). These rules bar airlines that own, control, or operate a system from denying access to that system to two or more airlines whose flights share a single designator code and from discriminating against any airline because that airline uses the same designator code as another airline.

The Civil Aeronautics Board ("the Board"), the agency then responsible for the economic regulation of the airline industry, adopted both the comprehensive rules (Part 255) and the rules governing the treatment of code-sharing airlines (Part 256) in the same year, 1984, on the basis of a common economic and competitive analysis. 49 FR 12675 (March 30, 1984) (Part 256); 49 FR 32540 (August 15, 1984) (Part 255). The Board adopted the CRS regulations due to the systems' important role in the distribution of airline tickets and the systems' ownership by airlines, and we readopted the comprehensive rules in 1992 for the same reason. Like the Board, we based our readoption of the rules on 49 U.S.C. 41712, originally section 411 of the Federal Aviation Act, which authorized us (and earlier the Board) to prohibit unfair and deceptive practices and unfair methods of competition in the distribution of airline tickets.

B. Our Proposal to Eliminate the Rules on the Treatment of Code-Sharing Airlines and the Comments on That Proposal

When we again reexamined the need for the comprehensive rules in our most recent rulemaking, we concluded that they had become unnecessary, and we terminated all of them by July 31, 2004. 69 FR 976, 977 (January 7, 2004). Our decision that industry developments had ended the need to maintain the comprehensive rules suggested that we no longer had a basis for maintaining the rules on the systems' treatment of code-sharing airlines, Part 256. We began this rulemaking to examine whether the rules governing the treatment of code-sharing airlines remained necessary. 70 FR 16990 (April 4, 2005). We proposed to terminate those rules as well. We believed that those rules, like the comprehensive rules, had become unnecessary, primarily because the increasing importance of the Internet in airline distribution was reducing the systems' market power over airlines and because U.S. airlines had divested all of their CRS ownership interests. One of the systems, Amadeus, is owned in part by three European airlines, but it also has substantial public ownership, and its airline owners should have no incentive to prejudice airline competition within the United States. In addition, because these rules cover only airlines that own, control, or operate a system, and do not cover systems not owned, controlled, or operated by airlines, Amadeus had become the only system subject to these rules. Maintaining these rules seemed illogical when they did not cover the three largest systems operating within the United States. Finally, we tentatively found that the systems were unlikely to deny access to code-sharing airlines, or to discriminate against them, because code-sharing had become a widespread practice and travel agents would probably be unwilling to use systems that did not display airline services marketed under code-share arrangements. 70 FR 16992–16993.

The only two firms filing comments, Delta Air Lines and Amadeus Global Travel Distribution, support our proposal. Delta agrees with our findings that the rules have become unnecessary due to the U.S. airlines' divestiture of their system ownership interests and the ready access to airline information on the Internet for travel agents and consumers. Delta also cites the policy goal of relying on free market forces rather than regulation to obtain

transportation policy goals. Amadeus supports our finding that no system is likely to discriminate against airlines that code-share, because travel agents and consumers can easily obtain information and book code-share services through the Internet. Amadeus further agrees with our reasoning that the rules are irrational, because they exclude the three other systems from their coverage. Amadeus, however, does not agree that the ending of the systems' ownership by U.S. airlines by itself would have made CRS regulation unnecessary if the airline distribution business had not changed as it has.

C. The Final Rule

This final rule eliminates the rules governing the treatment of code-sharing airlines by systems owned, controlled, or operated by airlines because those rules are no longer necessary. As shown, the commenters agree that the rules should be eliminated and generally agree with our reasoning. Changes in the airline distribution business, particularly the growth of the Internet, and in the systems' ownership have made these rules unnecessary, just as those changes made the comprehensive rules unnecessary. Moreover, as we explained in our notice, systems are unlikely to engage in the conduct prohibited by the rules, which in any event cover only one of the four systems operating in the United States.

As we stated in our final rule terminating the comprehensive rules, we will take appropriate investigative, enforcement, or regulatory action against a system that apparently engages in unfair and deceptive practices or unfair methods of competition. 69 FR 977. We may take such action even if we do not have rules specifically regulating system practices. 69 FR 978. We determined, moreover, that each system is a ticket agent subject to our jurisdiction to prevent unfair and deceptive practices and unfair methods of competition in the airline and airline marketing businesses. 69 FR 995–998. The Court of Appeals has affirmed that determination. *Sabre, Inc.* v. *Department of Transportation*, D.C. Cir. No. 04–1073 (decided November 22, 2005).

Regulatory Process Matters

Regulatory Assessment and Unfunded Mandates Reform Act Assessment

1. Unfunded Mandates Reform Act Assessment

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal or private mandate likely to result in the expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

This rule will not result in expenditures by the private sector or by State, local, or tribal governments because we are eliminating the rules. In addition, no such government operates a system or airline that is or has been subject to our regulations.

2. Regulatory Assessment

Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), defines a significant regulatory action as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more, or that may 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. Regulatory actions are also considered significant if they are likely to create a serious inconsistency or interfere with the actions taken or planned by another agency, if they establish novel policy issues, or if they materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of the recipients of such programs.

The Department's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) outline similar definitions and requirements with the goal of simplifying and improving the quality of the Department's regulatory process. They state that a rule will be significant if it is likely to generate much public interest.

We believed that our proposed regulation was a significant regulatory action under the Executive Order, because CRS rules have long been a subject of public controversy. Our notice of proposed rulemaking set forth our tentative assessment of the likely costs and benefits for our proposal and invited comments on that assessment. The proposal was reviewed by the Office of Management and Budget under the Executive Order.

Our preliminary economic analysis sought to estimate the potential economic and competitive consequences of our proposed rules on computer reservations systems, airlines, and travel agencies and to evaluate the rules' benefits for the industry and the travelling public. We believed that the elimination of the rules should not harm airlines, travel agencies, or consumers, or have a material effect on firms in the airline or airline distribution businesses or on consumers. We reasoned that the industry conditions that originally caused the Civil Aeronautics Board to adopt the rules barring discrimination against code-sharing airlines no longer existed. No system is owned by a U.S. airline or airline affiliate, and no system should have an incentive to discriminate against code-share services. Because the Internet has given travel agents and consumers new sources of readily-available information on airline services and has created new channels for airlines for distributing their services, airlines are gaining more bargaining leverage with the systems. 70 FR 16993–16994.

We requested interested persons to provide us with detailed information on the potential consequences of our proposal, including its benefits, costs, and economic and competitive impacts. 70 FR 16994. No one has submitted comments on our tentative regulatory assessment, so we are making it final. The Office of Management and Budget has reviewed this rule under the Executive Order.

Initial Regulatory Flexibility Statement

Congress enacted the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The statute requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller U.S. and foreign airlines and smaller travel agencies.

Our notice of proposed rulemaking set forth the reasons for our rule proposal and its objectives and legal basis. We tentatively found that our proposed termination of the rules would not have a significant economic impact on a substantial number of small business entities. The rules impose obligations only on airlines that own, control, or operate a system, and none of the airlines that now own, or have owned, a system has been a small entity. While the rules could indirectly affect smaller airlines and travel agencies, which are small entities, because they may affect how code-share services are displayed in the systems used by travel agents, we tentatively found that eliminating the rules should have no significant impact on smaller airlines or travel agencies. The rules cover only one of the four systems operating in the United States, Amadeus, which has the smallest market share in the United States. No system would likely discriminate

against airlines that code-share, or deny access to airlines that code-share, because code-sharing has become a widespread practice since the Board adopted the rules and travel agents and airlines should have some ability to keep systems from discriminating against code-share services. 70 FR 16994. We invited interested persons to submit comments on these findings under the Regulatory Flexibility Act. No one submitted comments on our reasoning.

The Regulatory Flexibility Act requires us to publish a final regulatory flexibility analysis that considers such matters as the impact of a rule on small entities if the rule would have "a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). For the reasons stated above, I certify that the elimination of our rule on the treatment of code-share operations will not have a significant economic impact on a substantial number of small entities. No final regulatory flexibility analysis is therefore required for this action.

Our final rule contains no direct reporting, recordkeeping, or other compliance requirements that would affect small entities. There are no other federal rules that duplicate, overlap, or conflict with our proposed rules.

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 the proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the final rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Thomas Ray at (202) 366–4731.

Paperwork Reduction Act

The final rule contains no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law 96–511, 44 U.S.C. Chapter 35. *See* 57 FR at 43834.

Federalism Implications

Our final rule will have no substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, dated August 4, 1999, we have determined that it does not present sufficient federalism implications to warrant consultations with State and local governments.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Government 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 Heath Risks and Safety Risks. This rule does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Consultation and Coordination With Tribal Governments

This rule will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Therefore, it is exempt from the consultation requirements of Executive Order 13175. No tribal implications were identified during the comment period.

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 this is not classified as a "significant energy action" under that order because it is a "significant regulatory action" under Executive Order 12866 and it would not have a significant adverse effect on the supply, distribution, or use of energy.

Environment

This rule will have no significant impact on the environment.

List of Subjects in 14 CFR Part 256

Air carriers, Antitrust.

PART 256—[REMOVED AND RESERVED]

■ Accordingly the Department removes and reserves 14 CFR part 256.

Issued in Washington, DC, on February 8, 2006.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 06–1550 Filed 2–17–06; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9250]

RIN 1545–BD46

Application of Section 367 in Cross Border Section 304 Transactions; Certain Transfers of Stock Involving Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that address the interaction of section 304 and section 367. These regulations provide that section 367(a) and (b) do not apply to a deemed section 351 exchange resulting from a section 304(a)(1) transaction. These regulations may apply to taxpayers transferring stock to related foreign corporations.

DATES: *Effective Date:* This regulation is effective February 21, 2006.

Applicability Dates: For dates of applicability, see § 1.367(a)–3(e)(1)(G) and § 1.367(b)–6(a)(1).

FOR FURTHER INFORMATION CONTACT: Tasheaya L. Warren Ellison, (202) 622–3870 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2005, the IRS and Treasury published in the **Federal Register** a notice of proposed rulemaking (REG–127740–04; 2005–24 I.R.B. 1254; [70 FR 30036]) under section 367(a) and (b) of the Internal Revenue Code (proposed regulations) pursuant to the regulatory authority under section 367. The proposed regulations would provide that if, pursuant to section 304(a)(1), a U.S person is treated as transferring stock of a domestic or foreign corporation to a foreign corporation in exchange for stock of such foreign corporation in a transaction to which section 351(a) applies, such deemed section 351 exchange is not a transfer to a foreign corporation subject to section 367(a). The proposed regulations would further provide that if, pursuant to section

304(a)(1), a foreign corporation is treated as acquiring the stock of another foreign corporation in a transaction to which section 351(a) applies, such deemed section 351 exchange is not an acquisition subject to section 367(b).

A public hearing was not held with respect to the proposed regulations because no requests to speak were received. However, several written comments were received.

After consideration of the comments, the proposed regulations are adopted, as revised by this Treasury decision. The comments received and the revisions are discussed below.

Explanation of Provisions and Summary of Comments

A. Nonapplication of Section 367(a) and (b) to Deemed Section 351 Exchanges

Section 304(a)(1) generally provides that, for purposes of sections 302 and 303, if one or more persons are in control of each of two corporations and in return for property one of the corporations (the acquiring corporation) acquires stock in the other corporation (the issuing corporation) from the person (or persons) so in control, then such property shall be treated as a distribution in redemption of the acquiring corporation stock. To the extent the distribution is treated as a distribution to which section 301 applies, the transferor and the acquiring corporation are treated as if (1) the transferor transferred the stock of the issuing corporation to the acquiring corporation in exchange for stock of the acquiring corporation in a transaction to which section 351(a) applies, and (2) the acquiring corporation then redeemed the stock it is treated as having issued. Under section 301(c)(1), the distribution is first treated as a dividend to the extent of certain earnings and profits of the acquiring corporation and the issuing corporation. See sections 316 and 304(b). Then under section 301(c)(2) and (3), the remaining portion of the distribution is applied against and reduces the adjusted basis of the stock, and finally is treated as gain from the sale or exchange of property.

Section 367(a)(1) provides that if, in connection with certain nonrecognition transactions, including section 351, a United States person transfers property to a foreign corporation, such foreign corporation shall not, for purposes of determining the extent to which gain shall be recognized on such transfer, be considered to be a corporation. In addition, certain section 351 exchanges can cause the exchanging shareholder to include in income a deemed dividend under section 367(b). § 1.367(b)–4.

Under current law, certain section 304(a)(1) transactions can also be subject to section 367. The result of this overlapping application is considerable complexity, uncertainty, and the risk of multiple income inclusions. In such a transaction, a U.S. person could recognize income (dividend or capital gain) equal to the built-in gain in the stock of the issuing corporation under section 367, and income (dividend or capital gain) pursuant to section 304. The total income recognized could exceed the fair market value of the transferred stock of the issuing corporation.

The proposed regulations would exclude from the application of sections 367(a) and (b) a deemed section 351 exchange that arises by reason of a transaction described in section 304(a)(1). The IRS and the Treasury believe that the interests of the government are protected, and the policies underlying section 367(a) and (b) are preserved, in a section 304(a)(1) transaction without regard to the application of section 367. The IRS and Treasury believe that, in most or all cases, the income recognized in a section 304 transaction will equal or exceed the transferor's inherent gain in the stock of the issuing corporation transferred to the foreign acquiring corporation. Elimination of the application of section 367(a) and (b) in this context will also serve the interests of sound tax administration by creating greater certainty and simplicity in these transactions, and by avoiding the over-inclusion of income that could result when section 367 and section 304 both apply to such transactions. As a result, this Treasury decision finalizes the proposed regulations and makes section 367(a) and (b) inapplicable to deemed section 351 exchanges pursuant to section 304(a)(1) transactions.

Commentators did note that in certain cases, depending on how the basis and distribution rules are applied, the amount of income recognized under section 304(a) may not equal or exceed the transferor's inherent gain in the stock of the issuing corporation. In the example cited, P, a domestic corporation, owns all the stock of F1 and F2, both of which are foreign corporations. P has an adjusted basis of $0 in its F1 stock and $100x in its F2 stock. P's stock of F1 and F2 each has a fair market value of $100x. Neither F1 nor F2 has current or accumulated earnings and profits. P sells its F1 stock to F2 for its fair market value of $100x in a transaction subject to section 304(a)(1). Under section 304(a)(1), the transaction is treated as if P had transferred its F1 stock to F2 in exchange for F2 stock in a transaction to which section 351(a) applies, and then F2 had redeemed such deemed issued stock.

These commentators posit that P in the above example may not recognize income or gain because the adjusted basis of both the F2 stock that is treated as being issued in the deemed section 351 exchange, and the adjusted basis of the F2 stock already held by P prior to the transaction, is available for reduction under section 301(c)(2). On these particular facts (i.e., no earnings and profits in either the acquiring corporation or the issuing corporation), this basis position would mean that income or gain is not recognized as a result of the transaction. The IRS and the Treasury believe, however, that current law does not provide for the recovery of the basis of any shares other than the basis of the F2 stock deemed to be received by P in the section 351(a) exchange (which would take a basis equal to P's basis in the F1 stock). Thus, in the case described, P would recognize $100x of gain under section 301(c)(3) (the built-in gain on the F1 stock), and P would continue to have a $100x basis in its F2 stock that it holds after the transaction. This issue will be addressed as part of a larger project regarding the recovery of basis in all redemptions treated as section 301 distributions. This larger project will be the subject of future guidance. Comments are requested about the appropriate treatment of basis in such redemptions.

B. Adjustments Under Section 304(b)(6)

Section 304(b)(6) provides that in the case of any acquisition to which section 304(a) applies, where the acquiring or issuing corporation is a foreign corporation, the Secretary shall prescribe regulations, as appropriate, in order to eliminate a multiple inclusion of any item in income and to provide appropriate basis adjustments (including modifications to the application of sections 959 and 961). The preamble to the proposed regulations requested comments on basis adjustments under section 304(b)(6). The preamble also requested comments regarding similar adjustments that could be made outside the context of section 304(b)(6).

Several comments were received in response to this request, and will be considered in a separate guidance project. The IRS and Treasury request additional comments on section 304(b)(6), particularly comments that would take into account the effect of section 362(e), enacted on October 22, 2004, by the American Jobs Creation Act of 2004 (Pub. L. 108–357).

Comments also were received regarding the application of section 959 to previously taxed amounts in connection with section 304(a)(1) transactions. These comments are being considered in a separate guidance project under section 959, and therefore are not addressed in these final regulations.

C. Transfer of Issuing Stock in Return for Property and Stock of Acquiring

The proposed regulations would apply to exclude a section 351 exchange from the application of section 367(a) only to the extent the exchange is treated as such by reason of section 304(a)(1). Thus, section 367(a) would continue to apply to applicable transfers of property subject to section 351 by reason other than the operation of section 304(a)(1).

One commentator notes that the proposed regulations would not address the treatment of stock sales for an amount less than the fair market value of the transferred stock where the acquiring corporation would be deemed to issue stock to the transferor other than as a result of the application of section 304(a)(1). See, for example, section 367(c)(2). The commentator states that in such a case the transfer would be, in part, a section 304(a)(1) transaction and, in part, a section 351(a) exchange (other than by reason of section 304(a)(1)). The commentator requests guidance on such transactions, including, for example, whether such a transaction would be bifurcated and, if so, how the basis in the transferred stock would be allocated between the two parts of the transaction. The same bifurcation and related issues occur in section 304(a)(1) transactions where the acquiring corporation actually issues its own stock in partial consideration for the stock of the issuing corporation.

As was the case with the proposed regulations, these final regulations only apply to the extent of deemed section 351 exchanges resulting from section 304(a)(1) transactions. In addition, these regulations could apply to certain transactions that are, in part, still subject to the stock transfer rules of section 367(a) (*e.g.*, a section 304(a)(1) transaction in which both acquiring stock and property are used as consideration). The issues raised by this commentator are relevant to a wide range of transactions, and are not limited to section 304 transactions that are subject to these regulations. As a result, the IRS and Treasury believe that the resolution of these issues is beyond the scope of this project, and this comment is not addressed in these final regulations.

D. Effective Dates

The proposed regulations stated that the rules would apply to section 304(a)(1) transactions occurring on or after the date of publication of the regulations in the **Federal Register**. Several commentators requested that the final regulations be made retroactive at the election of the taxpayer.

These final regulations adopt the general effective date contained in the proposed regulations and therefore apply to section 304(a)(1) transactions occurring on or after February 21, 2006. In response to the comments received, however, the final regulations provide that taxpayers may rely on the final regulations for all (but not less than all) section 304(a)(1) transactions that occurred in all their open tax years; in such cases, any gain recognition agreements filed pursuant to § 1.367(a)–8 with respect to such transactions shall terminate and have no further effect.

Effect on Other Documents

Rev. Rul. 91–5 (1991–1 C.B. 114) and Rev. Rul. 92–86 (1992–2 C.B. 199) are modified to the extent inconsistent with these regulations.

Special Analyses

The IRS and the Treasury have determined that the adoption of these regulations is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because these regulations do not impose a collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Tasheaya L. Warren Ellison, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.367(a)–3 is amended as follows:

■ 1. A sentence is added to paragraph (a) immediately following the second sentence.

■ 2. The new fourth sentence of paragraph (a) is amended by removing the language "However" and adding "In addition" in its place.

■ 3. Adding new paragraph (e)(1)(G).

The additions read as follows:

§ 1.367(a)–3 Treatment of transfers of stock or securities to foreign corporations.

(a) *In general.* * * * However, if, pursuant to section 304(a)(1), a U.S. person is treated as transferring stock of a domestic or foreign corporation to a foreign corporation in exchange for stock of such foreign corporation in a transaction to which section 351(a) applies, such deemed section 351 exchange is not a transfer to a foreign corporation subject to section 367(a). * * *

* * * * *

(e) * * * (1) * * *

(G) Except as otherwise provided in this paragraph (e)(1)(G), the third sentence of paragraph (a) of this section shall apply to section 304(a)(1) transactions occurring on or after February 21, 2006. However, taxpayers may rely on the third sentence of paragraph (a) of this section for all section 304(a)(1) transactions occurring in open tax years; in such cases any gain recognition agreements filed pursuant to § 1.367(a)–8 with respect to such transactions shall terminate and have no further effect.

* * * * *

■ **Par. 3.** In § 1.367(b)–4, a sentence is added to paragraph (a) immediately following the first sentence to read as follows:

§ 1.367(b)–4 Acquisition of foreign corporate stock or assets by a foreign corporation in certain nonrecognition transactions.

(a) *Scope.* * * * However, if pursuant to section 304(a)(1), a foreign acquiring corporation is treated as acquiring the stock of a foreign acquired corporation in a transaction to which section 351(a)

applies, such deemed section 351 exchange is not an acquisition subject to section 367(b). * * *

* * * * *

■ **Par. 4.** In § 1.367(b)–6, paragraph (a)(1) is amended by adding a sentence to the end to read as follows:

§ 1.367(b)–6 Effective dates and coordination rule

(a) *Effective date*—(1) *In general.* * * * The second sentence of paragraph (a) in § 1.367(b)–4 shall apply to section 304(a)(1) transactions occurring on or after February 21, 2006; however, taxpayers may rely on this sentence for all section 304(a)(1) transactions occurring in open tax years.

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: February 8, 2006.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 06–1465 Filed 2–17–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 004–2006]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice, Bureau of Prisons (Bureau or BOP), is exempting a Privacy Act system of records from the following subsections of the Privacy Act: (c)(3) and (4), (d)(1)–(4), (e)(2) and (3), (e)(5), and (g). This system of records is the "Inmate Electronic Message Record System, (JUSTICE/BOP–013)."

The exemptions are necessary to preclude the compromise of institution security, to better ensure the safety of inmates, Bureau personnel and the public, to better protect third party privacy, to protect law enforcement and investigatory information, and/or to otherwise ensure the effective performance of the Bureau's law enforcement functions.

DATES: This final rule is effective February 21, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: On November 16, 2005 (70 FR 69487), a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

This rule relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedure, Freedom of Information Act, Government in the Sunshine Act, and Privacy Act.

■ Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR part 16 is amended as follows:

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

■ 1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g) and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717 and 9701.

■ 2. Section 16.97 is amended by adding paragraphs (p) and (q) to read as follows:

§ 16.97 Exemption of Bureau of Prisons Systems—limited access.

* * * * *

(p) The following system of records is exempt from 5 U.S.C. 552a (c)(3) and (4), (d)(1)–(4), (e)(2) and (3), (e)(5), and (g):

Inmate Electronic Message Record System (JUSTICE /BOP–013).

(q) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and/or (k)(2). Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, the applicable exemption may be waived, either partially or totally, by the BOP. Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) to the extent that this system of records is exempt from subsection (d), and for such reasons as those cited for subsection (d) in paragraph (q)(3) below.

(2) From subsection (c)(4) to the extent that exemption from subsection (d) makes this exemption inapplicable.

(3) From the access provisions of subsection (d) because exemption from this subsection is essential to prevent access of information by record subjects that may invade third party privacy; frustrate the investigative process; jeopardize the legitimate correctional interests of safety, security and good order to prison facilities; or otherwise compromise, impede, or interfere with BOP or other law enforcement agency activities.

(4) From the amendment provisions of subsection (d) because amendment of the records may interfere with law enforcement operations and would impose an impossible administrative burden by requiring that, in addition to efforts to ensure accuracy so as to withstand possible judicial scrutiny, it would require that law enforcement information be continuously reexamined, even where the information may have been collected from the record subject. Also, some of these records come from other Federal criminal justice agencies or State, local and foreign jurisdictions, or from Federal and State probation and judicial offices, and it is administratively impossible to ensure that records comply with this provision.

(5) From subsection (e)(2) because the nature of criminal and other investigative activities is such that vital information about an individual can be obtained from other persons who are familiar with such individual and his/her activities. In such investigations it is not feasible to rely solely upon information furnished by the individual concerning his/her own activities since it may result in inaccurate information and compromise ongoing criminal investigations or correctional management decisions.

(6) From subsection (e)(3) because in view of BOP's operational responsibilities, application of this provision to the collection of information is inappropriate. Application of this provision could provide the subject with substantial information which may in fact impede the information gathering process or compromise ongoing criminal investigations or correctional management decisions.

(7) From subsection (e)(5) because in the collection and maintenance of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely and complete. Material which may seem unrelated, irrelevant or incomplete when collected may take on added meaning or significance at a later date or as an investigation progresses. Also, some of these records may come from other Federal, State, local and foreign law

enforcement agencies, and from Federal and State probation and judicial offices and it is administratively impossible to ensure that the records comply with this provision. It would also require that law enforcement information be continuously reexamined even where the information may have been collected from the record subject.

(8) From subsection (g) to the extent that this system is exempted from other provisions of the Act.

Dated: February 13, 2006.

Paul R. Corts,

Assistant Attorney General for Administration.

[FR Doc. 06–1549 Filed 2–17–06; 8:45 am]

BILLING CODE 4410–05–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1234

RIN 3095–AB39

Records Management; Electronic Mail; Electronic Records; Disposition of Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is revising our regulations to provide for the appropriate management and disposition of very short-term temporary e-mail, by allowing agencies to manage these records within the e-mail system.

DATES: This rule is effective March 23, 2006.

FOR FURTHER INFORMATION CONTACT: Cheryl Stadel-Bevans at telephone number 301–837–3021 or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2004, at 69 FR 63980, NARA published a proposed rule pertaining to the disposition of electronic mail records with short retention periods. In response, we received comments from nine Federal agencies and two public interest groups.

Discussion of Comments Received

Five of the Federal agencies concurred without further comment.

One Federal agency concurred and requested that we not limit the definition of short-term to 180 days or less, but extend it to up to 3 years. As this rule is meant to apply only to records of fleeting value, we will not amend the definition to include records retained beyond 180 days.

Another Federal agency concurred and asked that we provide a definitive cut-off for short-term. We accepted this recommendation and have set the cut-off at 180 days.

Two Federal agencies and both public interest groups disagreed with our proposed rule.

One Federal agency and one public interest group raised the concern that this regulatory change could unintentionally result in the destruction of important e-mail records with long-term or permanent value. The commenters did not dispute that, in a perfect world, this rule is both legally permissible and potentially harmless. Their concern was that, in the words of one commenter, this new rule will "help foster the attitude that e-mail generally is a disposable, 'off-the-record' category of communication whose loss or destruction is of little concern to NARA or to the public." They pointed out, and NARA recognizes, that many agencies and their employees do not properly maintain all e-mail records for their prescribed retention period, such that valuable records are being lost prematurely. The solution, they believe, is that all Federal employees must be required to print and file or copy to an electronic recordkeeping system every e-mail record, to diminish the possibility that long-term records will be automatically deleted as transitory.

NARA fully agrees with these commenters' objective of wanting to improve the Government's retention of e-mail records for their full duration. However, based on long consideration and experience, NARA does not believe that the commenters' recommended solution will have that result. To require the creation of a record copy of all of these e-mail messages is not only extremely costly and burdensome, but may also be partly responsible for any current non-compliance with existing e-mail retention requirements: *i.e.*, the largely pointless exercise of expending significant time and effort to print and file hundreds of transitory e-mail messages every week may be a contributing factor to what leads many Government employees to forego printing any of their e-mail messages.

NARA has concluded that Government employees are more likely to take seriously their responsibility of retaining e-mail records of long-term or permanent value, either by printing and filing or by investing in electronic recordkeeping systems to retain a smaller percentage of e-mail records, if they do not have to spend time on the very high volume of transitory and very short-term e-mail records that cross their desktops every day. Accordingly, NARA believes that this regulation, as further modified, will serve to improve the Government's retention and preservation of important e-mail records.

NARA wishes to emphasize, however, that this regulatory change is intended to be narrowly construed, *i.e.*, the waiver of the requirement to print out or otherwise electronically save very short term e-mail records (with dispositions of 180 days or less) is to be limited to records covered under the categories listed in General Record Schedule (GRS) 23, Item 7, or in file series in agency schedules with similarly short term disposition periods. In other words, longer term temporary or permanent e-mail records on agency e-mail systems must still be printed out or saved electronically in accordance with current regulations. For the convenience of readers, the text of GRS 23, Item 7, is reproduced at the end of this Supplementary Information.

One Federal agency expressed concern that the proposed rule will place too much of a burden on Federal employees. Federal employees are currently responsible for maintaining these records. For the reasons given in the previous paragraphs, we believe that the new rule will ease the burden on Federal employees.

One Federal agency stated that both e-mail and paper records of a transitory nature should be treated the same. We agree, and that is the basis for our revisions. General Record Schedule 23, Item 7, applies to a variety of transitory records, regardless of the media on which they were created, including paper records and, with the recent changes, electronic records. Agency records schedules may include other transitory records, which now may be managed similarly in both paper and electronic form.

Two Federal agencies stated that the proposed rule will require a technology solution, such as a records management application (RMA). We disagree. This rule allows agencies to manage transitory e-mail messages within the e-mail system. It removes the requirement that transitory records be placed in a separate recordkeeping system (printed and filed or moved to an RMA). We believe that this rule allows greater flexibility. It reduces costs by not requiring that every e-mail message be printed and also reduces the amount of time spent filing.

We received one comment from a Federal agency asking why these records needed to be kept under a freeze if they are truly transitory. Federal agencies have an ongoing obligation to comply with legal demands such as

court orders requiring the preservation of documents as evidence in a particular litigation; agencies must continue to take reasonable steps to freeze the disposition of any and all records as specified in court orders or other legal process.

One public interest group asked if this rule pertains to private companies. NARA's regulations apply only to Federal executive branch agencies. Private companies must follow the regulations that are appropriate for their industry.

We received one comment from a public interest group asking for the technical definition of e-mail for this rule. "Electronic mail message" is defined in 36 CFR 1234.2 as a "document created or received on an electronic mail system including brief notes, more formal or substantive narrative documents, and any attachments, such as word processing and other electronic documents, which may be transmitted with the message."

One public interest group asked about the criteria needed to determine "* * * special cases where e-mail is important to retain for some official purpose; for example, e-mails that require a receipt, or those that contain a digital signature, or where the function of e-mail is to serve as a time stamp." This rule applies only to transitory e-mail messages, which, by definition, are required only for a minimal amount of time for business needs or accountability. 36 CFR 1234.24(a) specifies that it is the responsibility of each agency to ensure that the proper metadata (*e.g.*, receipt data) is captured as part of the record when it is required.

One public interest group asked about attachments to messages. Attachments must also be managed as records. If the attachment meets the definition of transitory, then it too may be deleted from the e-mail system without producing a recordkeeping copy. If it is not transitory, then the attachment must be copied to an RMA or printed and filed. E-mail messages and attachments must be considered together to determine if one provides context for the other before either is determined to be transitory.

Only one substantial change was made between the proposed rule and the final rule. In the proposed rule, "short-term" was not a set period of time. The final rule defines "short-term" as 180 days or less. For clarity, minor wording changes were made to §§ 1234.24(b)(3)(i) and 1234.32(d)(1).

NARA wishes to point out that this final rule is part of NARA's larger effort to assist agencies with proper management of their records in electronic and other forms. Through the Records Management Initiatives (RMI), NARA is developing strategies to support records management within agencies. As part of this effort, NARA has developed updated policies and strategies for a variety of topics, including flexible scheduling and pre-accessioning of permanent electronic records. More information may be found on NARA's Web site at *http://www.archives.gov/records-mgmt/initiatives/rm-redesign-project.html.*

NARA also is continuing its work with the Office of Management and Budget (OMB) to implement the President's Management Agenda for expanding electronic government (E-Gov) through the Electronic Records Management (ERM) Initiative. As part of this project, NARA has issued guidance for the transfer of permanent electronic records to NARA in six electronic formats not previously accepted by NARA for preservation. In addition, NARA has released guidance for evaluating Capital Planning and Investment Control (CPIC) proposals and on developing agency-specific functional requirements for ERM systems and continues to work on further guidance. More information on NARA's E-Gov ERM Initiative and the completed products is available on NARA's Web site at *http://www.archives.gov/records-mgmt/initiatives/erm-overview.html.*

Text of General Records Schedule 23, Item 7

As noted earlier in this preamble, we are setting out the text of the revised GRS 23, Item 7, for the convenience of readers. The revision was issued on September 1, 2005, and is available online at *http://www.archives.gov/records-mgmt/ardor/grs23.html.*

Transitory Records

Records of short-term (180 days or less) interest, including in electronic form (*e.g.*, e-mail messages), which have minimal or no documentary or evidential value. Included are such records as:

- Routine requests for information or publications and copies of replies which require no administrative action, no policy decision, and no special compilation or research for reply;
- Originating office copies of letters of transmittal that do not add any information to that contained in the transmitted material, and receiving office copy if filed separately from transmitted material;
- Quasi-official notices including memoranda and other records that do not serve as the basis of official actions, such as notices of holidays or charity and welfare fund appeals, bond campaigns, and similar records;
- Records documenting routine activities containing no substantive information, such as routine notifications of meetings, scheduling of work-related trips and visits, and other scheduling related activities;
- Suspense and tickler files or "to-do" and task lists that serve as a reminder that an action is required on a given date or that a reply to action is expected, and if not received, should be traced on a given date.

Destroy immediately, or when no longer needed for reference, or according to a predetermined time period or business rule (*e.g.*, implementing the auto-delete feature of electronic mail systems).

Regulatory Analysis and Review

This final rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). As required by the Regulatory Flexibility Act, it is hereby certified that this final rule will not have a significant impact on a substantial number of small entities because this rule applies to Federal agencies. This final rule does not have any federalism implications. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

List of Subjects in 36 CFR Part 1234

Archives and records, Computer technology.

■ For the reasons set forth in the preamble, NARA amends chapter XII of title 36 of the Code of Federal Regulations as follows:

PART 1234—ELECTRONIC RECORDS MANAGEMENT

■ 1. The authority citation for part 1234 is revised to read as follows:

Authority: 44 U.S.C. 2904, 3101, 3102, 3105, and 3303.

■ 2. Amend § 1234.24 by revising paragraph (b)(2) and adding paragraph (b)(3) to read as follows:

§ 1234.24 Standards for managing electronic mail records.

* * * * *

(b) * * *.

(2) Agencies may elect to manage electronic mail records with very short-term NARA-approved retention periods (transitory records with a very short-term retention period of 180 days or less as provided by GRS 23, Item 7, or by a NARA-approved agency records

schedule) on the electronic mail system itself, without the need to copy the record to a paper or electronic recordkeeping system, provided that:

(i) Users do not delete the messages before the expiration of the NARA-approved retention period, and

(ii) The system's automatic deletion rules ensure preservation of the records until the expiration of the NARA-approved retention period.

(3) Except for those electronic mail records within the scope of paragraph (b)(2) of this section:

(i) Agencies must not use an electronic mail system to store the recordkeeping copy of electronic mail messages identified as Federal records unless that system has all of the features specified in paragraph (b)(1) of this section.

(ii) If the electronic mail system is not designed to be a recordkeeping system, agencies must instruct staff on how to copy Federal records from the electronic mail system to a recordkeeping system.

* * * * * *

■ 3. Amend § 1234.32 by revising paragraph (d) to read as follows:

§ 1234.32 Retention and disposition of electronic records.

* * * * *

(d) Electronic mail records may not be deleted or otherwise disposed of without prior disposition authority from NARA (44 U.S.C. 3303a).

(1) *Electronic mail records with very short-term (transitory) value.* Agencies may use the disposition authority in General Records Schedule 23, Item 7, or on a NARA-approved agency records schedule for electronic mail records that have very short-term retention periods of 180 days or less. (See § 1234.24(b)(2)).

(2) *Other records in an electronic mail system.* When an agency has taken the necessary steps to retain a record in a scheduled recordkeeping system (whether electronic or paper), the identical version that remains on the user's screen or in the user's electronic mailbox has no continuing value. Therefore, NARA has authorized deletion of the version of the record in the electronic mail system under General Records Schedule 20, Item 14, after the record has been preserved in a recordkeeping system along with all appropriate transmission data. If the records in the recordkeeping system are not scheduled, the agency must follow the procedures at 36 CFR part 1228.

(3) *Records in recordkeeping systems.* The disposition of electronic mail records that have been transferred to an appropriate recordkeeping system is governed by the records schedule or schedules that control the records in that system. If the records in the recordkeeping system are not scheduled, the agency must follow the procedures at 36 CFR part 1228.

Dated: September 14, 2005.

Allen Weinstein,

Archivist of the United States.

Note: This document was received at the Office of the Federal Register on February 17, 2006.

[FR Doc. 06–1545 Filed 2–17–06; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 83

Procedure for Designating Classes of Employees as Members of the Special Exposure Cohort Under the Energy Employees Occupational Illness Compensation Program Act of 2000

AGENCY: Department of Health and Human Services.

ACTION: Interim final rule; extension of comment period.

SUMMARY: The Department of Health and Human Services (DHHS) is extending the comment period for the interim final rule making amendments to procedures for designating classes of employees as members of the Special Exposure Cohort under the Energy Employees Occupational Illness Program Act (EEOICPA), which was published in the **Federal Register** on Thursday, December 22, 2005.

DATES: Any public written comments on the interim final rule published on December 22, 2005 (70 FR 75949) must be received on or before March 23, 2006.

ADDRESSES: Address written comments on the notice of proposed rulemaking to the NIOSH Docket Officer electronically by e-mail to: *NIOCINDOCKET@CDC.GOV*. Alternatively, submit printed comments to NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS–C–46, Cincinnati, Ohio 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests may also be submitted by e-mail to *OCAS@CDC.GOV*.

SUPPLEMENTARY INFORMATION: On December 22, 2005, HHS published an interim final rule with request for comments amending the procedures for designating classes of employees as members of the Special Exposure Cohort under EEOICPA, [*See FR Vol. 70, No. 245, 75949*]. The rule included a public comment period that was to end on February 21, 2006. On January 26, 2006, the Advisory Board on Radiation and Worker Health initiated its review of the interim final rule. The Board requested that the comment period be extended by 30 days, for a total of 90 days, to provide the Board with adequate time to complete its review and submit comments to HHS. HHS would appreciate the comments of the Board and is now providing for a 90-day comment period to accommodate the Board's request. This extension of the comment period may also assist any members of the public who require additional time to comment on the rule.

Dated: February 15, 2006.

Michael O. Leavitt,

Secretary.

[FR Doc. 06–1588 Filed 2–17–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 021406B]

Fisheries of the Exclusive Economic Zone Off Alaska; Non-Community Development Quota Pollock with Trawl Gear in the Chinook Salmon Savings Areas of 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 non-Community Development Quota (CDQ) pollock with trawl gear in the Chinook Salmon Savings Areas of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2006 limit of chinook salmon caught by vessels using trawl gear while directed fishing for non-CDQ pollock in the BSAI.

DATES: Effective 12 noon, Alaska local time (A.l.t.), February 15, 2006, through 12 noon, A.l.t., April 15, 2006, and from 12 noon, A.l.t., September 1, 2006, through 12 midnight, A.l.t., December 31, 2006.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI 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 chinook salmon PSC limit for the pollock fishery is set at 29,000 fish (see § 679.21(e)(1)(i) and (vii)). Of that limit, 7.5 percent is allocated to the groundfish CDQ program as prohibited species quota reserve (see § 679.21(e)(1)(i)). Consequently, the 2006 non-CDQ limit of chinook salmon caught by vessels using trawl gear while directed fishing for pollock in the BSAI is 26,825 animals.

In accordance with § 679.21(e)(7)(viii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2006 non-CDQ limit of chinook salmon caught by vessels using trawl gear while directed fishing for non-CDQ pollock in the BSAI has been reached. Consequently, the Regional Administrator is prohibiting directed fishing for non-CDQ pollock with trawl gear in the Chinook Salmon Savings Areas defined at Figure 8 to 50 CFR part 679.

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 a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for non-CDQ pollock with trawl gear in the Chinook Salmon Savings Areas. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 14, 2006.

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

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

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

Dated: February 15, 2006.

James P. Burgess,

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

[FR Doc. 06–1563 Filed 2–15–06; 1:17 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 34
Tuesday, February 21, 2006

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925, 930, and 948

[Docket Nos. FV06–925–610 Review; FV06–930–610 Review; and FV06–948–610 Review]

Grapes Grown in a Designated Area of Southeastern California; Tart Cherries Grown in the States of Michigan, et al.; and Irish Potatoes Grown in Colorado

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of review and request for comments.

SUMMARY: This document announces that the Agricultural Marketing Service (AMS) plans to review Marketing Order 925 (Grapes grown in a designated area of Southeastern California), Marketing Order 930 (Tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin), and Marketing Order 948 (Irish potatoes grown in Colorado) under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA).

DATES: Written comments on this document must be received by April 24, 2006.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice of review. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*, or Internet: *http://www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or may be viewed at *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; Telephone: (301) 734–5243, or Fax: (301) 734–5275; E-mail: *Kenneth.Johnson@usda.gov* regarding the tart cherry marketing order; Teresa Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Portland, OR 97204; Telephone: (503) 326–7440; E-mail: *Teresa.Hutchinson@usda.gov* regarding the Irish potato marketing order; and

Terry Vawter, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Fresno, CA 93721; Telephone: (559) 487–5901, or Fax: (559) 487–5906; E-mail: *Terry.Vawter @usda.gov* regarding the California grape marketing order; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Fax: (202) 720–8938, or E-mail: *George.Kelhart@usda.gov*.

SUPPLEMENTARY INFORMATION: Marketing Order No. 925 (7 CFR part 925), regulates the handling of grapes grown in a designated area of southeastern California. Marketing Order No. 930, as amended (7 CFR part 930), regulates the handling of tart cherries in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. Marketing Order No. 948, as amended (7 CFR part 948), regulates the handling of Irish potatoes grown in the State of Colorado. These marketing orders are effective under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674).

AMS initially published in the **Federal Register** (64 FR 8014; February 18, 1999) its plan to review certain regulations, including Marketing Order Nos. 925, 930, and degree to which technology, economic conditions, or other factors have changed in an area affected by the marketing order.

Written comments, views, opinions, and other information regarding the grape, tart cherry, and potato marketing orders' impact on small businesses are invited.

Dated: February 13, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–1536 Filed 2–17–05; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–P–7909]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed

below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location of referenced elevation	♦Elevation in feet (NAVD)		Communities affected
	Existing	Modified	
Crystal Creek:			
Just upstream of South Harrison Street	♦734	♦735	Village of Algonquin, City of Crystal Lake, Village of Lake-in-the-Hills, McHenry County, (Unincorporated Areas).
Just downstream of Country Club Road	♦892	♦891	

Village of Algonquin, McHenry County, Illinois.

Maps are available for inspection at Community Map Repository, 2200 Harnish Drive, Algonquin, Illinois.

Send comments to The Honorable John Schmidt, Acting President, 2200 Harnish Drive, Algonquin, Illinois 60102.

Village of Crystal Lake, McHenry County, Illinois.

Maps are available for inspection at Community Map Repository, Department of Planning and Development, 100 West Municipal Complex, Crystal Lake, Illinois.

Send comments to The Honorable Aaron Shepley, Mayor, Village of Crystal Lake, Post Office Box 597, 100 West Municipal Complex, Crystal Lake, Illinois 60039–0597.

Village of Lake-in-the-Hills, McHenry County, Illinois.

Maps are available for inspection at Community Map Repository, Office of Community Development, 600 Harvest Gate, Lake-in-the-Hills, Illinois.

Send comments to The Honorable Ed Plaza, President, Village of Lake-in-the-Hills, 600 Harvest Gate, Lake-in-the-Hills, Illinois 60156.

Unincorporated Areas of McHenry County, Illinois.

Maps are available for inspection at Community Map Repository, Planning and Development, 2200 North Seminary Avenue, Administrative Building, Woodstock, Illinois.

Send comments to The Honorable Ken Koehler, Chairman, McHenry County Board, 2200 North Seminary Avenue, Woodstock, Illinois 60098.

Big Hollow Creek:			
At the confluence with Turkey Creek	♦719	♦720	Taney County, (Unincorporated Areas), City of Hollister.
Approximately 5,540 feet upstream of Hidden Valley Road.	♦None	♦806	
Happy Hollow Creek:			
At the confluence with Turkey Creek	♦None	♦773	Taney County, (Unincorporated Areas).
Approximately 8,675 feet upstream of the confluence with Turkey Creek.	♦None	♦867	
Kohler Creek:			
Approximately 350 feet upstream of the confluence with Turkey Creek.	♦724	♦725	Taney County, Unincorporated Areas), City of Hollister.
Approximately 6,370 feet upstream of Maple Street	♦None	♦869	
Roark Creek:			
At the confluence with White River	♦714	♦719	City of Branson, Taney County, (Unincorporated Areas).
Approximately 250 feet upstream of U.S. Highway 65	♦718	♦719	
Swan Creek:			
At the confluence with White River	♦None	♦694	Taney County, (Unincorporated Areas), City of Forsyth.

Source of flooding and location of referenced elevation	♦Elevation in feet (NAVD)		Communities affected
	Existing	Modified	
Approximately 1,250 feet upstream of Strawberry Road	♦None	♦694	
Thorp Creek:			
At the confluence with Turkey Creek	♦None	♦855	Taney County, (Unincorporated Areas).
Approximately 6,810 feet upstream of the confluence with Turkey Creek.	♦None	♦907	
Turkey Creek:			
At the confluence with White River	♦716	♦720	Taney County, (Unincorporated Areas), City of Hollister.
Approximately 6,950 feet upstream of the confluence of Thorp Creek.	♦None	♦902	
White River:			
At the southern county boundary	♦None	♦692	Taney County, (Unincorporated Areas), City of Branson, City of Forsyth, City of Hollister, Village of Merriam Woods, Town of Rockaway Beach.
Approximately 5.73 miles upstream of the confluence of Cooper Creek.	♦None	♦735	

City of Branson, Taney County, Missouri.

Maps are available for inspection at the Community Map Repository, 110 West Maddux Street, Suite 215, Branson, Missouri.
Send comments to The Honorable Louis E. Shaefer, Mayor, City of Branson, City Hall, 110 West Maddux Street, Branson, Missouri 65616.

City of Forsyth, Taney County, Missouri.

Maps are available for inspection at the Community Map Repository, 15405 U.S. Highway 160, Forsyth, Missouri.
Send comments to The Honorable Karl Smith, Mayor, City of Forsyth, Post Office Box 545, 15405 U.S. Highway 160, Forsyth, Missouri 65653.

City of Hollister, Taney County, Missouri.

Maps are available for inspection at the Community Map Repository, City Hall, 312 Esplanade Street, Hollister, Missouri.
Send comments to The Honorable David G. Tate, Mayor, City of Hollister, Post Office Box 638, Hollister, Missouri 65673.

Village of Merriam Woods, Taney County, Missouri.

Maps are available for inspection at the Community Map Repository, Clerk's Office, 4417 State Highway 176, Merriam Woods, Missouri.
Send comments to The Honorable Mike Wilkerson, Chairman of the Board, Village of Merriam Woods, Post Office Box 238, Merriam Woods, Missouri 65740.

Town of Rockaway Beach, Taney County, Missouri.

Maps are available for inspection at the Community Map Repository, City Hall, 2764 State Highway 176, Rockaway Beach, Missouri.
Send comments to The Honorable Thomas Strom, Mayor, Town of Rockaway Beach, City Hall, Post Office Box 315, Rockaway Beach, Missouri 65740.

Unincorporated Area of Taney County, Missouri.

Maps are available for inspection at the Community Map Repository, 1617 U.S. Highway 160, Forsyth, Missouri.
Send comments to The Honorable Chuck Pennel, Presiding Commissioner, Taney County, Post Office Box 1086, Forsyth, Missouri 65653.

♦ North American Vertical Datum of 1988.

Source of flooding and location of referenced elevation	*Elevation in feet (NGVD)		Communities affected
	Existing	Modified	
Skokie River:			
Approximately 3,000 feet upstream of Clavey Road	*636	*635	City of Highland Park
Approximately 4,500 feet downstream of Deerfield Road.	*637	*636	

City of Highland Park, Illinois.

Maps are available for inspection at the Public Works Office, 1150 Half Day Road, Highland Park, Illinois.
Send comments to The Honorable Michael D. Belsky, Mayor, City of Highland Park, City Hall, 1707 Saint Johns Avenue, Highland Park, Illinois 60035.

*National Geodetic Vertical Datum.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: January 4, 2006.

David I. Maurstad,

Acting Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–2417 Filed 2–17–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–P–7911]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location of referenced elevation	♦Elevation in feet (NAVD)		Communities affected
	Existing	Modified	
Armour Branch Gypsum Creek:			
At confluence with Gypsum Creek	♦1,321	♦1,322	City of Eastborough, City of Wichita.
Approximately 1,120 feet upstream of Rockwood Road	None	♦1,368	
Big Slough South:			
Approximately 500 feet upstream of confluence with Arkansas River.	♦1,257	♦1,258	City of Wichita, Sedgwick County, (Unincorporated Areas).
Approximately 2,830 feet upstream of South Meridian Avenue.	♦1,288	♦1,286	
Calfskin Creek:			
At confluence with Cowskin Creek	♦1,314	♦1,316	
Approximately 5,070 feet upstream of South 119th Street West.	♦1,322	♦1,324	
Cowskin Creek:			
At confluence with Wichita Valley Center Floodway	None	♦1,279	City of Colwich, City of Maize, City of Wichita, Sedgwick County, (Unincorporated Areas).
Approximately 4,000 feet downstream of State Highway 296.	♦1,369	♦1,368	

Source of flooding and location of referenced elevation	♦Elevation in feet (NAVD)		Communities affected
	Existing	Modified	
Dry Creek of Gypsum Creek:			
At confluence with Gypsum Creek	♦1,291	♦1,290	City of Wichita.
Approximately 150 feet upstream of the confluence with Gypsum Creek.	♦1,291	♦1,290	
Dry Creek North of Cowskin Creek:			
At confluence with Cowskin Creek	None	♦1,347	Sedgwick County, (Unincorporated Areas).
At West 167th Street North	None	♦1,386	
Dry Creek South of Cowskin Creek:			
At confluence with Cowskin Creek	None	♦1,292	Sedgwick County, (Unincorporated Areas).
At South Maize Road	None	♦1,317	
Dry Creek of Spring Creek:			
Just downstream of East Madison Avenue	♦1,267	♦1,266	City of Derby, Sedgwick County, (Unincorporated Areas).
Approximately 50 feet upstream of East 55th Street South.	None	♦1,331	
East Branch Gypsum Creek:			
At confluence with Gypsum Creek	♦1,336	♦1,334	City of Wichita.
Approximately 100 feet upstream of East Central Parkway.	None	♦1,343	
East Branch Gypsum Creek (Splitflow):			
At convergence with East Branch Gypsum Creek	♦1,341	♦1,340	
At divergence from East Branch Gypsum Creek	♦1,343	♦1,342	
East Fork Chisholm Creek:			
At confluence with Wichita Drainage Canal	♦1,305	♦1,306	
At Interstate Highway 135 Access Road	♦1,305	♦1,306	
Fabrique Branch Gypsum Creek:			
At confluence with Gypsum Creek	♦1,315	♦1,317	
Approximately 150 feet upstream of Pedestrian Bridge/East Zimmerly Avenue.	None	♦1,325	
Frisco Ditch:			
Approximately 140 feet upstream of Interstate Highway 135.	♦1,299	♦1,300	
Approximately 600 feet upstream of Northeast Cemetery Road.	None	♦1,366	
Gypsum Creek:			
At confluence with Wichita Drainage Canal	♦1,279	♦1,278	City of Wichita, Sedgwick County, (Unincorporated Areas).
At confluence of Middle and West Branches of Gypsum Creek.	♦1,340	♦1,338	
Little Arkansas River (Upper Reach):			
Approximately 2,400 feet downstream of Wichita Valley Center Floodway Control Structure.	None	♦1,340	Sedgwick County, (Unincorporated Areas).
At County Boundary	♦1,375	♦1,372	
Middle Branch Gypsum Creek:			
At confluence with Gypsum Creek	♦1,340	♦1,339	City of Wichita.
Approximately 2,400 feet upstream of East Tipperary Street.	♦1,351	♦1,352	
Middle Fork Calfskin Creek:			
Approximately 70 feet upstream of the confluence with North Fork Calfskin Creek.	♦1,324	♦1,325	
Approximately 3,375 feet upstream of confluence with North Fork Calfskin Creek.	None	♦1,340	
North Fork Calfskin Creek:			
At confluence with Calfskin Creek	♦1,320	♦1,322	City of Wichita, Sedgwick County, (Unincorporated Areas).
Approximately 4,350 feet upstream of North 135th Street West.	None	♦1,370	
Rock Road South Tributary Gypsum Creek:			
Approximately 650 feet upstream of South Rock Road	♦1,325	♦1,326	City of Wichita.
Approximately 3,730 feet upstream of East Harry Street.	♦1,344	♦1,347	
Spring Creek:			
Approximately 1,700 feet upstream of the confluence with Arkansas River.	♦1,236	♦1,237	City of Derby, Sedgwick County, (Unincorporated Areas).
Approximately 50 feet upstream of East 63rd Street South/South Greenwich Road.	None	♦1,309	
Tributary to North Fork Calfskin Creek:			
At confluence with North Fork Calfskin Creek	None	♦1,346	
Approximately 3,930 feet upstream of North 151st Street West.	None	♦1,381	
West Branch Gypsum Creek:			
At confluence with Gypsum Creek	♦1,340	♦1,338	City of Wichita.
Approximately 175 feet upstream of East Farmview Lane.	None	♦1,382	

Source of flooding and location of referenced elevation	♦Elevation in feet (NAVD)		Communities affected
	Existing	Modified	
ADDRESSES:			
City of Colwich, Sedgwick County, Kansas.			
Maps are available for inspection at Community Map Repository, City Hall, 310 South Second Street, Colwich, Kansas. Send comments to The Honorable Terrance Spexarth, Mayor, City of Colwich, 310 South Second Street, Colwich, Kansas 67030.			
City of Derby, Sedgwick County, Kansas.			
Maps are available for inspection at Community Map Repository, City Hall, 611 Mulberry Street, Derby, Kansas. Send comments to The Honorable Dion Avello, Mayor, City of Derby, 611 Mulberry Street, Derby, Kansas 67037.			
City of Eastborough, Sedgwick County, Kansas.			
Maps are available for inspection at Community Map Repository, City Hall, 1 Douglas Street, Wichita, Kansas. Send comments to The Honorable Gary Poore, Mayor, City of Eastborough, 1 Douglas Street, Wichita, Kansas 67207.			
City of Maize, Sedgwick County, Kansas.			
Maps are available for inspection at Community Map Repository, City Hall, 123 Khedive, Maize, Kansas. Send comments to The Honorable Claire Donnelly, Mayor, City of Maize, 123 Khedive, Maize, Kansas 67101.			
Unincorporated Areas of Sedgwick County, Kansas.			
Maps are available for inspection at Community Map Repository, Office of Stormwater Management, 455 North Main Street, 8th Floor, Wichita, Kansas. Send comments to The Honorable William P. Buchanan, County Manager, Sedgwick County, 525 North Main Street, Suite 343, Wichita, Kansas 67203.			
City of Wichita, Sedgwick County, Kansas.			
Maps are available for inspection at Community Map Repository, Office of Stormwater Management, 455 North Main Street, 8th Floor, Wichita, Kansas. Send comments to The Honorable Carlos Wayans, Mayor, City of Wichita, 455 North Main Street, 8th Floor, Wichita, Kansas 67202.			
Big Creek:			
Approximately 240 feet downstream of North Ranson Road.	♦919	♦918	City of Greenwood, City of Lee's Summit.
Approximately 830 feet upstream of the confluence of Tributary B1 to Big Creek.	♦983	♦984	
Blue Branch:			
Approximately 1,220 feet downstream of South Buckner Tarsney Road.	♦779	♦778	City of Grain Valley, Jackson County, (Unincorporated Areas).
Approximately 3,050 feet upstream of Sni-A-Bar Boulevard.	♦801	♦802	
Burr Oak Creek:			
Approximately 2,080 feet downstream of the confluence of Burr Oak Creek Tributary.	None	♦774	City of Independence.
Approximately 160 feet downstream of Northwest Pink Hill Road.	None	♦798	
Burr Oak Creek Tributary:			
At the confluence with Burr Oak Creek	None	♦798	
Approximately 4,780 feet upstream of the confluence with Burr Oak Creek.	None	♦803	
Cedar Creek:			
Approximately 960 feet upstream of Interstate Highway 470.	♦806	♦807	City of Lee's Summit.
Approximately 1,550 feet upstream of Southwest Lakeview Boulevard.	♦991	♦996	
East Fork Little Blue River:			
Approximately 1,260 feet downstream of Northeast Scruggs Road.	None	♦887	
Approximately 6,870 feet upstream of Southeast Winburn Trail.	None	♦978	
Horseshoe Creek Tributary:			
Approximately 50 feet upstream of the confluence with Horseshoe Creek.	♦784	♦782	City of Oak Grove.
Approximately 230 feet upstream of South Broadway Street.	None	♦842	
Little Blue River:			
At Kelly Road	♦897	♦908	City of Grandview.
Approximately 3,200 feet upstream of Kelly Road	♦907	♦908	
May Brook:			
Approximately 4,390 feet upstream of Northeast Velie Road.	♦777	♦776	City of Lee's Summit.
Approximately 290 feet upstream of Northeast Maybrook Road.	♦788	♦792	
Mouse Creek:			
At Southwest Scherer Road	♦891	♦908	
Approximately 3,050 feet downstream of Southwest Sampson Road.	♦907	♦908	

Source of flooding and location of referenced elevation	♦Elevation in feet (NAVD)		Communities affected
	Existing	Modified	
SB–1 Tributary to Sni-A-Bar Creek:			
Approximately 2,950 feet upstream of the confluence with Sni-A-Bar-Creek.	None	♦792	Jackson County, (Unincorporated Areas).
Approximately 680 feet upstream of South Hillside School Road.	None	♦841	
SB–2 Tributary to Sni-A-Bar Creek:			
Approximately 50 feet downstream of South Stillhouse Road.	None	♦797	
Approximately 2,620 feet upstream of East Cummings Road.	None	♦862	
SB–3 Tributary to Sni-A-Bar Creek:			
Approximately 430 feet downstream of South Stillhouse Road.	♦802	♦803	
Approximately 6,400 feet upstream of South Broadway Street/State Highway F.	None	♦870	
SB–4 Tributary to Sni-A-Bar Creek:			
At the confluence with Sni-A-Bar Creek	♦830	♦832	
Approximately 2,440 feet upstream of East Tapscott Road.	None	♦882	
Swiney Branch:			
Approximately 900 feet upstream of Seymour Road	♦774	♦773	City of Grain Valley, Jackson County, (Unincorporated Areas).
Approximately 275 feet downstream of East Duncan Road.	♦805	♦804	
Tributary A1 to East Fork Little Blue River:			
At confluence with East Fork Little Blue River	♦901	♦902	City of Lee's Summit.
Approximately 570 feet upstream of Windsboro Drive	♦953	♦960	
Tributary A2 to East Fork Little Blue River:			
At confluence with Tributary A1 to East Fork Little Blue River.	♦920	♦919	
Approximately 950 feet upstream of Southeast Battery Point.	None	♦953	
Tributary B1 to Big Creek:			
At confluence with Big Creek	♦975	♦981	
Approximately 2,560 feet upstream of the confluence with Big Creek.	♦989	♦986	
Tributary B2 to Big Creek:			
At confluence with Big Creek	♦925	♦928	City of Greenwood, City of Lee's Summit.
Approximately 1,930 feet upstream of State Highway 291.	None	♦985	
Tributary C1 to Cedar Creek:			
At confluence with Cedar Creek	♦833	♦839	City of Lee's Summit.
Approximately 400 feet upstream of Southwest 3rd Street.	♦865	♦888	
Tributary C2 to Cedar Creek:			
At confluence with Cedar Creek	♦905	♦906	
Approximately 820 feet upstream of U.S. Highway 50	None	♦956	
Tributary C3 to Cedar Creek:			
At confluence with Cedar Creek	♦931	♦932	
Approximately 1,030 feet upstream of Southwest Persels Road.	None	♦970	
Tributary C4 to Cedar Creek:			
At confluence with Cedar Creek	♦968	♦966	
Approximately 280 feet upstream of Southwest Lakeview Boulevard.	None	♦992	
Tributary C5 to Cedar Creek:			
At confluence with Cedar Creek	♦850	♦851	
Approximately 1,070 feet upstream of Southwest Forest Park Boulevard.	None	♦915	
Tributary C6 to Cedar Creek:			
At the confluence with Cedar Creek	♦921	♦920	
Approximately 1,920 feet upstream of Southwest Pacific Drive.	None	♦946	
Tributary G1 to Lake Winnebago:			
At County Line Road	♦921	♦938	
At State Highway 291	♦974	♦970	
Tributary G2 to Raintree Lake:			
Approximately 75 feet upstream of the confluence with Raintree Lake.	♦962	♦961	
Approximately 3,660 feet upstream of the confluence with Raintree Lake.	None	♦981	

Source of flooding and location of referenced elevation	♦Elevation in feet (NAVD)		Communities affected
	Existing	Modified	
Tributary L1 to Lakewood Lakes:			
At confluence with Lakewood Lakes	♦863	♦864	
Approximately 2,480 feet upstream of Gregory Boulevard.	None	♦906	
Tributary P1 to Prairie Lee Lake:			
At confluence with Prairie Lee Lake	♦886	♦881	
Approximately 1,770 feet upstream of State Highway 291.	♦952	♦953	
Tributary P2 to Prairie Lee Lake:			
Approximately 30 feet upstream of the confluence with Prairie Lee Lake.	♦887	♦886	
Approximately 950 feet upstream of the confluence of Tributary P4 to Prairie Lee Lake.	♦958	♦961	
Tributary P3 to Prairie Lee Lake:			
At confluence with Tributary P2 to Prairie Lee Lake	♦922	♦923	
Approximately 1,550 feet upstream of State Highway 291.	♦978	♦980	
Tributary P4 to Prairie Lee Lake:			
At confluence with Tributary P2 to Prairie Lee Lake	♦951	♦957	
Just downstream of State Highway 291	♦957	♦969	
Tributary P5 to Prairie Lee Lake:			
Approximately 1,460 feet downstream of Northeast Scruggs Road.	None	♦886	City of Lee's Summit, Jackson County, (Unincorporated Areas
Approximately 8,450 feet upstream of Northeast Blackwell Road.	None	♦949	
Tributary to Tributary B2 to Big Creek:			
At confluence with Tributary B2 to Big Creek	♦968	♦969	City of Lee's Summit.
Approximately 1,560 feet upstream of confluence with Tributary B2 to Big Creek.	None	♦976	
Tributary to West Fork Sni-A-Bar Creek:			
Approximately 1,550 feet upstream of the confluence with West Fork Sni-A-Bar Creek.	None	♦806	Jackson County, (Unincorporated Areas).
Approximately 7,990 feet upstream of East Major Road	None	♦875	
Yennie Avenue Drain:			
At confluence with Sni-A-Bar Creek	♦775	♦774	City of Grain Valley, Jackson County, (Unincorporated Areas).
Approximately 1,510 feet upstream of Yennie Avenue	None	♦805	

ADDRESSES:

City of Grain Valley, Jackson County, Missouri.

Maps are available for Inspection at City Hall, 711 Main Street, Grain Valley, Missouri.
Send comments to The Honorable Brad Knight, Mayor, City of Grain Valley, City Hall, 711 Main Street, Grain Valley, Missouri 64029.

City of Grandview, Jackson County, Missouri.

Maps are available for inspection at City Hall, 1200 Main Street, Grandview, Missouri.
Send comments to The Honorable Robert M. Beckers, Mayor, City of Grandview, City Hall, 1200 Main Street, Grandview, Missouri 64030.

City of Greenwood, Jackson County, Missouri.

Maps are available for inspection at City Hall, 709 West Main Street, Greenwood, Missouri.
Send comments to The Honorable Kevin Adey, Mayor, City of Greenwood, City Hall, 709 West Main Street, Greenwood, Missouri 64034.

City of Independence, Jackson County, Missouri.

Maps are available for inspection at City Hall, 111 East Maple Avenue, Independence, Missouri.
Send comments to The Honorable Ron Stewart, Mayor, City of Independence, City Hall, 111 East Maple Avenue, Independence, Missouri 64050.

City of Lee's Summit, Jackson County, Missouri.

Maps are available for Inspection at City Hall, 207 Southwest Market Street, Lee's Summit, Missouri.
Send comments to The Honorable Karen R. Messerli, Mayor, City of Lee's Summit, City Hall, 207 Southwest Market Street, Lee's Summit, Missouri 64063

City of Oak Grove, Jackson County, Missouri.

Maps are available for inspection at City Hall, 1300 South Broadway Street, Oak Grove, Missouri 64075.
Send comments to The Honorable Mark Fulks, Mayor, City of Oak Grove, City Hall, 1300 South Broadway Street, Oak Grove, Missouri 64075.

Unincorporated Areas of Jackson County, Missouri.

Maps are available for Inspection at 303 West Walnut, Independence, Missouri.
Send comments to Ms. Katheryn J. Shields, County Executive, Jackson County, Jackson County Courthouse, 415 East 12th Street, Kansas City, Missouri 64106.

♦North American Vertical Datum of 1988.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 22, 2005.

David I. Maurstad,

Acting Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–2415 Filed 2–17–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Yellowstone Cutthroat Trout as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of a 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (USFWS), announce our 12-month finding for a petition to list the Yellowstone cutthroat trout (YCT) (*Oncorhynchus clarkii bouvieri*) as a threatened species throughout its range in the United States, pursuant to the Endangered Species Act of 1973, as amended. After a thorough review of all available scientific and commercial information, we find that listing the YCT as either threatened or endangered is not warranted at this time. We ask the public to continue to submit to us any new information that becomes available concerning the status of or threats to the subspecies. This information will help us to monitor and encourage the ongoing conservation of this subspecies.

DATES: The finding in this document was made on February 14, 2006.

ADDRESSES: Data, information, comments, or questions regarding this notice should be sent to U.S. Fish and Wildlife Service, 780 Creston Hatchery Road, Kalispell, Montana 59901. The complete administrative file for this finding is available for inspection, by appointment and during normal business hours, at the above address. The petition finding, the status review for YCT, related **Federal Register** notices, the Court Order, and other pertinent information, may be obtained on line at *http://mountain-prairie.fws.gov/endspp/fish/YCT/.*

FOR FURTHER INFORMATION CONTACT: The Montana Ecological Services Field Office (see **ADDRESSES**), by telephone at (406) 758–6872, by facsimile at (406) 758–6877, or by electronic mail at *fw6_yellowstonecut@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Endangered and Threatened Species that contains substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether any species is threatened or endangered, and expeditious progress is being made to add or remove qualified species from the List of Endangered and Threatened Species. Section 4(b)(3)(C) of the ESA requires that a petition for which the requested action is found to be warranted but precluded be treated as though resubmitted on the date of such finding, i.e., requiring a subsequent finding to be made within 12 months. Such 12-month findings must be published in the **Federal Register.**

On August 18, 1998, we received a petition dated August 14, 1998, to list the YCT as threatened, under the ESA, where it presently occurs throughout its historic range. Petitioners were Biodiversity Legal Foundation, the Alliance for the Wild Rockies, the Montana Ecosystems Defense Council, and George Wuerthner.

Biology and Distribution

The YCT is 1 of about 13 named subspecies of cutthroat trout native to interior regions of western North America (Behnke 1992, 2002). Cutthroat trout owe their common name to the distinctive red or orange slash mark that occurs just below both sides of the lower jaw. Aside from distribution, morphological differences, particularly external spotting patterns, may distinguish the various subspecies of cutthroat trout (Behnke 1992). Adult YCT typically exhibit bright yellow, orange, and red colors on their flanks and opercles, especially among males during the spawning season. Characteristics of YCT that may be useful in distinguishing this fish from the other subspecies of cutthroat trout include a pattern of irregularly shaped spots on the body, with few spots below the lateral line except near the tail; a unique number of chromosomes; and other genetic and morphological traits that appear to reflect a distinct evolutionary lineage (Behnke 1992).

Also among those 13 cutthroat trout subspecies is the fine-spotted Snake River cutthroat trout (which Behnke [1992] referred to as *Oncorhynchus clarkii* spp., but more recently referred to as *Oncorhynchus clarkii behnkei* [Behnke 2002]). The natural range of the fine-spotted Snake River cutthroat trout is principally in the western portion of Wyoming and southeastern Idaho, almost entirely surrounded by that of *O. c. bouvieri* (Behnke 1992). In their petition, the petitioners considered the fine-spotted Snake River cutthroat trout a morphological form (or morphotype) of YCT. Biochemical-genetic studies have revealed very little genetic difference between the large-spotted form of YCT and the fine-spotted cutthroat trout of the Snake River basin (most recently, Mitton *et al.* 2006 in review, Novak *et al.* 2005). As the common names indicate, the large-spotted YCT and fine-spotted cutthroat trout are typically separable based primarily on the basis of the sizes and patterns of spots on the sides of the body. The large-spotted YCT has pronounced, medium to large spots that are round in outline and moderate in number, whereas the spots of the fine-spotted cutthroat trout are the smallest of any native trout in western North America and so profuse they resemble "a heavy sprinkling of ground pepper" (Behnke 1992). However, in areas of natural geographic overlap, intergrades of the two forms with intermediate spotting patterns are common (Novak *et al.* 2005).

For purposes of this review, we use the name YCT to represent both of the closely related putative subspecies (*Oncorhynchus clarkii bouvieri* and *Oncorhynchus clarkii behnkei*) and they are considered a single entity (as petitioned) in our status review (USFWS 2006). We refer to them collectively as YCT throughout this document.

Although not specifically documented with historical data, the recent historic range of YCT is thought to have included waters of the Snake River drainage (Columbia River basin) upstream from Shoshone Falls, Idaho (River Mile 614.7), and those of the Yellowstone River drainage (Missouri River basin) upstream from and including the Tongue River, in eastern Montana (Behnke 1992). Historic range of YCT in the Yellowstone River drainage thus includes large regions of northwest Wyoming and southcentral Montana. Historic range in the Snake River drainage includes large regions of the western portion of Wyoming, southeast Idaho, and small parts of the northwest corner of Utah and northeast corner of Nevada (Behnke 1992, Novak

et al. 2005). The transcontinental divide range of YCT in Montana and Wyoming likely resulted from headwater connection. The range of YCT may have once extended further downstream, but probably became isolated in the headwaters of the Snake River following creation of Shoshone Falls (between 30,000 and 60,000 years ago). Today, various YCT stocks remain in the headwaters of the Snake and Yellowstone River drainages in Montana, Wyoming, Idaho, Utah, and Nevada.

The distribution of YCT occurs in 40 watersheds that can be delineated by 4th code Hydrologic Unit Code (HUC) boundaries. Those HUCs generally equate to named watersheds. In this 12-month finding, the term HUC and the word watershed are used more or less interchangeably. Twenty-two of those HUCs are in the headwaters of the Yellowstone River basin and 18 are in the Snake River basin headwaters. Because the status of native fish species can often vary substantially from drainage to drainage, based on the presence and degree of threats and other factors, we believe it is appropriate to treat these 40 watersheds as separate but related entities in order to evaluate the array of threats and status of the species. We will follow that approach to describe many of the threats for YCT.

May et al. (2003) defined a conservation population, per the State position paper on Genetic Considerations Associated with Cutthroat Trout Management (Utah Division of Wildlife Resources 2000), as one that is either genetically unaltered (i.e., core population) or one that may be slightly introgressed due to past hybridization (typically less than 10 percent) and having attributes worthy of conservation. Hybridization is an important concern for YCT populations. For hybridization to result in an introgressed population, it requires that the nonnative species be introduced into or invade the YCT habitat, that the two species then interbreed (i.e., "hybridize"), and that the resulting hybrids themselves survive and reproduce. If the F1 hybrids backcross with one or both of the parental species, genetic introgression occurs. Continual introgression can eventually lead to the loss of genetic identity of one or both parent species, thus resulting in a "hybrid swarm" consisting entirely of individual fish that often contain variable proportions of genetic material from both of the parental species.

We have adopted the States' standards and consider all core and conservation populations, as defined under these standards and as described by May et al. (2003) to be YCT for purposes of this 12-month finding. Because the categories are nested, the term conservation population includes the core populations, and we refer to the collective as conservation populations in the remainder of this document. Those conservation populations collectively occupied about 84 percent of the total habitat occupied by YCT (the rest are sport fish populations that are not considered YCT conservation populations).

The YCT status assessment report (May et al. 2003), identified 10,220 kilometers (km) (6,352 miles [mi]) of stream habitat occupied by 195 separate YCT conservation populations. May et al. (2003) indicated, based on professional judgment which was used to produce an estimate of potentially suitable habitat, that YCT historically occupied about 28,014 km (17,407 mi) of habitat (mostly stream, but including some lakes) in five States. More details of the estimated current and historic distribution are found in the status review accompanying this finding (USFWS 2006).

Previous Federal Actions

On February 23, 2001, we published a 90-day finding (66 FR 11244) which found that the petition to list the YCT failed to present substantial information indicating that listing the YCT may be warranted. A complaint was filed in the U.S. District Court for the District of Colorado on January 20, 2004, on the conclusion of this 90-day finding. On December 17, 2004, the District Court of Colorado (Judge Figa) ruled in favor of the plaintiffs and ordered the USFWS to produce a 12-month finding for YCT. On February 14, 2005, the Court clarified the order and attached a February 14, 2006, due date for the USFWS to complete the 12-month finding. We published a notice reopening the comment period for 60 days on August 31, 2005 (September 1, 2005; 70 FR 52059). The comment period closed on October 31, 2005.

Summary of Factors Affecting the Species

Section 4 of the ESA (16 U.S.C. 1533), and implementing regulations at 50 CFR part 424, set forth procedures for adding species to the Federal List of Endangered and Threatened Species. In making this finding, information regarding the status and threats to this species in relation to the five factors provided in section 4(a)(1) of the ESA is summarized below.

We examined each of these factors as they relate to the current distribution of YCT. In response to our 2000 and 2005 **Federal Register** notices, we received comments and information on YCT from several State fish and wildlife agencies, the U.S. Forest Service (USFS), private citizens and organizations, the Shoshone-Bannock Tribes, and other entities. Among the materials that we received, the most important was a status assessment report for YCT (May *et al.* 2003). The May *et al.* (2003) status assessment was a comprehensive document covering the entire range of the YCT, coauthored by the USFS in conjunction with fish and wildlife agencies of the States of Idaho, Montana, Wyoming, Utah, and Nevada.

The YCT status assessment report (May *et al.* 2003) and the comprehensive database that is the report's basis, along with other supplemental submissions from the agencies and commentors, presented to us the best scientific and commercial information available that describes the present-day rangewide status of YCT in the United States. To compile the information in the status report (May *et al.* 2003), 43 professional fishery biologists from 10 State, Federal, and Tribal agencies and private firms met at 5 State workshops held across the range of YCT, in 2000. At the workshops, the biologists submitted essential information on the YCT in their particular geographic areas of professional responsibility, according to standardized protocols.

In conducting our 12-month finding for YCT we considered all scientific and commercial information on the status of YCT that we received or acquired between the time of the initial petition (August 1998) and the time of the final preparation of this finding. However, we relied mainly on the published and peer-reviewed documentation for our conclusions. Our evaluations of the five factors to the YCT are presented below.

We used the database of May *et al.* (2003) to examine certain aspects of threats and distribution on a watershed by watershed (*i.e.*, HUC by HUC) basis. In order to do so, we used the GIS layers provided with the database (Hagener 2005). We overlaid the HUC boundaries on the conservation population stream layer and recalculated the stream lengths that fell within each HUC. Because there are slight irregularities in some of the HUC boundaries relative to the stream reaches, summarized results are close to, but may not exactly replicate, totals given by May *et al.* (2003). However, the conclusions we have drawn remain appropriate.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

May *et al.* (2003) revealed that 59 percent of the habitat for extant YCT populations (including both conservation populations and sport fish populations) lies on lands administered by Federal agencies, particularly the USFS; specifically the Shoshone, Bridger-Teton, Caribou-Targhee, Bighorn, Custer, and Gallatin National Forests. Moreover, many of the strongholds for YCT conservation populations occur within roadless or wilderness areas or national parks, all of which afford considerable protection to YCT habitat.

We are not aware of any comprehensive assessment of habitat status or trend that has been conducted across the range of the YCT. An extensive body of published literature exists on effects of man-caused perturbations to coldwater salmonid habitat (see for example Beschta *et al.* 1987; Chamberlin *et al.* 1991; Furniss *et al.* 1991; Meehan 1991; Sedell and Everest 1991; Frissell 1993; Henjum *et al.* 1994; McIntosh *et al.* 1994; Wissmar *et al.* 1994; U.S. Department of Agriculture and U.S. Department of the Interior 1996; Gresswell 1999; Trombulak and Frissell 2000). This literature provides a record of the types of activities that are most detrimental to fish habitat. It further documents the physical processes that result from these activities to cause negative impacts to coldwater salmonids such as the YCT. Declines in populations of native salmonids may result from the combined effects of habitat degradation and fragmentation, the blockage of migratory corridors, declining water quality or quantity, angler harvest and poaching, entrainment (process by which aquatic organisms are pulled through a diversion or other device) into diversion channels and dams, introduced nonnative species, or other impacts (USFWS 2002). Examples of specific land and water management activities that depress salmonid populations and degrade habitat include dams and other diversion structures, forest management practices, livestock grazing, agriculture, agricultural diversions, road construction and maintenance, mining, and urban and rural development.

An important aspect of population demographics, which contributes to changes in the range of the YCT as a whole, is the abundance within individual populations. Since each population exists under a unique set of habitat variables and threats, it is important to consider the trend in individual populations as a potential indicator of the status of the subspecies as a whole. Unfortunately, few if any populations have been adequately monitored to provide quantitative indicators of the population trend over the past several generations, due mostly to logistical and financial considerations.

May *et al.* (2003) conducted a qualitative assessment of the viability of each of the 195 conservation populations, based on a ranking system where each isolet (a population isolated by physical barriers or habitat limitations, typically in a headwater drainage) or metapopulation (a set of local populations, among which there may be gene flow and extinction and colonization) was ranked from low to high for each of 4 population variables. The status assessment (May *et al.* 2003) concluded populations at high or moderately high risk occupied only 11.2 percent of the range of YCT conservation populations and the remaining 88.8 percent were estimated to be at low or moderately low risk.

The analysis of risk by watershed, conducted by May *et al.* (2003), is largely congruent with our analysis of occupancy and distribution (USFWS 2006). In general, HUCs or watersheds with populations occupied by few or scattered isolets are considered at greater risk, due primarily to the high degree of isolation. The HUCs with large, interconnected metapopulations are generally rated as being at lower risk. May *et al.* (2003) asked the 43 scientists who conducted the rankings to determine, for each stream segment, which of 4 categories best described their existing knowledge of the demographic status (primarily trend) of the population. The YCT conservation population in each stream segment was classified as either: (1) Much reduced and declining over the long term and/or at a fast rate; (2) reduced and declining; (3) reduced from potential, but now fluctuating around equilibrium; and, (4) increasing, or fluctuating around equilibrium and near potential. Results of this analysis indicated that for the Yellowstone River basin only about 17 percent of stream miles classified as isolets and 4 percent of miles considered part of metapopulations were classified in the two reduced and declining categories. For the Snake River basin only about 20 percent of stream miles classified as isolets and 24 percent of miles considered part of metapopulations were classified in the two reduced and declining categories.

While the above analysis is primarily a qualitative indicator of population health, it does provide some insight into the overall status of the habitat. If habitat was rapidly declining or failing, it stands to reason that population status would follow a similar trend. We were only partially able to quantitatively assess the threat that destruction, modification, or curtailment of habitat may present to YCT for this finding. In the YCT review developed by May *et al.* (2003), the biologists who participated were able to identify potential risks to habitat in several categories, and they indicated on a stream reach basis whether certain land use impacts were present (known) or may be present (possible). May *et al.* (2003) cautioned that the information was too qualitative to link land use impacts to specific conservation populations and that much of the input was speculative. However, they concluded that even with those uncertainties, the information could serve to heighten awareness of the possible influences of land uses on YCT.

The YCT review (May *et al.* 2003) considered and evaluated land and water use impacts to YCT in seven broad categories: (1) Dewatering (presumably including other irrigation-related impacts such as impediments to fish passage, entrainment, stream channel destabilization, etc.); (2) mining (presumably including impacts such as effects to water quality, including dispersal of toxic substances and sedimentation); (3) range, *i.e.*, livestock grazing (presumably including riparian impacts, sedimentation, trampling, and other effects); (4) non-angling recreation (primarily identified as impacts from four-wheelers, ATVs, nondispersed campsites, recreational developments such as ski hills and golf courses, etc.); (5) roads (presumably related to a multitude of activities, such as logging, transportation corridors, recreational access and including not only roads, but also railroads and other utility networks); (6) timber harvest (presumably commercial private and public logging activities as well as other associated actions of forestry management); and, (7) other (including significant impacts not captured in the above, each identified in spatially-linked comments in the database to the location where they occur).

In the process of identifying the land use impacts described above, and linking them to specific stream segments associated with YCT conservation populations, fishery professionals were asked to judge whether each activity resulted in "known," "possible," or "no" impacts (May *et al.* 2003; see USFWS 2006 for

more detail). For the 195 designated conservation populations of YCT, the most commonly identified land use impact believed to affect the status and conservation of YCT was livestock grazing. Grazing was identified as a known impact on 45 populations (23 percent of the total number of conservation populations) and a possible impact on 97 others (50 percent). Thus, May *et al.* (2003) concluded that livestock grazing likely adversely affects nearly ¾ of the conservation populations of YCT. Grazing was followed, in order of frequency of occurrence identified as an impact, by roads (known impact on 33 populations and suspected on 66 more); non-angling recreation such as camping, trail riding, ATVs, etc. (known impact on 34 populations and suspected on 42 others); timber harvest (known impact on 31 populations and suspected on 35 others); stream dewatering (known impact on 21 populations and suspected on 40 others); and mining (known impact on 17 populations and suspected on 8 others). This information assessed only the relative frequency of these land use factors in affecting YCT populations; it did not assess the severity of impacts on a population by population basis (May *et al.* 2003). For example, while impacts from dispersed recreation may be pervasive, recreational impacts are not likely to severely affect YCT habitat to the extent that more intrusive uses such as major water withdrawals or extensive mining activities might in a given drainage.

An evaluation of the land and water use information by stream segment (May *et al.* 2003) reveals watersheds (HUCs) that are likely to experience higher magnitude of such impacts, based simply on the known presence of such activities (USFWS 2006). Watersheds in the Yellowstone River basin where grazing, roads, and timber harvest were considered to affect large areas of habitat occupied by conservation populations of YCT were in the Upper Yellowstone, Shields, and Upper Wind (May *et al.* 2003). Conversely, several HUCs were identified as having large areas of conservation habitat with no known impacts. These typically include wilderness, national park, or other highly protected areas. Watersheds in the Yellowstone River basin that were identified as containing over 161 km (100 mi) of habitat occupied by conservation populations with no known impacts were the Yellowstone Headwaters, Upper Yellowstone and Shields. The Upper Yellowstone and Shields HUCs both contain substantial habitat that is heavily impacted as well as major portions that are relatively unimpacted by land and water management activities.

In the Snake River basin, areas where grazing, roads, dewatering and timber harvest were considered to have known impacts on large areas of habitat occupied by conservation populations of YCT were located in nearly all HUCs, but were especially pervasive in the Greys-Hobock, Palisades, Salt, Teton, and Blackfoot watersheds. The only HUC in the Snake River basin identified as having over 161 km (100 mi) of conservation habitat with no known impacts was the Snake River Headwaters. This information is based on a very coarse analysis and should be viewed as preliminary. In a planned 2006 update of the database, the information linking habitat impacts to specific watersheds is expected to be improved (Brad Shepard, Montana Fish, Wildlife and Parks [MFWP], pers. comm. 2005).

As reported, mining impacts are not pervasive across the range of the YCT, but in some instances where they occur they have been noted to have particularly severe consequences to aquatic habitat (USFWS 2002). The status assessment of May *et al.* (2003) indicated that known impacts of mining on YCT were most widespread in the Yellowstone Headwaters and Upper Yellowstone HUCs, as well as in the Gros Ventre, Palisades, Salt and Blackfoot watersheds of the Snake River basin, where 24–113 km (15–70 mi) of YCT conservation populations in each watershed are known to have been impacted. Lemly (1999) described a particularly threatening scenario in the Blackfoot River drainage of Idaho where very high selenium concentrations were first discovered. A preliminary hazard assessment indicated that waterborne selenium concentrations in the Blackfoot River and 14 of its tributaries met or exceeded toxic thresholds for fish. The selenium problem centers on surface disposal of mine spoils. Compounding this problem is the presence of historic tailings dumps, many of which are large (>10 million cubic meters [353 million cubic feet]) and contain a tremendous reservoir of selenium that has the potential to be mobilized and introduced into aquatic habitats (Lemly 1999). Continued expansion of phosphate mining is anticipated in these watersheds, and large mineral leases are awaiting development both on and off National Forest lands (Lemly 1999, Christensen 2005). This may be a serious and evolving situation. However, while selenium poisoning should not be minimized as a threat to conservation populations of YCT in the Blackfoot and Salt River watersheds, it remains a localized threat and would not be expected to cause rangewide losses of YCT conservation populations.

Another localized threat occurs in the Teton River watershed, where Koenig (2005) and Benjamin (2005) reported that YCT populations have experienced precipitous declines in recent years. These declines are hypothesized to be linked to poor recruitment. Koenig (2005) investigated whether specific habitat attributes could be limiting cutthroat fry recruitment and at which life stage a recruitment bottleneck may be operating. His conclusions were that the number of cutthroat fry is more likely limited by low seeding than by spawning habitat availability. Koenig (2005) further concluded that low survival of age-1 cutthroat trout may be attributable to competition with introduced rainbow and brook trout for overwinter habitat. Benjamin (2005) speculated that water shortages and stream dewatering have played a major role in the decline of YCT in the Teton River basin.

In Idaho, the State manages approximately 292,000 hectares (722,000 acres) of Endowment lands. These lands include approximately 200 km (124 mi) of perennial streams that Idaho Department of Fish and Game (IDFG) has identified as providing habitat for the YCT (Caswell and Huffaker 2005). The predominant use of these lands is livestock grazing, though some timber harvest also occurs. Where timber harvest occurs on those lands, the State of Idaho reports that the Department strictly adheres to the rules and guidelines provided by Idaho's Forest Practices Act (Caswell and Huffaker 2005).

There are substantial portions of the range where habitat threats appear to be limited. Wichers (2005) reported that the upper Yellowstone River above Yellowstone Lake appears not to be subject to genetic or habitat threats, due largely to the remote wilderness setting (see USFWS 2006 for additional discussion).

In Yellowstone National Park (YNP), of the approximately 3,132 km (1,946 mi) of stream originally supporting resident or fluvial YCT (mostly outside of the Yellowstone Lake and River drainage above the Lower and Upper Falls), 65 percent (2,025 km [1,258 mi]) continue to support nonintrogressed fish, and 35 percent (1,107 km [688 mi]) now are home to fish hybridized to varying degrees with nonnative rainbow trout (Lewis 2005).

In Utah and Nevada, the range of YCT is restricted to a few headwater streams

in the lower Snake River portion of the range, specifically in the Goose and Raft HUCs. Utah and Nevada are part of the Interstate Yellowstone Cutthroat Trout Working Group. They participated in the YCT status assessment (May *et al.* 2003), but they have not provided specific comments for this status review (USFWS 2006) regarding updates to status or distribution. The States of Idaho, Montana, and Wyoming comprise approximately 98 percent of the range of YCT conservation populations.

The Center for Biological Diversity (Greenwald 2005) submitted an alternative analysis of the data presented in May *et al.* (2003). According to Greenwald (2005), these results clearly indicate that ongoing habitat degradation is threatening remaining YCT populations. We refer the reader to our previous discussion of the limitations of the data on known habitat impacts presented in May *et al.* (2003). In contrast with the Center for Biological Diversity (Greenwald 2005), the USFWS finds that the mere presence of an activity within a stream segment that hosts a conservation population is not sufficient evidence to conclude that the population is threatened. Additional parameters, such as distribution and abundance, as well as recent trends must be factored into an overall status determination. Otherwise, logic would dictate that every species that comes in contact with managed landscapes is threatened by those human influences. Such a conclusion is not reasonable.

Summary of Factor A

In summary, populations of YCT that meet the State management agency standards as conservation populations (*i.e.*, those populations we are considering YCT for purposes of this finding), are well-distributed and relatively secure in at least nine HUCs (*i.e.*, watersheds) in the central headwaters of their native range. In the Yellowstone River basin, we find that populations in the HUCs of the Yellowstone Headwaters (1,308 km [813 mi] of occupied habitat), Upper Yellowstone (822 km [511 mi]), and Shields (653 km [406 mi]) form the central core of the YCT range and these populations are well-distributed (collectively providing 64 percent of the habitat occupied by conservation populations in the Yellowstone River drainage). In the Snake River basin, the central core of the range for the YCT conservation populations also is located in the headwaters, along the Continental Divide. The six strongest remaining conservation populations of YCT in the Snake River basin are in Greys-Hobock (1,051 km [653 mi] of occupied habitat), Snake Headwaters (716 km [445 mi]), Salt (694 km [431 mi]), Teton (644 km [400 mi]), Palisades (501 km [311 mi]), and Gros Ventre (414 km [257 mi]) watersheds. Conservation populations in these HUCS are generally well-distributed (collectively providing 68 percent of the habitat occupied by conservation populations in the Snake River drainage).

As a result of the present information, and as discussed more thoroughly in the status review (USFWS 2006), we conclude the best scientific and commercial information available to us indicates that present or threatened destruction, modification, or curtailment of habitat or range has not affected the status of YCT to the extent that listing under the ESA as a threatened or endangered species is warranted at this time. Although YCT distribution has declined, perhaps by more than 50 percent over the past 200 years (May *et al.* 2003), our analysis indicates that YCT strongholds remain in at least three major watersheds of the upper Yellowstone River basin and six major watersheds of the upper Snake River basin. These nine HUCs collectively form a solid basis for persistence of conservation populations of YCT.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

In the YCT status assessment (May *et al.* 2003) consideration was given to the effects of angling on population status. Angling was considered to have a known impact on 54 of 195 conservation populations (28 percent) and a possible impact on 22 other populations. In total, then, recreational angling was considered by May *et al.* (2003) to impact up to about 40 percent of the 195 designated conservation populations of YCT.

Our status review (USFWS 2006) revealed that each of the States and the National Park Service have greatly restricted the angler harvest of YCT. May *et al.* (2003) noted that restrictive angling regulations have been implemented for YCT on waters comprising nearly half of the 195 designated conservation populations of YCT. In many regions, catch-and-release is the only type of angling that is allowed (Caswell and Huffaker 2005; Hagener 2005; Koel *et al.* 2005; Osborne 2005; Wyoming Game and Fish Department [WGFD] 2005). However, catch-and-release angling regulations are not essential to protecting YCT from excessive harvest by anglers in all waters.

Although overfishing contributed to the decline of YCT in specific locations in the past, overfishing or overcollection is not currently perceived as a threat to YCT in Montana (Hagener 2005), Idaho (Caswell and Huffaker 2005), or Wyoming (WGFD 2005). These activities are tightly regulated and have become increasingly restrictive. Enforcement of regulations pertaining to native fish is a priority. Extensive education and signing efforts have been undertaken to help anglers identify YCT and to encourage their support for YCT conservation efforts (*e.g.*, Hagener 2005). Collection of YCT for scientific and educational purposes is regulated by State agencies and is allowed only for valid, scientific purposes. Collection methods, locations, and timing are stipulated as part of the conditions of the permits.

In YNP, in order to ensure that the native YCT populations within the Park continue to persist into the foreseeable future even with a high degree of angling pressure, the Park instituted a mandatory catch-and-release regulation for cutthroat trout and other native park fish species in 2001 (Lewis 2005). Recently, they have proposed liberalizing harvest limits for nonnative species that exist in waters that also are inhabited by native cutthroat trout (Lewis 2005).

Threats from legal recreational angling are easier to control through regulatory actions than are threats from most land and water management activities. Where legal angling is considered a risk, restrictive regulations continue to be implemented, sometimes with dramatic results. For instance, directed harvest on rainbow trout was rapidly initiated in the South Fork Snake River, upon discovery that the rainbow trout population was expanding and threatening the YCT population (J. Fredericks in litt., IDFG, 2005).

Summary of Factor B

Although overfishing contributed to the decline of YCT in specific locations in the past, overfishing or overcollection is not currently perceived as a threat to YCT. Therefore, we conclude the best scientific and commercial information available to us indicates that overutilization for commercial, recreational, scientific, or educational purposes has not affected the status of YCT to the extent that listing under the ESA as a threatened or endangered species is warranted.

Factor C. Disease or Predation

Disease

The risk of transmitting disease while relocating wild or hatchery fish into new waters is addressed via policies and State statutes (Caswell and Huffaker 2005; Hagener 2005; WGFD 2005). For example, in Montana, policy requires that an environmental assessment be completed for all introductions of a species into waters where the species is not found. The environmental assessment process provides for evaluation of impacts to resident native species and public review. Before fish are relocated, fish from the donor source are inspected for the presence of any pathogen that might preclude the transfer. Approval of all fish transfers requires the approval of the Fisheries Division Administrator after consultation with the Fish Health Committee. Reducing the risk of amplifying or spreading disease by hatchery operations is considered important (Hagener 2005).

All fish hatcheries (Federal, State, and private) typically undergo annual fish health inspections as authorized by State statute. In Montana, for example, all hatcheries are required to report the presence of fish pathogens, and damages resulting from spread of diseases can be collected from the violator. The Montana Fish Wildlife and Parks (MFWP) has spent several million dollars during the past 10 years to upgrade and protect State hatchery water sources so that whirling disease and other pathogenic organisms cannot get into hatchery water supplies (Hagener 2005). Before any fish lot is stocked from a State facility, it is inspected for the presence of disease. Diseased fish cannot be stocked from State hatcheries. Because of the possible introduction of fish pathogens, MFWP does not bring wild fish into any of its salmonid hatcheries. Additionally, movement of fish between salmonid hatcheries is prohibited except in extreme emergencies and must be approved by the Fisheries Division Administrator and the Fish Health Committee (Hagener 2005).

As part of this 12-month finding, we consider the threat that diseases may pose to YCT. Except for whirling disease, the fish pathogens that occur in the natural habitats of YCT are mainly benign in wild populations and typically cause death only when the fish are stressed by severe environmental conditions. Whirling disease is caused by the exotic myxozoan parasite *Myxobolus cerebralis*. That microscopic parasite was introduced to the eastern United States from Europe in the 1950s, and has since been found in many western States. Two separate host organisms are necessary for completion of the parasite's life cycle, a salmonid (i.e., salmon, trout, and their close relatives) fish and a specific aquatic oligochaete worm (*Tubifex tubifex*).

Whirling disease has been identified in fish populations in 148 watersheds in Montana, including sites on upper Yellowstone River, in the Shields River, and in the Clarks Fork of the Yellowstone where YCT occur (Hagener 2005). To date, whirling disease has not been detected in any wild YCT populations in Montana and has not been documented as causing any impacts to Montana YCT populations. In Montana, actions continue to be taken to prevent the spread of whirling disease and to minimize the impact of this disease on native fish (Hagener 2005).

Whirling disease has been reported in wild YCT from Henrys Lake, Teton River, South Fork Snake River, and Blackfoot River in Idaho (Caswell and Huffaker 2005). It also has been documented in rainbow trout populations in several of the watersheds occupied by YCT in close proximity.

In Wyoming, the whirling disease parasite was first detected in 1996 on the South Fork Shoshone River with the infection suspected to have originated from privately stocked fish ponds adjacent to the river (WGFD 2005). Since that time, the organism has spread elsewhere throughout portions of Wyoming (USFWS 2006). To date, WGFD has not observed a population impact on YCT from whirling disease in State-managed waters.

Whirling disease has been implicated in the decline of YCT in Yellowstone Lake (Koel *et al.* 2005). The parasite *Myxobolus cerebralis* was discovered in Yellowstone Lake in 1998, among juvenile and adult cutthroat trout (Koel *et al.* in press 2006). Examination of specimens obtained as gillnetting mortalities has since confirmed the presence of the parasite throughout Yellowstone Lake, with highest prevalence existing in the northern region of the lake, near known infected streams. Although widespread presence of this harmful parasite in the lake has been documented, it is encouraging that the prevalence of parasitic spores in adult fish suggests some cutthroat trout are surviving initial infection (Koel *et al.* 2005).

The impacts of whirling disease in YNP have been most severe in Pelican Creek (Koel *et al.* 2005), where few wild-reared fry have been observed in recent years (2001–2004). Cutthroat trout sentinel fry exposures (i.e., experiments with caged fish) in this tributary have indicated that over 90 percent of the fry were infected with the parasite, with an average severity (by histological examination) of greater than "4" on a scale of "0" (no infection) to "5" (most severe infection; Koel *et al.* 2004). The spawning cutthroat trout population of Pelican Creek, which in 1981 totaled nearly 30,000 fish (Jones *et al.* 1982), has been essentially lost (Koel *et al.* 2005). Angling in the Pelican Creek drainage was completely closed in 2004, in an attempt to slow the dispersal of the whirling disease parasite to other Park waters.

Although the whirling disease parasite continues to spread in many waters of the western United States (Bartholomew and Reno 2002) and is now widespread in portions of the habitat occupied by YCT, few outbreaks of whirling disease in resident fishes have occurred (Caswell and Huffaker 2005; Hagener 2005; WGFD 2005). Studies summarized by Downing *et al.* (2002) indicated that presence of the whirling disease parasite does not portend outbreaks of the disease in resident fishes. For example, although 46 of 230 sites tested in Montana were positive for the parasite, disease outbreaks were known to have occurred at only 6 of those sites. Downing *et al.* (2002) provided evidence that the frequent absence of manifest symptoms of whirling disease in resident trout, despite presence of the parasite, is due to complex interactions among the timing and spatial locations of important host-fish life-history events (*e.g.*, spawning, fry emergence from stream gravels, and early-life growth) and spatial and temporal variation in the occurrence of the parasite itself. Only under specific conditions, which evidently occur only in a small proportion of the locations where the parasite has been found, are those interactions such that disease outbreaks occur in resident fishes.

Studies conducted on various salmonids by Vincent (2002) confirmed that YCT were moderately susceptible to whirling disease. All of the cutthroat trout he tested (including YCT of both the large-spotted and fine-spotted forms as well as westslope cutthroat trout [WCT]) were found under captive experiments to show significantly lower average infection intensity than all of six different rainbow trout strains. The WCT were found in those tests to have significantly lower infection rates than either of the YCT. We are unaware of any studies of the susceptibility of the hybrids of rainbow trout and YCT to whirling disease.

The YCT status assessment report (May *et al.* 2003) concluded that the threats to extant YCT populations from diseases in general were greater for the extensive YCT metapopulations than for the smaller YCT populations that occur as isolets. The key assumption made in reaching that conclusion was that because the ranges of individual metapopulations were naturally much larger and encompassed habitats more diverse than those of isolets, the probability that diseases may be introduced and become established in YCT populations and spread through migratory behavior was greater for metapopulations than isolets (May *et al.* 2003).

Extensive research is continuing to determine the distribution of whirling disease, the susceptibility of YCT and other fishes to whirling disease, infection rates, and possible control measures (Bartholomew and Wilson 2002). Although no means have been found to eliminate the whirling disease parasite from streams and lakes, the States have established statutes, policies, and protocols that help to prevent the human-caused spread of extant pathogens and the introduction of new pathogens. The available scientific information specific to whirling disease thus indicates considerable variation in the probable disease threat among individual YCT populations and provides evidence that the disease is not a significant threat to the majority of populations constituting YCT (see USFWS 2006 for more detail).

Predation

The instances when predation by other fishes may negatively affect extant YCT populations are thought to be fairly well distributed across the range, but are not well documented. Some authors have identified nonnative species as one of the greatest threats to cutthroat trout of the intermountain West (see for example—Gresswell 1995; Kruse *et al.* 2000; Dunham *et al.* 2004). Predation, or other forms of interaction with nonnative fish, threatens native YCT in both managed landscapes and in some relatively secure unaltered habitats, including roadless areas, wilderness areas, and national parks. Based on observations to date, YCT that have the adfluvial or fluvial life history may be most susceptible to the effects of predation by nonnative fishes.

Introduced brown trout are well established in much of the range of YCT, occurring primarily in rivers and their larger tributaries, where they likely compete for food and space and prey on cutthroat trout. Elevated water temperatures may often favor brown trout, which are adaptable to such conditions over native species like YCT. Introductions of nonnative game fish such as brown trout also can be detrimental due to the increased angling pressure they may attract, which can result in the subsequent incidental catch and harvest of YCT.

The illegal introduction and subsequent establishment of a reproducing lake trout population in Yellowstone Lake has had far-reaching consequences and serves as a well-documented example of such impacts in the range of YCT. With the recent invasions by lake trout (and whirling disease), YNP is placing a high priority on preservation and recovery of YCT, particularly in Yellowstone Lake. Introduced lake trout have already resulted in the decline of cutthroat trout (Koel *et al.* 2005) and the problem also may have consequences to the food web, including impacts on grizzly bears and other consumers (Koel *et al.* 2005; Lewis 2005). Nonnative lake trout are not viewed as a suitable ecological substitute for cutthroat trout in the Yellowstone Lake system because they are inaccessible to most consumer species (Koel *et al.* 2005). Lake trout tend to occupy greater depths within the lake than do cutthroat trout. Lake trout remain within Yellowstone Lake at all life stages and they do not typically enter tributary streams, as do cutthroat trout.

Bioenergetics modeling suggests that an average-sized mature lake trout in Yellowstone Lake will consume 41 cutthroat trout per year (Ruzycki *et al.* 2003). Following the guidance of a lake trout expert advisory panel (McIntyre 1995), the National Park Service initiated gillnetting to determine the spatial and temporal distribution of lake trout within Yellowstone Lake (Koel *et al.* 2005). The efforts have led to a long-term lake trout removal program for the protection of the cutthroat trout in this system (Mahony and Ruzycki 1997; Bigelow *et al.* 2003).

Lake trout densities in the West Thumb of Yellowstone Lake remain high and pose an ongoing threat to the cutthroat trout (Koel *et al.* 2005). The goals of controlling lake trout and rehabilitating historical cutthroat trout abundance in Yellowstone Lake are yet to be achieved. Relatively low lake trout catch per unit effort and an annual decrease in the size of sexually mature lake trout are indicators that the removal program is exerting pressure on the lake trout population (Koel *et al.* 2005).

The lake trout threat in Yellowstone Lake is relatively new, occurs in a unique ecological setting, and involves a predaceous nonnative fish species (lake trout) that has a limited history of sympatry with YCT (due partly to the relative scarcity of natural adfluvial populations of YCT). A similar set of circumstances occurs in nearly a dozen large headwater lakes of the Columbia River basin, located mostly in and around Glacier National Park. Introduced populations of lake trout have become established there and have dramatically expanded in sympatry with native bull trout (*Salvelinus confluentus*) and WCT in recent years. The initial lake trout introduction in Flathead Lake occurred about 100 years ago and to date cutthroat trout have not been extirpated from the lakes in the Flathead River system, but major food web perturbations have occurred (Spencer *et al.* 1991). Some populations of native fish persist only at very low levels (Fredenberg 2002). We believe there is a level of uncertainty over the eventual outcome of the competitive interaction between lake trout and YCT in Yellowstone Lake. The USFWS finds reason for concern over the future of the Yellowstone Lake population of YCT, and we will monitor this situation closely. However, given the large scope of the Yellowstone Lake ecosystem and ongoing conservation actions, we believe that conservation populations of YCT will persist in this ecosystem, at least for the foreseeable future.

We concur with Greenwald (2005), who submitted comments that asserted: "Where YCT are able to persist in sympatry with nonnative trout, their overall numbers and biomass may be greatly reduced. This is very likely a major factor, along with habitat degradation, in the restriction of the YCT to isolated, high-elevation, headwater streams." Greenwald (2005) noted that May *et al.* (2003) did not compile data on the presence of non-hybridizing trout in YCT streams (*e.g.*, brown trout, brook trout), but concluded it is safe to say that many of their conservation populations and the nonintrogressed populations are in fact sympatric with nonnative trout. Greenwald (2005) advocated that YCT populations existing in sympatry with predaceous nonnative fish were not secure and are in fact, threatened with extirpation. Nonnative trout that do not hybridize with cutthroat have undoubtedly caused historical reductions in the size and distribution of conservation populations of YCT across substantial portions of the range. However, most of these introduced trout populations have been in place for many decades, if not a century or more, and they have not caused widespread

extirpation of YCT. Nonetheless, active programs to suppress or remove nonnative trout from waters where YCT populations exist are encouraged and in some areas are being initiated (USFWS 2006).

Summary of Factor C

As a result of this analysis, we conclude the best scientific and commercial information available to us indicates that neither whirling disease nor other nonnative disease organisms have affected the status of YCT to the extent that listing under the ESA as a threatened or endangered species is warranted at this time. Additionally, we conclude the best scientific and commercial information available to us indicates that predation from brown trout, lake trout, or other predaceous, nonnative fishes has not affected the status of YCT to the extent that listing under the ESA as a threatened or endangered species is warranted. However, where such predation does occur, often on YCT that have either the fluvial or adfluvial life history, it can have serious consequences to conservation populations. The impacts of some remaining, nonnative fishes overlapping with YCT (*e.g.*, brook trout) will be discussed in subsequent sections (see Factor E) of this document.

We believe that intensive monitoring and evaluation of the status of conservation populations of YCT and their overlapping competitors over time is necessary and may ultimately indicate whether nonnative species control actions have been adequately implemenfed and effective. If the current trend of nonnative species expansion cannot be halted, some conservation populations of YCT will likely exhibit a downward trend over time, and at some point the species may become threatened, largely as a result of those nonnative species interactions. However, at this time the best scientific and commercial evidence available to us does not suggest that the YCT is impacted across its range to the extent that listing under the ESA as a threatened or endangered species is warranted.

Factor D. Inadequacy of Existing Regulatory Mechanisms

The ESA requires us to examine the adequacy of existing regulatory mechanisms with respect to those extant threats that place the species in danger of becoming either threatened or endangered. In the United States, YCT are generally managed as a sought-after game fish species by State fish and wildlife managers in most of the watersheds where they occur. Each management jurisdiction bases its fishing regulations on local fish population information, consistent with its overall regulatory framework and public review process, as well as broader general management plans and objectives (Caswell and Huffaker 2005; Hagener 2005; Lewis 2005; Wichers 2005). However, the management authorities that develop and set the angling regulations typically do not own or manage the habitat in the watersheds inhabited by conservation populations of the YCT. Most of that habitat is managed by Federal land management agencies. Notable major exceptions occur in YNP and on all or portions of Native American Indian Reservations, where ownership and management are consolidated. Coordination in implementation of regulatory mechanisms that are designed to protect the habitat, with angling regulations allowing public enjoyment of the species, is vitally important. Numerous examples were submitted to the USFWS where such coordinated efforts were highlighted (Caswell and Huffaker 2005; Hagener 2005; Lewis 2005; McAllister 2005; Wichers 2005).

Regulatory Mechanisms Involving Land Management

The status assessment report (May *et al.* 2003) revealed that approximately 59 percent (7,125 of the 12,115 km [4,427 of the 7,528 mi]) of habitat presently occupied by all YCT populations (including both conservation and sport fish populations) lies on lands managed by Federal agencies. Included within that total are lands with special management, including those designated as national parks (10 percent of all occupied habitat on Federal lands), USFS-administered wilderness areas (14 percent), or other USFS-administered roadless areas (19 percent). Additional lands managed as roadless by the Bureau of Land Management (BLM) were not quantified, but would add to this total. In summary, about half of the federally managed land occupied by YCT occurs in some form of protected habitat.

Numerous State and Federal laws and regulations exist that help to prevent adverse effects of land management activities on YCT. Federal laws that protect YCT and their habitats include the Clean Water Act, Federal Land Management Protection Act, National Forest Management Act, Wild and Scenic Rivers legislation, Wilderness Act, and the National Environmental Policy Act (NEPA). The USFS and BLM have adopted the Inland Native Fish Strategy or similar standards in waters of the Snake River Basin west of the Continental Divide, that includes standards and guidelines that help protect the biological integrity of watersheds. The USFS classifies YCT as a "sensitive" species. As a result, Biological Evaluations include appropriate mitigation for any Forest project that has the potential to affect YCT.

Greenwald (2005), in comments submitted for the status review (USFWS 2006), asserts that the National Forest Management Act and other laws are inadequate and their implementation is insufficient to provide necessary protections to YCT on USFS lands. However, we have based our analysis of listing Factor D (Inadequacy of Existing Regulatory Mechanisms) primarily on the best available scientific and commercial information regarding the status and trend of the species. We found the record did not indicate that status and trend of YCT is declining in a broad pattern, or to such an extent that would indicate a failure of existing laws and regulatory mechanisms to provide for sufficient protection of the species habitat on National Forest lands. Greenwald (2005) cites numerous examples of purportedly inadequate environmental assessments for timber sales, inadequate resource management plans, *etc.*, but evidence of ostensibly resultant impacts to the YCT populations was not provided.

Few other aquatic species listed under the ESA overlap the distribution of YCT, so YCT currently receive minimal protection from the ESA's section 7 consultation provisions. Salmon, steelhead, and bull trout in the Snake River system are all found downstream of Shoshone Falls (River Mile 614.7), outside the recent historical range of YCT. Two ESA-listed snail species, the endangered Utah valvata (*Valvata utahensis*) documented to occur in the lower Henry's Fork and in the mainstem Snake River from the mouth of the Henry's Fork downstream to Grandview (River Mile 487), and the endangered Snake River physa (*Haitia natricina*) known to occur in the mainstem Snake River from Grandview (River Mile 487) as far upstream as Minidoka Dam (River Mile 674.5), are within the range of YCT. The threatened wetland plant, *Spiranthes diluvialis* (Ute ladies'-tresses), occurs in wetlands along the mainstem Snake River downstream from the Palisades Dam to American Falls Reservoir and along the Henry's Fork.

Temperature regime also is identified as one of the most important water quality attributes affecting distribution of some native salmonids (Rieman and McIntyre 1995; Adams and Bjornn 1997). The U.S. Environmental

Protection Agency (EPA) works with USFWS, State environmental quality agencies, and other entities to develop regional temperature guidance (USFWS 2002). The goals are to develop EPA regional temperature criteria guidance that—(1) meet the biological requirements of native salmonid species for survival and recovery pursuant to the ESA, provide for the restoration and maintenance of surface water temperature to support and protect native salmonids pursuant to the Clean Water Act, and meet the Federal trust responsibilities with treaty tribes for rebuilding salmon stocks, (2) recognize the natural temperature potential and limitations of water bodies, and (3) can be effectively incorporated by States and Tribes in programs concerned with water quality standards. States and Tribes will use the new criteria guidance to revise their temperature standards, and if necessary, the EPA and other agencies will use the new criteria guidance to evaluate State and Tribal standard revisions.

In Idaho, State regulatory mechanisms that provide some protection for YCT habitat include the Stream Channel Protection Act, the Lake Protection Act, and the Forest Practices Act (Caswell and Huffaker 2005). Wyoming has similar regulatory oversight (WDFG 2005). Montana laws that benefit YCT include the Montana Stream Protection Act, the Streamside Management Zone Law, the Montana Natural Streambed and Land Preservation Act, and the Montana Pollutant Discharge Elimination System (Hagener 2005). The Montana Stream Protection Act requires a permit be obtained for any project that may affect the natural and existing shape and form of any stream or its banks or tributaries.

Other State laws, rules, and regulatory mechanisms that help ensure the conservation of YCT and their habitat in Utah and Nevada are not discussed, but they are similar to those in the three States (Idaho, Montana, and Wyoming) where 98 percent of the extant range of the YCT occurs.

Regulatory Mechanisms That Address Threats From Hybridizing, Nonnative Fishes

Stocking has been part of Idaho's fisheries management for many years; indeed, fish stocking is recognized as an integral part of Idaho's fisheries policy (IDFG 2005). In Idaho, regulatory mechanisms that will minimize the potential for additional threats to extant YCT populations from hybridization are now in place (Caswell and Huffaker 2005). The IDFG management efforts to reduce hybridization have expanded greatly in the past few years. Since 1999, it has been the policy of IDFG to stock YCT waters with only rainbow trout from eggs that were heat-shocked to produce triploidy and sterility (Caswell and Huffaker 2005), thus reducing fish stocking as a source of hybridizing rainbow trout. The IDFG management direction, as described in its Fisheries Management Plan (a publicly reviewed, Commission-adopted document), gives priority in management decisions to wild, native populations of fish. In addition, the transport of live fish to, within, and from Idaho is regulated by the IDFG and the Idaho Department of Agriculture. The IDFG regulates private ponds in the State and applies the same criteria to private-pond stocking that it does to the stocking of public waters (*i.e.*, stocking of potentially hybridizing fishes that may pose a hybridization threat to native cutthroat trout is prohibited).

Partially in recognition of past problems caused by indiscriminant fish stocking, Montana has adopted a number of laws and regulatory mechanisms that address threats posed by the unlawful stocking of potentially hybridizing, nonnative fishes (Hagener 2005). These include State statutes, rules, and policies that restrict the capture, possession, transportation, and stocking of live fish, including fishes that may hybridize with YCT, as well as rigorous fish-health policies that restrict the transport or stocking of live fish. The stocking of private ponds also is closely regulated (Hagener 2005). Furthermore, although the stocking of rivers and streams with a variety of nonnative fishes was routine early in the 20th Century, it no longer occurs in Montana. In 1976, Montana adopted a policy that prohibits the stocking of hatchery fish in rivers and streams. Consequently, unless done for government-sponsored conservation purposes, no other trout or nonnative fish may be stocked in rivers and streams inhabited by YCT in Montana.

Regulatory Mechanisms That Address Threats From Pathogens

The MFWP has established a Fish Health Committee to review all projects and policies that involve fish health issues and is in the process of finalizing its Fish Health Policy. This policy establishes monitoring protocols for State, Federal, and private fish hatcheries; identifies four classifications of fish pathogens; outlines the policies and, where appropriate, the permitting processes for importation or transfer of fish, fish eggs and fish parts; establishes disinfection procedures of hatchery equipment, hatchery facilities, and fish eggs; delineates the hatchery quarantine process and procedures; and establishes policies regarding the importation of aquatic animals.

Montana limits the threat of importation of fish pathogens by restricting the importation of fish, leeches, and crayfish (Hagener 2005). Importations of fish and fish gametes require an import permit. Sources of imported fish, fish gametes, and leeches must pass a rigorous fish health certification process. Nonnative aquatic nuisance species (ANS) include nonindigenous animal and plant species and pathogens that can potentially impact native species or their environments. The ANS may pose a threat to YCT and other Montana native species through competition, predation, or disruption of the ecology of their environment (Hagener 2005). In order to proactively respond to this threat, MFWP formed the Montana Aquatic Nuisance Species Technical Committee that has completed an Aquatic Nuisance Species Management Plan that addresses the illegal importation of exotic aquatic animals, plants, and pathogens. Led by the MFWP ANS Program Coordinator, Montana coordinates State efforts and funding to prevent accidental introductions of ANS, limit the spread of established ANS, and eradicate ANS where feasible.

In Wyoming, similar State regulatory practices are in place. In Utah and Nevada, the range of YCT is restricted to a few headwater streams in the lower Snake River portion of the range, specifically in the Goose and Raft HUCs. For the most part, applicable State laws and regulations in Utah and Nevada are similar to those detailed in the other three States (Idaho, Montana, and Wyoming) which comprise approximately 98 percent of the YCT range.

Greenwald (2005) submitted comments for this status review (USFWS 2006) indicating that the Interstate Yellowstone Cutthroat Trout Working Group Memorandum of Agreement and a similar Conservation Agreement for YCT within Montana are voluntary agreements that do not qualify as regulatory mechanisms. The USFWS agrees with that assessment and based its finding of the listing status of YCT on the best available scientific and commercial information regarding the status and threats to YCT, not on the promised or anticipated results of conservation actions.

Summary of Factor D

Our status review (USFWS 2006) has not revealed information to indicate that regulatory mechanisms related to land

management or fisheries management are not working, or will not work to protect YCT in the future. As a result of this status review (USFWS 2006) we conclude that the best scientific and commercial information available to us indicates that any identified inadequacies of existing regulatory mechanisms have not affected the status of YCT to the extent that listing under the ESA as a threatened or endangered species is warranted.

Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Fragmentation and Isolation of Small YCT Populations in Headwater Areas

Extant YCT populations are not necessarily small or limited to headwater streams. Instead, May *et al.* (2003) indicated that many river drainages had numerous, interconnected miles of stream habitat occupied by YCT. Those areas include the nine watersheds previously described as forming the central core of YCT conservation efforts (Yellowstone Headwaters, Upper Yellowstone, and Shields in the Yellowstone River Basin [see Table 1 and Figure 2 in USFWS 2006]; Snake Headwaters, Gros Ventre, Greys-Hobock, Palisades, Salt, and Teton in the Snake River basin [see Table 2 and figure 2 in USFWS 2006]).

Although YCT remain widely distributed in two headwater basins, the effects of human activities combined with natural factors have reduced the overall distribution and abundance of YCT to an undetermined extent over the past two centuries (May *et al.* 2003). Multiple local populations distributed throughout a watershed provide a mechanism for spreading risk because the simultaneous loss of all local populations is unlikely. Migratory corridors allow individuals access to unoccupied but suitable habitats, foraging areas, and refuges from disturbances. Where migratory life history forms of salmonid species are not present, isolated populations cannot be replenished naturally when a disturbance makes local habitats unsuitable.

Our status review (USFWS 2006) found little direct evidence that the geographic isolation of YCT populations had resulted in stochastic extirpations of such populations (due, for example, to natural events such as floods, landslides, or wildfires). Given the lack of such evidence it logically follows that such threats are unlikely to occur to such a degree as to threaten the YCT subspecies or substantial portions thereof (USFWS 2001). However, the historical record indicates the distribution of YCT has been substantially reduced over the past 200 years and it is likely that catastrophic natural events contributed at some level to that loss, even if only affecting isolated populations. Conservation populations of YCT were determined by May *et al.* (2003) to be currently absent from five watersheds where they historically existed (Pompeys Pillar, Lake Basin, Popo Agie, Lower Wind River, Lake Walcott), and distribution was extremely limited in single isolet populations extending through less than 16 km (10 mi) of stream in five other HUCs (Pryor, Little Bighorn, Upper Tongue, Shoshone, and North Fork Shoshone). For the most part, these watersheds are in the downstream margins of the range of YCT, where populations are noticeably fragmented, and may have been so, historically. We were not able to determine how much of the currently restricted range of those populations is due primarily to habitat suitability vs. other threats such as hybridization with rainbow trout.

Information provided in the YCT status assessment (May *et al.* 2003) ranked each of four measures of population viability that could make YCT vulnerable to catastrophic natural events or adverse human effects on the aquatic-environment—(1) population productivity (*i.e.*, demographics), (2) temporal variability, (3) isolation, and (4) population size. That analysis suggested isolets were at greater risk of extirpation due to stochastic natural events than were metapopulations, but the analysis was not rigorously quantitative. We have also indicated that climatic variables play a role and that YCT subpopulations on the margins of the range are naturally at greater risk due to those factors.

Kruse *et al.* (2001) assessed the possible demographic and genetic consequences of purposely isolating the populations of YCT in headwater streams in the Absaroka Mountains, Wyoming. Such isolation may result, for example, from intentional placement of a movement barrier to prevent nonnative fishes downstream from invading upstream reaches. Kruse *et al.* (2001) speculated that isolated YCT populations are vulnerable to chance extinction, although they also pointed out that "there has been little opportunity to observe the real effects of small population size and isolation on native, extant Yellowstone cutthroat trout populations."

The widespread geographic distribution of YCT across the subspecies' range in portions of five States further mitigates potential negative effects resulting from local population extinctions following future catastrophic natural events, as no single event is likely to impact a significant percent of the overall number of isolated populations. Moreover, given the widespread efforts for the conservation of these fish, any such local extirpation that occurs in habitat where YCT are precluded from naturally recolonizing is likely to be followed by reintroduction efforts by responsible management agencies. There is widespread evidence of successful establishment of reproducing populations of YCT in suitable vacant habitat, often from a single introduction, as witnessed by the many self-sustaining populations of YCT found in lakes upstream from geological barriers that precluded their natural colonization.

Information provided in the YCT status assessment report (May *et al.* 2003) indicated that, although 143 (73 percent) of the 195 YCT conservation populations were isolets that were often restricted to 10 stream miles or less habitat in isolated headwater areas, those isolets represented only 27 percent of the total stream miles occupied by YCT. Thus, the small YCT populations in headwater areas are numerous, but they collectively occupy only about ¼ of the total habitat occupied by YCT conservation populations. Most of the occupied stream miles (73 percent) were habitat for YCT in metapopulations. As a result of this analysis (USFWS 2006), we conclude that the fragmentation and isolation of small YCT populations in headwater areas has not resulted in the subspecies being eliminated from major portions of its historical range.

Threats to Any of the Three Yellowstone Cutthroat Trout Life-History Forms

Three life-history forms occur across the range of YCT. We found that YCT naturally occur in an unquantified but small number of lakes (probably fewer than 20) across the range. All of the natural YCT populations dependent on lakes are considered adfluvial (*i.e.*, live in lakes and migrate into rivers to spawn) and most of them are in areas where they receive a high level of habitat protection afforded by national parks or wilderness. However, YCT with the adfluvial life history constitute a small proportion of the range of YCT and did so historically.

The State of Wyoming, in comments submitted for this status review (Wichers 2005), indicated that YNP is an important part of Wyoming and plays a significant role in YCT conservation but expressed concern that the importance of YNP to overall YCT

conservation should not be overstated. Wichers (2005) reported that of the entire historic stream habitat in Wyoming, 88 percent is outside YNP and 80 percent of the currently occupied stream miles are outside YNP. Based on May *et al.* (2003), YNP accounts for about 4.7 percent of the historic and 8.5 percent of the presently occupied miles of habitat across the entire range of YCT. However, we note that Yellowstone Lake constitutes the majority of existing habitat for the adfluvial life history form. The significance of this is discussed in greater detail in the status review (USFWS 2006).

We also found that stream-dwelling resident (*i.e.*, showing little movement) and fluvial (*i.e.*, migratory within streams and larger rivers) YCT populations constitute the most common YCT life-history forms and occur in well over 90 percent of the estimated 12,115 km (7,528 mi) of occupied habitat distributed among two major stream drainages (Snake and Yellowstone) and 40 component watersheds. The distinction between resident and fluvial migratory forms is often difficult to discern in practice and there is considerable overlap, so it is not possible to definitively quantify the occupied distribution of each of these two life history forms. Over the long term, preservation of all existing life history forms is important to persistence of YCT. The inherent life form plasticity of the subspecies and its proven ability to colonize new habitats (*i.e.*, history of fish culture success) would appear to provide some measure of security for perpetuation of the adfluvial life history form, which is the most vulnerable form, into the future.

Fisheries Management

Historic introductions of nonnative species by the Federal Government, State fish and game departments, and private parties, across the West have contributed to declines in abundance, local extirpations, and hybridization of YCT (Gresswell 1995; Kruse *et al.* 2000; Dunham *et al.* 2004). In addition, legal and illegal activities associated with recreational angling are known to be a major vector for movement and dispersal of nonnative fishes and other organisms (Hagener 2005). The unauthorized or unintentional movement of nonnative organisms poses a significant but unquantifiable risk associated with recreational angling.

The States have policies in place to combat these concerns. For example, the Private Pond Stocking Policy of MFWP restricts what species of fish may be stocked in private ponds that are in YCT-occupied drainages of Montana (Hagener 2005). In Wyoming, State Game and Fish Commission policy precludes the stocking of fish into waters that are capable of sustaining satisfactory, self-sustaining fisheries (WGFD 2005). Other States have similar policies (see details in USFWS 2006).

Competition From Introduced Brook Trout

Brook trout, a char species native to eastern North America but liberally introduced throughout the West, beginning as early as 1900, can adversely compete with YCT (*e.g.*, Griffith 1988). Brook trout apparently adapt better to degraded habitats than native trout and brook trout also tend to occur in streams with higher water temperatures (Adams and Bjornn 1997). Because elevated water temperatures and sediments are often indicative of degraded habitat conditions, native trout may be subject to compounded stresses from both competitive interactions with brook trout and degraded habitat (Rieman *et al.* 2006).

The database of May *et al.* (2003) did not assess the extent that brook trout co-occur (*i.e.*, are sympatric) with extant YCT. However, in future iterations of the database that information will be incorporated (Brad Shepard, MFWP, pers. comm. 2005). Nonetheless, it is evident from the longstanding coexistence of brook trout with YCT in some streams that complete competitive exclusion of YCT by brook trout is not necessarily inevitable where the two fishes co-occur.

Systematic sampling of the Snake River headwaters in Wyoming (McAllister 2005) found brook trout were present in approximately 13 percent of the length of all perennial streams occupied by any trout species or subspecies (but 27 percent of the streams themselves). Brook trout have displaced cutthroat trout from 14 streams that comprise 1.3 percent of the total trout stream in that watershed. Ten of the 14 streams sampled are tributaries to the Snake River.

In the Teton River, Wyoming, YCT have experienced broad declines (Koenig 2005) and are seemingly being replaced by brook trout. Benjamin (2005) reported that only four drainages in the upper Teton River watershed remain inhabited solely by YCT. . Benjamin (2005) hypothesized that these populations have probably been spared from invasion because culverts, diversion structures, and dewatered sections prevent fish from moving from the main Teton River into these tributaries. The nine largest tributaries in the upper Teton watershed that are occupied by YCT have been colonized by brook trout.

Although a correlation exists between the spread of brook trout populations (or other nonnative salmonids) and the decline of YCT in some watersheds, the causes of YCT population decline often include multiple currently operating factors (*e.g.*, habitat loss, dewatering, whirling disease, etc.). As a result, it is difficult to determine whether brook trout are the cause of YCT decline in such cases or merely a symptom of broader ecosystem perturbations (Rieman *et al.* 2006). We conclude that the competition from introduced brook trout is serious, where it occurs, but it has not affected the status of YCT conservation populations on a widespread scale. Comprehensive analysis of the degree of rangewide overlap between YCT and brook trout distribution is currently not available, but is expected to be a component of the next iteration of the State status assessment.

Hybridization With Nonnative Fishes

Hybridization with introduced, nonnative fishes, particularly rainbow trout and their hybrid descendants that have established self-sustaining populations, is recognized as an appreciable threat to YCT conservation. The YCT is known to interbreed primarily with rainbow trout and to a lesser extent with other subspecies of cutthroat trout. Rainbow trout were first stocked into many regions of the historic range of YCT more than 100 years ago. May *et al.* (2003) estimated that 133 of the 195 designated conservation populations (68 percent) would meet the standard as "core conservation population," essentially containing nonintrogressed YCT. These 133 potential "core conservation populations" occupy 3,009 km (1,870 mi) of habitat, encompassing about 29 percent of the approximately 10,223 km (6,352 mi) of habitat that May *et al.* (2003) considered to be occupied by conservation populations.

As pointed out by May *et al.* (2003), the vulnerability to hybridization of YCT in metapopulations stems from the key characteristic of the metapopulation itself, *i.e.*, the ability of its member fish to move (and interbreed) among the various YCT populations that constitute the metapopulation. It is assumed that potentially hybridizing fishes are similarly unencumbered in their movements throughout the geographic area occupied by the metapopulation and, accordingly, YCT metapopulations can inevitably become completely introgressed as a hybrid swarm. However, as the following discussion

shows, the process of hybridization and the results of introgression are not always predictable.

In Idaho, YCT in many populations are sympatric with potentially hybridizing rainbow trout but remain nonintrogressed (Meyer *et al.* 2006 in review). Thus, the occurrence of potentially hybridizing fishes does not portend their imminent hybridization with YCT. A multitude of factors, both physical and biological, determine whether or not introgression may occur, and those factors may not be stable over time. For example, in some circumstances drought cycles may serve to isolate spawning populations of YCT, possibly limiting access to potentially introgressing fish in YCT habitat. However, in other cases drought could have the opposite effect by limiting YCT access to traditional spawning streams where spatial or temporal isolation historically occurred; thereby forcing fish to spawn together in greater proximity and contributing to increased introgression.

In the Yellowstone River in Montana, De Rito (2004) assessed whether spatial or temporal reproductive isolation, or both, occurs between YCT and nonnative rainbow trout. Time and place of spawning were determined by radiotelemetry of 164 trout (98 cutthroat, 37 rainbow, and 29 cutthroat x rainbow hybrids) over 3 spawning seasons, from 2001 to 2003. Spawning area and spawning-reach overlap were high among all taxa. In contrast, mean migration and spawning dates of rainbow trout and hybrids were 5 to 9 weeks earlier than for cutthroat trout. Rainbow trout and hybrids began migrating and spawning in April and May when Yellowstone River discharges were lower and water temperatures were colder. In contrast, cutthroat trout migration and spawning occurred in June and July, when discharges and temperatures were higher. De Rito (2004) concluded that difference in time of spawning is likely the predominant mechanism eliciting reproductive isolation. He further concluded that conservation actions that focused on protecting and enhancing later spawning cutthroat trout in tributaries may enhance temporal reproductive isolation from rainbow trout and their hybrids.

There are scattered populations of WCT or other nonnative cutthroat trout subspecies found within the range of YCT, as a result of past introductions. However, due to the widespread popularity of fish culture activities using YCT, the opposite pattern (*e.g.*, YCT stocked in the native range of WCT) is a much more common occurrence. The present hybridization risk to YCT is almost entirely from rainbow trout.

In most cases today, it is not technologically possible to eliminate the self-sustaining populations of potentially hybridizing, nonnative fishes from entire drainages or even individual streams. Consequently, perceived threats to extant YCT posed by nonnative fishes in streams are sometimes met by installing barriers to the upstream movement of the nonnative fishes into stream reaches occupied by core populations of nonintrogressed YCT. In a few cases, usually involving small streams that provide the greatest opportunity for success, fish toxins may be used to completely remove all fishes upstream from such barriers, after which YCT may be stocked (Caswell and Huffaker 2005; Hagener 2005; Lewis 2005; WGFD 2005). Because of technological, budgetary, and other limitations, actions to eliminate or isolate sources of introgression are now being taken for only a small proportion of YCT populations across the subspecies' range.

Self-sustaining populations of nonnative rainbow trout pose the greatest hybridization threat to YCT and few of those populations can be eliminated or appreciably reduced. A key concern becomes the extent that introgressive hybridization may eventually pervade existing nonintrogressed or suspected nonintrogressed YCT populations, particularly those that inhabit headwater streams in high-elevation areas.

Meyer *et al.* (2003) found that YCT hybridization with rainbow trout in the Upper Snake River basin is far from ubiquitous, with only 19 percent of the sites containing YCT also containing rainbow trout or hybrids (see additional discussion in USFWS 2006). The finding that hybridization is not widespread across the Upper Snake River basin comports with range-wide findings of May *et al.* (2003) for YCT.

In addition, many extant YCT populations occur upstream from natural barriers that prevent the existing upstream movement of nonnative fishes, including those that may potentially hybridize with YCT. We examined the database of May *et al.* (2003) to determine the extent that nonintrogressed or suspected nonintrogressed YCT populations occur upstream from such "complete" barriers. Results indicated that a little over 3,219 km (2,000 mi) of stream habitat occupied by YCT conservation populations, including about 748 km (465 mi) inhabited by YCT in the 143 isolated populations and about 2,585 km (1,606 mi) inhabited by YCT in metapopulations are upstream from barriers. Of these, a high proportion is populated by nonintrogressed YCT with no hybridizing rainbow trout or other species in proximity.

The observation that numerous nonintrogressed YCT populations persist today despite the longstanding sympatric occurrence (*i.e.*, more than 100 years) of potentially hybridizing fishes, or their presence in downstream reaches where the absence of barriers to the upstream movement of those fish occurs, corroborates the physical evidence that not all nonintrogressed YCT populations have been and are equally vulnerable to introgression. The threat of hybridization with nonnative rainbow trout and the potential for introgression to occur to such an extent as to compromise the integrity of conservation populations of YCT is a complex and still evolving dynamic process. While we do not discount this threat and believe it may present one of the single biggest challenges to the continued conservation of YCT, we are encouraged that the most recent scientific studies (*e.g.*, Meyer *et al.* 2003, De Rito 2004, Novak *et al.* 2005, Meyer *et al.* 2006 in review) indicate that substantial genetic isolation of YCT may persist, even in sympatry with populations of rainbow trout. These data would appear to indicate that the level of genetic isolation has not been increasing.

New Zealand Mud Snails

New Zealand mud snails (NZMS), an invasive nonnative mollusk, can coat benthic/food producing areas, has not been found in any areas currently occupied by wild populations of YCT in Wyoming (WGFD 2005). In 2002, NZMS were discovered in the Big Horn River (Upper Big Horn HUC) near Thermopolis, Wyoming. High densities of NZMS exist in Polecat Creek, a tributary to the Snake River near the YNP boundary. Polecat Creek is a geothermally heated stream, which likely contributes to the high densities of NZMS observed. NZMS can be found in the Snake River above Jackson Lake, but in lower densities than in Polecat Creek. No additional information on the range or spread of NZMS within the conservation habitat of YCT was reviewed. While it is likely this organism is increasingly becoming more widespread and will continue to spread, to date there is no evidence that implicates NZMS in the collapse of any conservation populations of YCT.

Summary of Factor E

As a result of our status review (see USFWS 2006), we conclude the best scientific and commercial information available indicates that risk associated with fragmentation and isolation of small YCT conservation populations, including stochastic risk from catastrophic natural events, has not affected the status of YCT to the extent that listing under the ESA as a threatened or endangered species is warranted.

The available data also do not suggest the future loss of any of the three life-history forms represented by YCT, although the adfluvial form is clearly the most vulnerable. We conclude the best scientific and commercial information available to us indicates that threats to any of the three YCT life-history forms have not affected the status of the YCT to such an extent that listing under the ESA as a threatened or endangered species is warranted.

In our 90-day finding (66 FR 11244) we concluded that ongoing fisheries management programs were not a sufficient threat to the status of YCT to cause us to consider listing. Likewise, the presence of introduced, nonnative fishes such as brook trout did not necessarily portend the imminent decline or elimination of YCT. This status review (see USFWS 2006) supports that conclusion.

As a result of this analysis, we also conclude the best scientific and commercial information available to us indicates that introgressive hybridization with rainbow trout or other cutthroat subspecies has not affected the status of YCT to the extent that listing under the ESA as a threatened or endangered species is warranted. However, we will continue to evaluate new information that may be made available regarding these and other threats, and we urge the public to submit to us any new information that becomes available concerning the status of or threats to YCT. That is particularly true of new threats such as the recent spread of invasive New Zealand mud snails.

Petition Finding

In the context of the ESA, the term "threatened species" means any species (or subspecies or, for vertebrates, DPS) that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The term "endangered species" means any species that is in danger of extinction throughout all or a significant portion of its range. The ESA does not indicate threshold levels of historic population size at which, as the population of a species declines, listing as either "threatened" or "endangered" becomes warranted. Instead, the principal considerations in the determination of whether or not a species warrants listing as a threatened or an endangered species under the ESA are the threats that now confront the species and the probability that the species will persist in "the foreseeable future." The ESA does not define the term "foreseeable future." However, the YCT Interstate Workgroup that produced the YCT status assessment report (May *et al.* 2003) which formed much of the scientific basis for our status review (USFWS 2006) considered the "foreseeable future" to be 20 to 30 years (which equates to approximately 4 to 10 YCT generations, depending on the productivity of the environment). That is a measure that the USFWS supports as both reasonable and appropriate for our status review (USFWS 2006) because it is long enough to take into account multi-generational dynamics of life-history and ecological adaptation, yet short enough to incorporate social and political change that affects species management.

In our status review (USFWS 2006), we provided evidence that indicates a decline in YCT occurred over the past 200 years, but much of that loss is believed to have occurred in the late 19th and early 20th century. Recent trends appear to be stable or upward, with a few notable exceptions (i.e., Yellowstone Lake, Teton River). Although YCT remain widely distributed in two headwater basins, the overall abundance of YCT have declined to an undetermined extent over the past two centuries (May *et al.* 2003). We attribute the distributional decline of YCT in large measure to competition, hybridization, and predation caused by one or more nonnative fish species. These impacts have been observed since the initial introductions of brown trout, rainbow trout, and brook trout began in the late 1800s. These introduced salmonid species have subsequently expanded to colonize new habitat and form many naturally reproducing populations occupying the range of YCT. More recently, lake trout introduction has been a major factor in causing decline of the adfluvial YCT population of Yellowstone Lake.

Coinciding with, and largely inseparable in its effect on YCT from the impacts of nonnative species introduction, has been a gradual and in some instances substantial decline in overall quality of in-stream fish habitat and riparian status. This has occurred largely as a result of human-caused land and water management practices. Increased sediment and reduced or altered streamflow patterns are considered the primary causes of reduced habitat quality for native salmonid populations throughout the west. These impacts have probably been exacerbated by natural or man-caused climate changes that have led to generally warmer and drier conditions. Such conditions generally do not favor cutthroat trout, especially in watersheds occupying the margins of suitable habitat within their historical range.

Our analysis for this review (USFWS 2006) found there is little evidence of major changes in overall distribution or abundance of YCT over approximately the past decade. There are indications that increased focus is being placed by management agencies on the protection and restoration of conservation populations of YCT in many watersheds. Corresponding emphasis is occurring on habitat restoration activities and fisheries management actions such as restrictive angling regulation changes that are designed to benefit YCT. For many of these actions, it is too early to judge their success. Some of these actions appear to have resulted in improved population levels in some areas. Examples are found in the Snake River Headwaters of Wyoming (Novak *et al.* 2005), portions of Idaho (Meyer *et al.* 2003; Meyer *et al.* 2006 in review), the Shields River watershed in Montana (Hagener 2005), and other locations. At the same time, this success is countered by evidence of recent dramatic declines in a formerly robust population of YCT within the relatively secure habitat of Yellowstone Lake in YNP (Koel *et al.* 2005), documented declines and recruitment failure in the Teton River watershed in Wyoming and Idaho (Benjamin 2005; Koenig 2005), and concerns over the status and threats due to selenium toxicity in the Blackfoot River and possibly other watersheds in Idaho (Lemly 1999; Christensen 2005). In balance, the monitoring record is insufficient to document either an overall upward or downward trend in the status of YCT populations across the subspecies' historic range over the recent past.

It is important that the status and distribution of YCT continue to be monitored. The USFWS finds that the management agencies are contributing substantial resources in that regard, and we believe the planned upgrade of the YCT status assessment to be initiated by the Yellowstone Cutthroat Trout Interstate Workgroup in 2006 (WGFD 2005; Brad Shepard, MFWP, pers. comm. 2005) will become an important

document for establishing an accurate current baseline to be used to evaluate future population status changes.

Conclusions

On December 17, 2004, Judge Figa (U.S. District Court of Colorado) ordered the USFWS to complete a 12-month status review for YCT. As a result, we have done so and present our conclusions in this notice, and in more detail in the accompanying status review (USFWS 2006). The information we have summarized includes substantial amounts of new information not analyzed or reported in our previous 90-day finding (66 FR 11244), particularly that obtained from the status report of May *et al.* (2003). That information indicates at least 195 extant YCT conservation populations, qualifying as YCT under the standards we have adopted, collectively occupy 10,220 km (6,352 mi) of stream and lake habitat in Idaho, Montana, Wyoming, Utah, and Nevada. Those 195 YCT populations are distributed among 35 component watersheds in the Snake and Yellowstone River basins, within the international boundaries of the United States.

Of those 195 conservation populations, about 133 were considered likely to qualify as potential "core conservation populations" comprised of nonintrogressed YCT (99 percent genetic purity standard; see Discussion of Hybrid YCT in Listing Determinations at the beginning of the status review [USFWS 2006]). If, after further genetic testing the existence of approximately 133 core conservation populations is verified, then those populations would include about 3,009 km (1,870 mi) of habitat encompassing about 29 percent of the existing range of conservation populations of YCT.

Although the distribution of YCT has been reduced from historic levels and existing populations face threats in several areas of the historic range, we find that the magnitude and imminence of those threats do not compromise the continued existence of the subspecies within the foreseeable future (which we define as 20–30 years). Many former threats to YCT, such as those posed by excessive harvest by anglers or the ongoing stocking of nonnative fishes, are no longer factors that threaten the continued existence of YCT. That is not to downplay the active legacy of past fish stocking activities, but current programs have been revised to avoid further impacts. The effects of other extant threats, especially those to habitat, may be effectively countered, at least in part, by the ongoing management actions of State and Federal agencies. These actions occur in conjunction with application of existing regulatory mechanisms. It is largely too soon to judge the overall long-term effectiveness of those actions, though some positive signs are present. At the least, we conclude that active loss of habitat has been minimized.

Nonetheless, hybridization with nonnative rainbow trout or their hybrid progeny and descendants, both of which have established self-sustaining populations in many areas in the range of YCT, remains an active threat in the form of introgression to YCT conservation populations. The eventual extent that hybridization occurs in YCT habitat may be stream-specific and impossible to predict. Nonetheless, the criteria that we adopted for inclusion of individual fish or populations as YCT, following the lead of past actions (see WCT finding in USFWS 2003; 66 FR 46989) and consistent with the genetic standards adopted by the State fishery managers (Utah Division of Wildlife Resources 2000), allow for the limited presence in YCT conservation populations of genetic material from other fish species. We view this as consistent with the intent and purpose of the ESA.

The YCT remain widely distributed and there are numerous robust YCT populations and metapopulations throughout the subspecies' historic range. Moreover, numerous nonintrogressed YCT populations are distributed in secure habitats throughout the subspecies' historic range. In addition, despite the frequent occurrence of introgressive hybridization, we find that some YCT populations that are sympatric with rainbow trout are nonintrogressed or nearly so, and thus retain substantial portions of their genetic ancestry, apparently due to temporal, behavioral, or spatial reproductive isolation. We consider slightly introgressed YCT populations, with low amounts of genetic introgression detectable only by molecular genetic methods, to be a potentially important and valued component of the overall YCT (*i.e.*, "conservation populations").

Finally, the numerous ongoing YCT conservation efforts clearly demonstrate the broad interest in protecting YCT held by State, Federal, Tribal, local, and nongovernmental organizations and other entities. However, those ongoing conservation efforts, while important, are not pivotal to our decision whether or not to propose to list the YCT as either a threatened or an endangered species under the ESA. That decision is based mainly on the present-day status and trend of YCT, the mitigation of many of the existing threats, and the occurrence of the numerous extant laws and regulations that work to prevent the adverse effects of land-management and other activities on YCT, particularly on those lands administered by Federal agencies.

On the basis of the best available scientific and commercial information, which has been broadly discussed in this notice and detailed in the documents contained in the Administrative Record for this decision, we conclude that the YCT is not endangered (threatened with extinction within the foreseeable future), nor is it threatened with becoming endangered within the foreseeable future. Therefore, listing of the YCT as a threatened or an endangered species under the ESA is not warranted at this time.

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor at the Montana Ecological Services Office (see **ADDRESSES**).

Author

The primary author of this document is the Montana Ecological Services Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 14, 2006.

H. Dale Hall,

Director, Fish and Wildlife Service.

[FR Doc. 06–1539 Filed 2–17–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 021306C]

RIN 0648–AS70

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Limited Access Program for Gulf Charter Vessels and Headboats

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

ACTION: Announcement of availability of fishery management plan amendments; request for comments.

SUMMARY: NMFS announces the availability of Amendment 17 to the Fishery Management Plan for the Coastal Migratory Pelagic (CMP) Resources of the Gulf of Mexico and South Atlantic (Amendment 17) and Amendment 25 to the Fishery Management Plan for the Reef Fish Resource of the Gulf of Mexico (Amendment 25), prepared by the Gulf of Mexico Fishery Management Council (Council). Amendments 17 and 25 would establish a limited access system for the Gulf of Mexico charter vessel/headboat (for-hire) permits for the reef fish and CMP fisheries in the exclusive economic zone of the Gulf of Mexico and would continue to cap participation at current levels. The intended effect of Amendments 17 and 25 is to support the Council's efforts to achieve optimum yield in the fishery and provide social and economic benefits associated with maintaining stability in these for-hire fisheries.

DATES: Written comments must be received no later than 5 p.m., eastern time, on April 24, 2006.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: *0648–AS70.NOA@noaa.gov*. Include in the subject line the following document identifier: 0648–AS70–NOA.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Jason Rueter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Fax: 727–824–5308, Attention: Jason Rueter.

Copies of Amendments 25 and 17, which include a Supplemental Environmental Impact Statement, a Regulatory Impact Review, and an Initial Regulatory Flexibility Analysis, are available from the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; e-mail: *gulfcouncil@gulfcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Jason Rueter, 727–824–5305; fax 727–824–5308; e-mail: *jason.rueter@noaa.gov*.

SUPPLEMENTARY INFORMATION: Charter vessel permits were initially required in the CMP fishery in 1987 and the reef fish fishery in 1997. A joint amendment establishing the charter vessel/headboat permit moratorium for the CMP fishery (Amendment 14) and the reef fish fishery (Amendment 20) was approved by NMFS on May 6, 2003, and implemented on June 16, 2003 (68 FR 26280). The intended effect of these amendments was to cap the number of for-hire vessels operating in these two fisheries at the current level (as of March 29, 2001) while the Council evaluated whether limited access programs were needed to constrain effort. The moratorium is set to expire on June 16, 2006. These amendments, if implemented would establish a limited access program.

A proposed rule that would implement the measures outlined in Amendments 17 and 25 has been received from the Council. In accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS is evaluating the proposed rule to determine whether it is consistent with the FMPs, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by April 24, 2006, whether specifically directed to the Amendments 17 and 25 or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendments. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendments or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: February 14, 2006.

James P. Burgess,

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

[FR Doc. E6–2403 Filed 2–17–06; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 71, No. 34
Tuesday, February 21, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–04–303]

United States Standards for Grades of Field Grown Leaf Lettuce

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is establishing voluntary United States Standards for Grades of Field Grown Leaf Lettuce. The standards will provide industry with a common language and uniform basis for trading, thus promoting the orderly and efficient marketing of field grown leaf lettuce.

DATES: *Effective Date:* March 23, 2006.

FOR FURTHER INFORMATION CONTACT: Cheri L. Emery, Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1661, South Building, Stop 0240, Washington, DC 20250–0240, (202) 720–2185, fax (202) 720–8871, or e-mail *Cheri.Emery@usda.gov*.

The United States Standards for Grades of Field Grown Leaf Lettuce is available either from the above address or by accessing the AMS, Fresh Products Branch Web site at: *http://www.ams.usda.gov/standards/stanfrfv.htm*.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture "To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices." AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements, no longer appear in the Code of Federal Regulations, but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS established voluntary United States Standards for Grades of Field Grown Leaf Lettuce using the procedures that appear in part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36).

Background

AMS previously published a notice in the **Federal Register** (68 FR 68858), on December 10, 2003, soliciting comments on the possible development of United States Standards for Grades of Field Grown Leaf Lettuce. Based on the comments received and information gathered, AMS developed proposed grade standards for field grown leaf lettuce. The proposed standards contained the following grades, as well as tolerances for each grade: U.S. Fancy, U.S. No. 1 and U.S. No. 2. In addition, there were "Tolerances," "Application of Tolerances," and "Size" sections. AMS is defining "Injury," "Damage," and "Serious Damage," along with specific basic requirements and definitions for defects. A notice was then published in the **Federal Register** (70 FR 15065), on March 24, 2005, requesting comments on the proposed United States Standards for Grades of Field Grown Leaf Lettuce. In response to the notice, a comment was received from a national trade association representing produce receivers, asking for an extension of the comment period. Following a review of the request, AMS published a notice in the **Federal Register** (70 FR 14386), on July 21, 2005, extending the period for comment. The comments are available by accessing the AMS, Fresh Products Branch Web site at: *http://www.ams.usda.gov/fv/fpbdocketlist.htm*.

After the extension of the comment period, two comments were received. One comment from a grower's association was in favor of the standards as proposed. One comment from a produce receiver's association also was in favor of the establishment of standards. However, they commented that tolerances should be less for the grades, not the proposed 12 percent for total defects, 6 percent serious damage, 3 percent decay, but should be the same as the existing United States Standards for Grades of Greenhouse Leaf Lettuce, which is 10 percent for total defects, 5 percent serious damage, and 1 percent decay. AMS does not agree with this assessment, since greenhouse leaf lettuce is grown in a more protected environment and typically has fewer defects. The association's second suggestion was that the defect Russet Spotting be included in the standards. AMS agrees with this comment, since Russet Spotting does occur on field grown leaf lettuce. Consequently, AMS has added Russet Spotting as a defect, as well as scoring definitions to the standards.

The adoption of the U.S. grade standards will provide the field grown leaf lettuce industry with U.S. grade standards similar to those extensively in use by the fresh produce industry to assist in orderly marketing of other commodities.

The official grade of a lot of field grown leaf lettuce covered by these standards will be determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (Sec. 51.1 to 51.61).

The United States Standards for Grades of Field Grown Leaf Lettuce will be effective 30 days after publication of this notice in the **Federal Register**.

Authority: 7 U.S.C. 1621–1627.

Dated: February 13, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–2386 Filed 2–17–06; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–04–306]

United States Standards for Grades of Watermelons

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is revising the United States Standards for Grades of Watermelons. Specifically, AMS is revising the standard to include a definition for seedless watermelons and a variance to the size requirements. This action is being taken based on a request by the National Watermelon Association (NWA). This change will bring the standards for watermelons in line with current marketing practices, thereby, improving the usefulness of the standards in serving the industry.

DATES: *Effective Date:* March 23, 2006.

FOR FURTHER INFORMATION CONTACT: Cheri L. Emery, Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1661 South Building, STOP 0240, Washington, DC 20250–0240, Fax (202) 720–8871 or call (202) 720–2185; E-mail *Cheri.Emery@usda.gov*. The revised United States Standards for Grades of Watermelons will be available either through the address cited above or by accessing the AMS, Fresh Products Branch Web site at: *http://www.ams.usda.gov/standards/stanfrfv.htm*.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture "To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices." AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements no longer appear in the Code of Federal Regulations, but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is revising the voluntary United States Standards for Grades of Watermelons using procedures that appear in part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36). These standards were last revised in 1978.

Background

AMS received a petition from the NWA requesting the United States Standards for Grades of Watermelons be revised to include a definition for seedless watermelons and a variance to the size requirements. Prior to undertaking detailed work to develop the proposed revision to the standards, AMS published a notice on April 22, 2004, in the **Federal Register** (69 FR 21812) requesting comments on the petition to revise the United States Standards for Grades of Watermelons which included watermelons with 16 or less mature seeds in the definition for seedless watermelons and proposed adding an allowance for watermelons to vary 3 pounds above the average weight. In response to our request for comments, AMS received one comment from an industry group supporting the proposed revision. On October 29, 2004, AMS published a notice in the **Federal Register** (69 FR 209) proposing to revise the standards. In response to this notice, AMS received two comments, one from an industry group representing receivers and one comment from a consumer. Both commenters supported a modified version of the proposed revision of the standards. Both commenters supported the inclusion of a definition for seedless watermelons with a lower number of allowable seed count. The commenter representing receivers supported the inclusion of a 3 pound variance in the size requirements, while the other commenter supported a 1 pound variance. After further consideration, NWA submitted a second petition amending the seedless watermelon definition in their original petition. On September 7, 2005, AMS published a notice in the **Federal Register** (70 FR 172) proposing to revise the standards based on the amended petition which provided for 10 instead of a 16 mature seeds or less. The comments are available by accessing the AMS, Fresh Products Branch Web site at: *http://www.ams.usda.gov/fv/fpbdocketlist.htm*.

With regard to the numbers of mature seeds AMS believes that 10 mature seeds or less best reflects current marketing practices. Further, a 3 pound variance above the stated average weight rather than a 1 pound is consistent within the size requirements as the standard currently allows watermelons to vary 3 pounds below the stated weight. According, AMS believes the revision to the standards for watermelons is warranted as the revision will bring the standards in line with current marketing practices, thereby, improving the usefulness of the standards in serving the industry.

The official grade of a lot of watermelons covered by these standards will be determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (Sec. 51.1 to 51.61).

The United States Standards for Grades of Watermelons will become effective 30 days after the publication of this notice in the **Federal Register**.

Authority: 7 U.S.C. 1621–1627.

Dated: February 13, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–2385 Filed 2–17–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), approved a petition for trade adjustment assistance (TAA) that was filed on December 28, 2005, by a group of snapdragon producers in Indiana. The certification date is February 10, 2006. Beginning on February 21, 2006, Indiana snapdragon producers will be eligible to apply for fiscal year 2006 benefits during an application period ending May 22, 2006.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that increased imports of snapdragons contributed importantly to a decline in producer prices of snapdragons in Indiana by 37 percent during January through December 2004, when compared with the previous 5-year average.

Eligible producers must apply to the Farm Service Agency for benefits. After submitting completed applications, producers shall receive technical assistance provided by the Extension Service at no cost and may receive an adjustment assistance payment, if certain program criteria are satisfied. Applicants must obtain the technical assistance from the Extension Service by September 29, 2006, in order to be eligible for financial payments.

Producers of raw agricultural commodities wishing to learn more about TAA and how they may apply should contact the Department of

Agriculture at the addresses provided below for General Information.

Producers Certified as Eligible for TAA, Contact: Farm Service Agency service centers in Indiana.

For General Information About TAA, Contact: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: February 8, 2006.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. E6–2399 Filed 2–17–06; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition filed by the National Grape Cooperative Association representing Washington Concord juice grape producers for trade adjustment assistance. The Administrator will determine within 40 days whether or not increasing grape juice, not from concentrate, imports contributed importantly to a decline in domestic producer prices of 20 percent or more during the marketing period beginning August 1, 2004, and ending July 31, 2005. If the determination is positive, all producers who produce and market their Concord juice grapes in Washington will be eligible to apply to the Farm Service Agency for no cost technical assistance and for adjustment assistance payments.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: February 10, 2006.

Ellen A. Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. E6–2400 Filed 2–17–06; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition filed by the National Grape Cooperative Association representing Michigan Concord juice grape producers for trade adjustment assistance. The Administrator will determine within 40 days whether or not increasing grape juice, not from concentrate, imports contributed importantly to a decline in domestic producer prices of 20 percent or more during the marketing period beginning August 1, 2004, and ending July 31, 2005. If the determination is positive, all producers who produce and market their Concord juice grapes in Michigan will be eligible to apply to the Farm Service Agency for no cost technical assistance and for adjustment assistance payments.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: February 10, 2006.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. E6–2401 Filed 2–17–06; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Middle Kyle Complex Environmental Impact Statement. Humboldt-Toiyabe National Forest, Spring Mountains National Recreation Area, Clark County, NV

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service (Forest Service) will prepare an environmental impact statement (EIS) to analyze and disclose the potential environmental consequences for a proposed recreation complex development. The proposed Middle Kyle Complex is located on the Spring Mountains National Recreation Area (NRA) of the Humboldt-Toiyabe National Forest, approximately 35 miles northwest of Las Vegas, Nevada. The Forest Service is considering the construction and operation of new recreational opportunities and facilities within the middle Kyle Canyon area in order to reduce the recreational pressure on sensitive species and their habitats within the upper Kyle and Lee Canyons. The project may include such facilities as a visitor center, commercial retail shops, amphitheater, picnic areas, campsites, administrative facilities, hiking/biking trails, equestrian trails, and off-highway vehicle (OHV) trails. Construction would begin approximately one year following the signing of the Record of Decision.

DATES: Comments concerning the scope of the analysis must be received in writing on or before April 3, 2006. The Draft Environmental Impact Statement (DEIS) is expected in March 2007 and the Final Environmental Impact Statement (FEIS) is expected in October 2007. A public open house is proposed in March 2007, during the DEIS formal comment period and shortly following release of the DEIS.

ADDRESSES: Send written comments to Hal Peterson, Middle Kyle Complex Project Manager, Spring Mountains NRA, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130. Email communications are encouraged, please include your name and return address in all written or electronic correspondence. Email messages should be sent to *Middle_Kyle_Complex@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: For additional information concerning this project, please contact Hal Peterson, Middle Kyle Complex Project Manager, Spring Mountains NRA, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130; phone (702) 839–5572. Information about this EIS will be posted on the Internet at: *http://www.fs.fed.us/r4/htnf/projects/smnra/middle_kyle_complex/home.shtml.* This Web site will be used to post all public documents during the environmental review process and announce opportunities for public participation and comment.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action: The Forest Service has determined a need for the development of new destination recreation, environmental education, visitor services, parking/transportation management and administrative facilities in the middle Kyle Canyon area of the Spring Mountains NRA. This need is in response to the increasing NRA visitation generated by the growth of the Las Vegas Metropolitan area, and the associated impacts on the environmentally sensitive areas in upper Kyle and Lee Canyons where the

Forest Service developed recreation and administrative facilities are currently located.

The purpose for this action is to move the Spring Mountains NRA toward the desired condition for the area. Elements of the desired condition as stated in the Humboldt-Toiyabe NF Land Management and Resource Plan, the Spring Mountains NRA General Management Plan and the Clark County Multiple Species Habitat Conservation Plan include: Provide additional developed recreation facilities in appropriate locations to encourage use away from upper Kyle and Lee Canyons: Emphasize new facilities in lower Kyle and Lee Canyons (east of Highway 158); Provide public education and information about the Spring Mountains natural and cultural resources; Increase capability to monitor and manage visitor traffic in Kyle and Lee Canyons; Provide additional multiple use trail opportunities; Increase accessibility of trailheads at appropriate locations for equestrians; Divert public to other appropriate areas once site or road capacities have been reached; Develop a Spring Mountains NRA visitor center along the entrance to Kyle and/or Lee Canyons; and, Provide facilities that meet administrative needs, are cost effective, increase management presence and customer satisfaction, operate year-round, are located in the lower canyon and transfer some uses from Kyle Guard Station. Additionally, the Forest Service has established the goal that this project be developed in an environmentally and fiscally sustainable manner.

Proposed Action: The proposed action has been developed by the Forest Service to respond to the need for action generated by the difference between the area's existing condition and its desired condition with the respect to the management direction for the area. The proposed action would provide a broad range of recreational and environmental education opportunities while preserving the canyon's key natural and cultural resources. Recreational-related facilities would generate revenue that would be returned to the project to help pay for annual operation and maintenance costs.

The proposed project is strategically located adjacent to the most heavily traveled entrance to the Spring Mountains NRA along the Kyle Canyon Road (Nevada State Route #157), and east of the Deer Creek Highway (Nevada State Route #158). Most of the proposed development would be located away from environmentally and culturally sensitive areas. The project area encompasses approximately 2,500 acres of National Forest System lands to provide adequate room to minimize impacts to sensitive resource areas and to provide for a logical grouping of uses to minimize user conflicts and enhance visitor experience. Many portions of the project area would remain undeveloped.

The main development area, the Village, would be located on the disturbed areas of the recently purchased former golf course. Facilities proposed for the Village area include a 12,000 square feet (sq ft) visitor center, 4,200 sq ft indoor group meeting area, retail space for 7 shops, food concession area for 3 vendors, a 2,200 sq ft residential area (security/artist-in-residence), 60,000 sq ft plaza area plus 40,000 sq ft plaza landscaped/play areas, 1500 seat amphitheater, 3 group picnic sites, a 185,000 sq ft commons area, a 1200 space underground parking structure plus 115 surface parking spaces, 900 linear feet of Village access roadway. In addition, a 2,000 sq ft transit center is proposed for this location. (Note: all dimensions stated are approximate.)

Adjacent to the Village area is the Village Valley which may include: 21,000 sq ft pond(s), approximately 1 acre of site restoration around the pond(s), 3 outdoor classrooms, approximately 6 acres of Kyle Canyon wash restoration and roughly 21 acres of upland restoration, 2.3 miles of paved trails, 2.7 miles of unpaved trails, and a connector trail from the Village Valley area to the existing Kyle Administrative Site adjacent to the Kyle Canyon wash.

The main picnic and camping areas are proposed east of the Village area, and on the south side of State Route 157. The picnic areas would include 245 individual sites, 3 group sites. 4 restroom structures, 116 parking spaces and 1.4 miles of road. The camping areas would include 210 tent/RV sites with hook-ups, 2 small group sites (15 spaces each), one large group camping area (with 100 spaces), 3 shower buildings, 4 restroom buildings, and 2.5 miles of road. This area could also include pedestrian and bicycle trails with 4.3 miles of unpaved trail and 3.2 miles of paved trail.

Single and multiple use hiking, biking and equestrian trails (10.2 miles), a horse rental concession area, and a 10 unit equestrian campground with one restroom building are proposed on the north side of State Route 157. An administrative site is also proposed on the north side of State Route 157. Administrative facilities may include: 10,000 sq ft of fire and administrative office/warehouse space, 2,000 sq ft concessionaire office space, 3,000 sq ft research center space, 2 helipads, 3 residential buildings, a barracks, a bridge and 1.7 miles of access road.

A 10 parking space OHV Trailhead to access existing OHV trails is proposed adjacent to State Route 157, northwest from the intersection of State Route 157 with Harris Springs Road.

At the east end of the project area, facilities adjacent to the Harris Springs Road, south of State Route 157, may include a short access road and trailhead with 8 parking spaces to access a 2.3 mile hiking trail in the canyon bottom. Facilities in the area south of the Kyle Canyon Wash, off of the Harris Springs Road, may include a trailhead with 40 parking spaces, a mountain bike rental concession and 8.4 miles of mountain bike/hiking trails.

Other anticipated activities include development of infrastructure to support the planned facilities (roads, utilities, wastewater treatment, etc.); State Route 157 highway improvements to provide for safe intersections for vehicles and pedestrians; restoration and revegetation of abandoned roads, trails and utility sites; removal of illegally dumped materials; a defined equestrian trail crossing for State Route 158; removal of non-native trees and shrubs in the Village area; restoration of the existing historic Civilian Conservation Corps (CCC) Kyle Guard Station for managed public use; closure of selected Forest Service Roads to motor vehicles; and, conversion of selected Forest Service Roads to non-motorized trail use.

More detailed information on the proposed action, including maps, may be obtained by visiting the Forest Service Web page at *http://www.fs.fed.us/r4/htnf/projects/smnra/middle_kyle_complex/home.shtml* and following the link to the Middle Kyle Canyon Framework Plan.

A no action alternative will also be considered.

Lead and Cooperating Agencies: The Forest Service will be the lead Federal agency in accordance with *40 Code of Federal Regulations* (CFR) 1501.5(b) and is responsible for the preparation of the EIS. Scoping will determine if any cooperating agencies are needed.

Responsible Official: The USDA Forest Service responsible official for this EIS is Robert L. Vaught, Forest Supervisor, Humboldt-Toiyabe National Forest Supervisor's Office, 1200 Franklin Way, Sparks, Nevada 89431; phone (775) 331–6444.

Nature of Decision To Be Made: The Responsible Official will decide whether to implement the action as proposed or modified, or to take no action. The Forest Supervisor will also

decide what mitigation measures and monitoring will be required.

Scoping Process: Public participation will be very important throughout the NEPA analysis process. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, American Indian tribes, as well as other individuals and organizations that may be interested in or affected by the proposed project.

Preliminary Issues: No preliminary planning issues were identified.

Comment Requested: This notice of intent initiates the scoping process, which guides the development of the EIS. Comments submitted during the scoping process should be in writing and should be specific to the purpose and need and the proposed action. The comments should describe as clearly and completely as possible any issues or concerns the commenter has with the proposal.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A DEIS will be prepared for comment. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

At this early stage, the Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of DEISs must structure their participation in the environmental review of the proposal in a way that it is meaningful and alerts an agency to the reviewer's position and contentions [*see "Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S.* 519, 553 (1978)"]. Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the FEIS may be waived or dismissed by the courts [*see "City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)*]. Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the NEPA at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection (*see* 40 CFR 1501.7 and 1508.22; *Forest Service Handbook 1909.15, Section 21*).

Dated: February 13, 2006.

Robert L. Vaught,

Forest Supervisor.

[FR Doc. E6–2326 Filed 2–17–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Harding Lake, Aquatic Habitat Enhancement Project

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service (formerly the Soil Conservation Service) Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, Robert Jones, State Conservationist, finds that neither the proposed action nor any of the alternatives is a major federal action significantly affecting the quality of the human environment, and determine that an environmental impact statement is not needed for the Harding Lake, Aquatic Habitat Enhancement Project.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Jones, State Conservationist, Natural Resources Conservation Service, Alaska State Office, 800 West Evergreen Avenue, Suite 100, Palmer, AK 99645–6539; Phone: 907–761–7760; Fax: 907–761–7790.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is to redirect and control partial stream flows to restore shallow-water spawning and rearing habitat for Northern Pike (*Exos lucius*) and the Least Ciscoe (*Coregonus sardinella*) at Harding Lake, Salcha, AK. The planned works of improvement include installation of a double-weir, sheet-pile stream flow control system in Rogge Creek. This will re-establish more consistent water flow to the Harding Lake Channel of Rogge Creek terminating in Harding Lake. Subsequently, the rise in water levels (design ASL 717) will provide more stable water conditions in Harding Lake to serve in reestablishing littoral wetland areas for northern pike production and rearing. Operation and maintenance of the structure will address flood control to the capacity of the Rogge Creek channels ability to contain flood waters (100 cfs), when out of bank flows will respond to the natural topography and conditions, irrespective of the structure presence. A natural outlet of the Harding Lake controls upper surface levels of the lake.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and other interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Robert Jones.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: February 9, 2006.

Robert Jones,

State Conservationist.

[FR Doc. 06–1573 Filed 2–17–06; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Coastal and Estuarine Land Conservation, Planning, Protection, or Restoration.

Form Number(s): None.

OMB Approval Number: 0648–0459.

Type of Request: Regular submission.

Burden Hours: 1,007.

Number of Respondents: 50.

Average Hours Per Response: 35 hours for a plan (one time only); 10 hours for an application; and 5 hours for a report.

Needs and Uses: The FY 2002 Commerce, Justice, State Appropriations Act directed the Secretary of Commerce to establish a Coastal and Estuarine Land Conservation Program (CELCP) to protect important areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion, and to issue guidelines for this program delineating the criteria for grant awards. (16 U.S.C. 1456d.). The guidelines establish procedures for eligible applicants, who choose to participate in the program, to use when developing state conservation plans, proposing or soliciting projects under this program, applying for funds and carrying out projects under this program in a manner that is consistent with the purposes of the program. NOAA also has, or is given, authority under the Coastal Zone Management Act, annual appropriations or other authorities, to issue funds to coastal states and localities for planning, conservation, acquisition, protection, restoration, or construction projects. This information collection will enable NOAA to implement the CELCP, under its current or future authorization, and facilitate the review of similar projects under different, but related authorities.

Affected Public: State, Local or Tribal Government; not-for profit institutions.

Frequency: One time, annually, and semi-annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: February 14, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6-2365 Filed 2–17–06; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Reporting of Sea Turtle Incidental Takes in Virginia Chesapeake Bay Pound Net Operations.

Form Number(s): None.

OMB Approval Number: 0648–0470.

Type of Request: Regular submission.

Burden Hours: 102.

Number of Respondents: 53.

Average Hours Per Response: 10 minutes.

Needs and Uses: The year-round reporting of sea turtle incidental take is necessary to (1) monitor the level of incidental take in the state-monitored pound net fishery, (2) ensure that the level of take does not exceed the Incidental Take Statement issued in conjunction with the Biological Opinion, and (3) verify that the seasonal pound net leader restrictions are adequate to protect sea turtles. The respondents will be Virginia pound net fishermen.

Affected Public: Individuals or households; business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: February 14, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–2366 Filed 2–17–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Residential Alterations and Repairs

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 24, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Joseph Huesman, U.S. Census Bureau, Room 2125 Building 4, Washington, DC 20233–6916, (301) 763–4822 (or via the Internet at *joseph.john.huesman@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request an extension of the currently approved Office of Management and Budget (OMB) clearance of the Survey of Residential Alterations and Repairs, also known as the (SORAR). SORAR collects monthly data on expenditures for residential improvements and repairs from owners or designated representatives of rental and vacant housing units. This segment of the economy amounted to more than $199 billion in 2004.

The Census Bureau also conducts the Consumer Expenditures Survey to collect data for improvement and repairs to owner-occupied residential properties. The Census Bureau

publishes estimates from these two sources in the C50 Series, Expenditures for Residential Improvements and Repairs. These estimates are used by a variety of private businesses and trade associations for marketing studies, economic forecasts, and assessments of the remodeling and construction industries. They also help governments evaluate economic policy. For example, the Bureau of Economic Analysis uses these statistics to develop the structures component of gross private domestic investment in the national income and product accounts.

II. Method of Collection

The universe for this survey is the owners or designated representatives of the more than 40 million rental and vacant housing units in the United States. A sample of these owners, as identified in the Consumer Expenditure Survey, is mailed the SORAR–705 form. They are asked to report detailed alterations, improvement, and repair expenditures for their entire property.

Approximately 4,000 owners are sampled each month. The sample design uses a rotation procedure that replaces one-twelfth of the sample survey each month. The data collected will continue to be adjusted for unreturned or unusable forms by region and metropolitan statistical area (MSA). The weights are adjusted so that sample counts of renter occupied and vacant housing units agree with independently derived controls from the Current Population Survey.

III. Data

OMB Number: 0607–0130.
Form Number: SORAR–705.
Type of Review: Regular Review.
Affected Public: Individuals or households, Businesses or Other for Profit, and State or Local Governments.
Estimated Number of Respondents: 4,000.
Estimated Time Per Response: 15 minutes.
Estimated Total Annual Burden Hours: 12,000.
Estimated Total Annual Cost: The cost to the respondents is estimated to be $120,000.
Respondents Obligation: Voluntary.
Legal Authority: Title 13, United States Code, Section 182.

IV. Request for 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 14, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–2364 Filed 2–17–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

[Docket No.: 050617160–5297–02]

Privacy Act of 1974: System of Records

AGENCY: Department of Commerce.

ACTION: Notice; COMMERCE/CENSUS–5, Population and Housing Census Records of the 2000 Census Including Preliminary Statistics for the 2010 Decennial Census.

SUMMARY: The Department of Commerce (Commerce) publishes this notice to announce the effective date of a Privacy Act System of Records notice entitled COMMERCE/CENSUS–5, Population and Housing Census Records of the 2000 Census Including Preliminary Statistics for the 2010 Decennial Census.

DATES: The system of records becomes effective on February 21, 2006.

ADDRESSES: For a copy of the system of records please mail requests to Gerald W. Gates, Chief Privacy Officer, U.S. Census Bureau, Washington, DC 20233, 301–763–2515.

FOR FURTHER INFORMATION CONTACT: Gerald W. Gates, Chief Privacy Officer, U.S. Census Bureau, Washington, DC 20233, 301–763–2515.

SUPPLEMENTARY INFORMATION: On July 11, 2005, the Commerce published and requested comments on a proposed amended Privacy Act System of Records notice entitled COMMERCE/CENSUS–5, Population and Housing Census Records of the 2000 Census Including Preliminary Statistics for the 2010 Decennial Census. No comments were received in response to the request for comments. By this notice, the Department is adopting the proposed system as final without changes effective February 21, 2006.

Dated: February 13, 2006.

Brenda Dolan,

Departmental Freedom of Information and Privacy Act Officer.

[FR Doc. E6–2392 Filed 2–17–06; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE FOR THE PERIOD JANUARY 23, 2006–FEBRUARY 13, 2006

Firm	Address	Date petition accepted	Product
RIM, Inc	901 W. I–20, Weatherford, TX 97087	1/23/06	Plastic parts, including seals.
Unicircuit, Inc	8192 Southpark Lane, Littleton, CO 80120.	1/24/06	Printed circuit boards.
CPC of Vermont Inc	227 Pond Lane, Middlebury, VT 05753	1/30/05	Steel molds and custom plastic injection molded parts.
Bassett Furniture Industries, Inc	3525 Fairystone Park Highway, Bassett, VA 24055.	1/30/05	Furniture.
American Reinforced Plastics, Inc	8209 East Pacific Highway, Tacoma, WA 98422.	1/30/06	Plastic baths, shower baths and soaking tubs.
Cell-Parts Manufacturing Company	125 Prairie Lake Road, East Dundee, IL 60118.	1/30/06	Molded and machined plastic parts.
DeLaine James, Inc	2013 Centimeter Circle, Austin, TX 78758	2/8/06	Blinds from wood, plastic and aluminum.
Quantegy Recording Solutions LLC	2230 Marvyn Parkway, Opelika, AL 36804.	2/8/06	Audio and video recording tape.
Saunders Brothers, Inc	170 Forest Street, Westbrook, ME 04098	2/8/06	Wood products.
Southern Fields Aloe, Inc	Rt. 2 85–D, Mercedes, TX 78570	2/8/06	Aloe Vera.
S & H Products, Inc	5891 Nolan Street, Unit 1, Arvada, CO 80003.	2/8/06	Safety shut off valves for firefighting equipment.
Fiber Science, Inc	2855 Kirby Circle, N.E. Suite 4, Palm Bay, FL 32905.	2/8/06	Synthetic (polymeric) continuous filament and staple fibers.
Extrudex Limited Partnership	310 Figgie Road, Painesville, OH 44077	2/8/06	Thermoplastic extrusions.
Air Cleaners, Inc	704 S. 12th Street, Broken Arrow, OK 74012.	2/13/06	Air filters.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Chief Counsel, Room 7005, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in section 315.9 of EDA's interim final rule (70 FR 47002) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: February 13, 2006.

Barry Bird,

Chief Counsel.

[FR Doc. E6–2416 Filed 2–17–06; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Bureau of Economic Analysis Advisory Committee

AGENCY: Bureau of Economic Analysis.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409, Pub. L. 96–523, Pub. L. 97–375 and Pub. L. 105–153), we are announcing a meeting of the Bureau of Economic Analysis Advisory Committee. The meeting's agenda is as follows: 1. Director's report/update 2. Measurement of Research & Development 3. Methodology and integration update for Input-Output accounts 4. Topics in state and local government finance.

DATES: Friday, May 19, 2006, the meeting will begin at 9 a.m. and adjourn at approximately 4 p.m.

ADDRESSES: The meeting will take place at the Bureau of Economic Analysis at 1441 L St., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Samantha Schasberger, Communications Division Program Analyst, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; telephone number: (202) 606–9642.

Public Participation: This meeting is open to the public. Because of security procedures, anyone planning to attend the meeting must contact Samantha Schasberger of BEA at (202) 606–9642 in advance. The meeting is physically accessible to people with disabilities. Requests for foreign language interpretation or other auxiliary aids should be directed to Samantha Schasberger at (202) 606–9642.

SUPPLEMENTARY INFORMATION: The Committee was established September 2, 1999. The Committee advises the Director of BEA on matters related to the development and improvement of BEA's national, regional, industry, and international economic accounts, especially in areas of new and rapidly growing economic activities arising from innovative and advancing technologies, and provides recommendations from the perspectives of the economics profession, business, and government. This will be the Committee's thirteenth meeting.

Dated: February 1, 2006.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

[FR Doc. 06–1538 Filed 2–17–06; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

C–533–825

Notice of Extension of Time Limit for Preliminary Results of Administrative Review: Polyethylene Terephthalate (PET) Film from India

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: February 21, 2006.

FOR FURTHER INFORMATION CONTACT: Toni Page or Scott Lindsay, Office of AD/CVD Operations 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th

Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–1398 or (202) 482–0780, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 29, 2005, in response to timely requests from Dupont Teijin Films, Mitsubishi Polyester Film of America, and Toray Plastics (America), Inc., (collectively, Petitioners), Jindal Poly Films Limited (Jindal), and Garware Polyester Limited (Garware), the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on polyethylene terephthalate (PET) film from India with respect to Jindal, Garware, and Polyplex Corporation Limited. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 51009 (August 29, 2005). The period of review is January 1, 2004 through December 31, 2004.

Extension of Time Limits for Preliminary Results

Section 351.213(h)(1) of the Department's regulations requires the Department to issue the preliminary results of a review within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and final results of the review within 120 days after the date on which notice of the preliminary results are published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within the aforementioned specified time limits, section 351.213(h)(2) of the Department's regulations allows the Department to extend the 245-day period to 365 days and to extend the 120-day period to 180 days. We determine that it is not practicable to complete the preliminary results of this review within the original time limit because, due to the large number of programs under review, the Department needs additional time to analyze the questionnaire responses and issue appropriate supplemental questionnaires. Therefore, the Department is extending the deadline for completion of the preliminary results of the administrative review of the countervailing duty order on PET film from India until no later than July 31, 2006.

This notice is published pursuant to sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: February 14, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–2420 Filed 2–17–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–351–840)

Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Orange Juice from Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 21, 2006.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Jill Pollack, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3874 or (202) 482–4593, respectively.

SUPPLEMENTARY INFORMATION:

Amendment to Final Determination

In accordance with sections 735(a) and 777(i)(1) of the Tariff Act of 1930, as amended, (the Act), on January 13, 2006, the Department published its notice of final determination of sales at less than fair value (LTFV) in the investigation of certain orange juice from Brazil. *See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil*, 71 FR 2183 (Jan. 13, 2006). On January 17, 2006, we received an allegation, timely filed pursuant to 19 CFR 351.224(c)(2), from the petitioners (*i.e.*, Florida Citrus Mutual, A. Duda & Sons, Inc. (doing business as Citrus Belle), Citrus World, Inc., and Southern Garden Citrus Processing Corporation (doing business as Southern Gardens)) that the Department made ministerial errors with respect to its final determination dumping margin calculations.

After analyzing the petitioners' submission, we have determined, in accordance with 19 CFR 351.224(e), that we made the following ministerial errors in the final determination:

- we inadvertently treated Fischer S/A - Agroindustria (Fischer) and an affiliated orange juice producer as separate entities for purposes of the cost test and product concordance, even though we had determined that it was appropriate to collapse them pursuant to 19 CFR 351.401(f), which resulted in constructed value incorrectly being used as the basis for normal value in Fischer's final margin calculations;
- we erred in the placement of programming language related to the application of adverse facts available to certain of Fischer's U.S. sales in the dumping margin program; and
- we mischaracterized the calculation of per–unit net U.S. customs duty expenses for Sucocitrico Cutrale Ltda.'s (Cutrale's) U.S. sales of frozen concentrated orange juice for manufacture (FCOJM) in our final determination. Specifically, we incorrectly stated that we recalculated Cutrale's per–unit net U.S. duties by allocating them only over Cutrale's period of investigation U.S. sales of FCOJM, rather than Cutrale's U.S. sales of both FCOJM and Not–From–Concentrate orange juice. However, the calculation of these customs duties itself, as well as their application to only FCOJM, was correct.

Correcting these errors results in a revised margin for Fischer. In addition, we have revised the calculation of the "All Others" rate accordingly.

For a detailed discussion of all ministerial errors alleged by the petitioners as well as the Department's analysis, see the February 8, 2006, memorandum from the team to Irene Darzenta Tzafolias entitled, "Ministerial Error Allegations in the Final Determination of the Antidumping Duty Investigation on Certain Orange Juice from Brazil."

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination of sales at LTFV in the antidumping duty investigation of certain orange juice from Brazil. The revised weighted–average dumping margins are as follows:

Manufacturer/Exporter	Final Determination Weighted–Average Margin Percentage	Amended Weighted–Average Margin Percentage
Fischer S/A - Agroindustria	9.73	12.46

Manufacturer/Exporter	Final Determination Weighted–Average Margin Percentage	Amended Weighted–Average Margin Percentage
Montecitrus Trading S.A.	60.29	60.29
Sucocitrico Cutrale, S.A.	19.19	19.19
All Others	15.42	16.51

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of certain orange juice from Brazil. CBP shall require a cash deposit equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the chart above. These instructions suspending liquidation will remain in effect until further notice.

This amended determination is issued and published pursuant to section 735(e) of the Act.

Dated: February 9, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–2418 Filed 2–17–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–828]

Stainless Steel Wire Rod from Taiwan: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Carpenter Technology Corporation, Dunkirk Specialty Steel, LLC (a subsidiary of Universal Stainless & Alloy Products) and North American Stainless (the "Domestic Interested Parties"), domestic producers of stainless steel wire rod, the Department of Commerce (the "Department") initiated an administrative review of the antidumping duty order on stainless steel wire rod from Taiwan. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 70 FR 61601 (October 25, 2005) ("*Initiation Notice*"). The period of review ("POR") is September 1, 2004, through August 31, 2005. The Department is now rescinding this review because the Domestic Interested Parties have withdrawn their request.

EFFECTIVE DATE: February 21, 2006.

FOR FURTHER INFORMATION CONTACT: Malcolm A. Burke or Howard Smith at (202) 482–3584 or (202) 482–5193, respectively; AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2005, the Department published a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on stainless steel wire rod from Taiwan. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 52072 (September 1, 2005). On September 30, 2005, the Department received a timely request from the Domestic Interested Parties to conduct an administrative review of the antidumping duty order on stainless steel wire rod from Taiwan with respect to Walsin Lihwa Corporation and any of its affiliates for the POR. On October 25, 2005, the Department initiated an administrative review of the antidumping duty order on stainless steel wire rod from Taiwan for the POR, and published a notice of initiation in the **Federal Register**. *See Initiation Notice*. On December 13, 2005, the Domestic Interested Parties withdrew their request for an administrative review.

Rescission of Review

Pursuant to 19 CFR §351.213(d)(1). the Department will rescind an administrative review if a party that requested a review withdraws its request within 90 days of the publication date of the notice of initiation thereof. Because the Domestic Interested Parties withdrew their review request within the 90-day time limit and no other party requested a review, the Department is rescinding this review. The Department will issue appropriate instructions directly to U.S. Customs and Border Protection.

Notification to Importers

This notice serves as a reminder to importers of their responsibility, under 19 CFR §351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR §351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 751(a) of the Tariff Act of 1930, as amended, and 19 CFR §351.213(d)(4).

Dated: February 14, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–2419 Filed 2–17–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Socioeconomic Monitoring Program for the Florida Keys National Marine Sanctuary

AGENCY: National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 24, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. Vernon Leeworthy, 301–713–3000, extension 138, or at *Bob.Leeworthy@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this information collection is to obtain socioeconomic monitoring information in the Florida Keys National Marine Sanctuary (FKNMS). In 1997, regulations became effective that created a series of "no take zones" in the FKNMS. Monitoring programs are used to test the ecological and socioeconomic impacts of the "no take zones". Two voluntary data collection efforts support the socioeconomic monitoring program.

The first collection involves a set of four panels on commercial fishing operations, where commercial fishermen will be interviewed to assess financial performance and to assess the impacts of Sanctuary regulations. The information on catch, effort, revenues, operating and capital costs will be obtained to do financial performance analysis. Seven years of data collection have been completed and this application is to complete the efforts for years eight through ten. Information on socioeconomic factors for developing profiles of the commercial fishermen such as age, sex, education level, household income, marital status, number of family members, race/ethnicity, percent of income derived from fishing, percent of income derived from study area, years of experience in fishing will be gathered to compare panels with the general commercial fishing population. The data would be collected annually.

The second collection will monitor recreational for-hire operations through the use of dive logs for estimating use in the "no take areas" versus other areas for snorkeling, scuba diving and glass-bottom boat rides. Volunteers or a contractor will collect the logbooks monthly.

II. Method of Collection

Face-to-face interviews will generally be used. Dive shops will be requested to share their logbooks.

III. Data

OMB Number: 0648–0409.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Response: 3 hours for a commercial fishing panel member interview and 10 hours for a dive shop interview.

Estimated Total Annual Burden Hours: 790.

Estimated Total Annual Cost to Public: $0.

IV. Request for 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 14, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–2370 Filed 2–17–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, National Ocean Service, Commerce.

ACTION: Notice of intent to evaluate and notice of availability of final findings.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performances of the Kachemak Bay (Alaska) National Estuarine Research Reserve, the Apalachicola (Florida) National Estuarine Research Reserve, the Michigan Coastal Management Program, the Virginia Coastal Management Program, and the Indiana Coastal Management Program.

The Coastal Zone Management Program evaluations will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA) and regulations at 15 CFR part 923, subpart L. The National Estuarine Research Reserve evaluations will be conducted pursuant to sections 312 and 315 of the CZMA and regulations at 15 CFR part 921, subpart E and part 923, subpart L. The CZMA requires continuing review of the performance of states with respect to coastal program implementation. Evaluation of Coastal Management Programs and National Estuarine Research Reserves requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document or Reserve final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

Each evaluation will include a site visit, consideration of public comments, and consultations with interested Federal, state, and local agencies and members of the public. A public meeting will be held as part of the site visit. Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of the public meeting during the site visits.

The Kachemak Bay (Alaska) National Estuarine Research Reserve evaluation site visit will be held April 3–6, 2006. One public meeting will be held during the week. The public meeting will be held on Wednesday, April 5, 2006, at 7 p.m. at the Kachemak Bay National Estuarine Research Reserve, Alaska Islands and Ocean Visitor Center, 95 Sterling Highway, Homer, Alaska.

The Apalachicola (Florida) National Estuarine Research Reserve evaluation site visit will be held May 1–3, 2006. One public meeting will be held during the week. The public meeting will be held on Wednesday, May 3, 2006 at 6:30 p.m. at the Apalachicola Community Center, 222 6th Street, Apalachicola, Florida.

The Michigan Coastal Management Program evaluation site visit will be held May 8–12, 2006. One public meeting will be held during the week. The public meeting will be held on Thursday, May 11, 2006, at 7 p.m. at Northwestern Michigan College, Great Lakes Campus, Great Lakes Water Studies Institute, Room 112, 715 East Front Street, Traverse City, Michigan.

The Virginia Coastal Management Program evaluation site visit will be held May 15–19, 2006. One public meeting will be held during the week. The public meeting will be held on Monday, February 14, 2006, at 4 p.m. at the Department of Environmental Quality, First Floor Conference Room, 629 East Main Street, Richmond, Virginia.

The Indiana Coastal Management Program evaluation site visit will be held May 30–June 2, 2006. One public meeting will be held during the week. The public meeting will be held on Wednesday, May 31, 2006, at 6 p.m. at the Westchester Public Library Service Center, 100 West Indiana Avenue, Chesterton, Indiana.

Copies of states' most recent performance reports, as well as OCRM's evaluation notification and supplemental information request letters to the states, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting held for a Program. Please direct written comments to Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910. When the evaluations are completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

Notice is hereby given of the availability of the final evaluation findings for the South Carolina and Maine Coastal Management Programs (CMPs) and the Wells (Maine) National Estuarine Research Reserve (NERR). Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended, require a continuing review of the performance of coastal states with respect to approval of CMPs and the operation and management of NERRs.

The states of South Carolina and Maine were found to be implementing and enforcing their federally approved coastal management programs, addressing the national coastal management objectives identified in CZMA section 303(2)(A)–(K), and adhering to the programmatic terms of their financial assistance awards. The Wells (Maine) NERR was found to be adhering to programmatic requirements of the NERR System.

Copies of these final evaluation findings may be obtained upon written request from: Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, or *Ralph.Cantral@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, (301) 563–7118.

Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration.

Dated: February 10, 2006.

Eldon Hout,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. E6–2421 Filed 2–17–06; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021406A]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Applications for two scientific research permits and one permit modification.

SUMMARY: Notice is hereby given that NMFS has received three scientific research permit application requests relating to Pacific salmon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts.

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on March 23, 2006.

ADDRESSES: Written comments on the applications should be sent to Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to 503–230–5441 or by e-mail to *resapps.nwr@NOAA.gov*.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, OR (ph.: 503–231–2005, Fax: 503–230–5441, e-mail: *Garth.Griffin@noaa.gov*). Permit application instructions are available from the address above.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): endangered upper Columbia River (UCR); threatened lower Columbia River (LCR); threatened upper Willamette River (UWR).

Chum salmon (*O. keta*): threatened Columbia River (CR).

Steelhead (*O. mykiss*): threatened middle Columbia River (MCR); threatened UCR; threatened UWR; threatened LCR.

Coho salmon (*O. kisutch*): threatened LCR.

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 1559

The Oregon State University (OSU) is asking for a 3–year research permit to take adult and juvenile UCR Chinook salmon, UCR steelhead, MCR steelhead, UWR Chinook salmon, and UWR steelhead in randomly-selected river systems in Oregon and Washington. The research was previously approved under Permit 1156; it is designed to help managers assess the condition of rivers and streams in the 12 conterminous

western states and evaluate and develop scientifically and statistically rigorous field protocols for assessing large (unwadeable) rivers. The study would benefit listed salmonids by providing baseline information about water quality in the study areas and helping managers enforce the Clean Water Act in those river systems where listed fish are present. The OSU proposes to capture fish (using raft-mounted electrofishing equipment), sample them for biological information, and release them. The researchers will seek to avoid adult salmonids, but some may be handled as an unintentional result of the sampling. Moreover, OSU does not intend to kill any fish being captured but some juvenile fish may die as an unintentional result of the research activities.

Permit 1560

The U.S. Geological Survey (USGS) is asking for a 3–year research permit to take adult and juvenile MCR steelhead, LCR Chinook salmon, LCR coho salmon, and CR chum salmon in the White Salmon River, Washington a tributary to the lower Columbia River. The objectives of the research are to: (1) Determine fish assemblage composition and fish use in the lower White Salmon River; (2) assess salmonid growth and survival as indices of productivity; (3) contribute to U.S. Fish and Wildlife Service efforts to characterize life history, genetics, and health of Chinook stocks that currently use the lower White Salmon River; and (4) coordinate with ongoing sampling efforts associated with dam removal projects in the Elwha River system (Olympic Peninsula, Washington). The study would benefit listed salmonids by providing information on the effects dam removal may have on important fish species such as Chinook, coho, steelhead, Pacific lamprey, bull trout, and sea-run cutthroat trout. The U.S. Geodetic Survey (USGS) proposes to conduct snorkel surveys instead of capturing fish whenever possible, but they will also capture fish using backpack electrofishing equipment and traps and anesthetize, measure, weigh and inspect them for external diseases. Researchers would clip the fins of some captured fish in order to collect genetic tissues and gauge trapping efficiency. The researchers will seek to avoid adult salmonids, but some may be handled as an unintentional result of the sampling. Moreover, the USGS does not intend to kill any fish being captured but some juvenile fish may die as an unintentional result of the research activities.

Permit 1336 – Modification 1

Permit 1336 currently authorizes the Port Blakely Farms (PBF) to take juvenile UWR Chinook salmon, LCR Chinook salmon, UWR steelhead and LCR steelhead in headwater streams in western Oregon and Washington. They are asking to modify their permit so they may be allowed to take LCR coho salmon; they also wish to extend the permit's expiration date to December 31, 2010. The purpose of the research is to evaluate factors limiting fish distribution and water quality in streams owned by PBF. The research would benefit listed salmonids by producing data to be used in conserving and restoring critical habitat. The PBF proposes to capture (using backpack electrofishing and dipnetting), handle, and release juvenile fish. The PBF does not intend to kill any fish being captured but some may die as an unintentional result of the research activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted to determine whether the application meets the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30–day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: February 14, 2006.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–2404 Filed 2–17–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021506C]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat/Marine Protected Area (MPA)/ Ecosystem Advisory Panel in March, 2006 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Tuesday, March 7, 2006 at 10 a.m.

ADDRESSES: The meeting will be held at the Radisson Hotel Plymouth Harbor, 180 Water Street, Plymouth, MA 02360; telephone: (508) 747–4900; fax: (508) 746–5386.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Advisory Panel will review the draft Essential Fish Habitat (EFH) designation management alternatives for inclusion in the EFH Omnibus Amendment 2. In addition the panel will be briefed on the EFH Omnibus Amendment 2 Habitat Area of Particular Concern (HAPC) proposals; review and continued work on the Advisory Panel gear description document; discussion of a potential gear description workshop and any other topics that may be covered at the panel's discretion.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: February 15, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–2406 Filed 2–17–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021306D]

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Crustacean Fisheries; 2006 Harvest Guideline

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

ACTION: Notification of harvest guideline for crustaceans.

SUMMARY: NMFS announces that the annual harvest guideline for the commercial lobster fishery in the Northwestern Hawaiian Islands (NWHI) for calendar year 2006 is established at zero lobsters.

FOR FURTHER INFORMATION CONTACT: Robert Harman, NMFS Pacific Islands Regional Office, at (808) 944–2207.

SUPPLEMENTARY INFORMATION: Under the regulations implementing the Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region (Crustaceans FMP) at 50 CFR 660.50(b)(2), every year NMFS is required to publish a harvest guideline for lobster Permit Area 1, which encompasses the Exclusive Economic Zone around the NWHI.

The fishery has been closed since 2000 for several reasons, including: (a) as a precautionary measure to prevent overfishing of the lobster resources while NMFS conducts biological research and assessment on the lobster stocks; (b) to comply with an order of the U.S. District Court for the District of Hawaii to keep the NWHI commercial lobster fishery closed until an environmental impact statement and a biological opinion have been prepared for the Crustaceans FMP; and (c) to be consistent with the NWHI Coral Reef Ecosystem Reserve, and the current process of designating certain waters of the NWHI as a national marine sanctuary.

NMFS announces the harvest guideline for the NWHI commercial lobster fishery for calendar year 2006 is established as zero lobsters, and no harvest of NWHI lobster resources is allowed. NMFS intends to continue to study and assess the status of the lobster populations in the NWHI and examine the resulting information to determine the appropriate direction for future fishery management actions.

Dated: February 14, 2006.

James P. Burgess,

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

[FR Doc. E6–2411 Filed 2–17–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability for the Draft 2006 Supplemental Environmental Assessment to the 2002 Rim of the Pacific Programmatic Environmental Assessment, Hawaii; Correction

AGENCY: Department of the Navy, DOD.

ACTION: Notice; correction.

SUMMARY: The Department of the Navy published a document in the **Federal Register** of January 20, 2006, concerning the draft 2006 Supplemental Environmental Assessment to the 2002 Programmatic Environmental Assessment (Supplemental PEA) for the Rim of the Pacific (RIMPAC) Hawaii exercise. The notice incorrectly identified the United States National Marine Fisheries Service (NMFS), National Atmospheric and Oceanic Administration (NOAA), Department of Commerce, as a cooperating agency.

Correction

FOR FURTHER INFORMATION CONTACT: Pacific Fleet Environmental Office at 808–474–7836 or write to Commander, U.S. Pacific Fleet (N01CE1), 250 Makalapa Drive, Pearl Harbor, HI 96860.

Correction: The United States National Marine Fisheries Service (NMFS), National Atmospheric and Oceanic Administration (NOAA), Department of Commerce, is not a cooperating agency in the preparation of the Supplemental PEA.

Dated: February 14, 2006.

Eric McDonald,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E6–2414 Filed 2–17–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 24, 2006.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 13, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension.

Title: Federal Perkins/NDSL Loan Assignment Form.

Frequency: On Occasion.

Affected Public: Businesses or other for-profit; Individuals or household; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 21,262.

Burden Hours: 8,505.

Abstract: This form is used to collect pertinent data regarding student loans from institutions participating in the Federal Perkins Loan Program. The Perkins Assignment Form serves as the transmittal document in the assignment of such loans to the Federal government.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2992. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to IC *DocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to the e-mail address IC *DocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–2398 Filed 2–17–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education

AGENCY: A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education, Department of Education.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming public hearing with members of A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education (Commission). Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES: Monday, March 20, 2006; 9 a.m. to 4 p.m.

ADDRESSES: The public hearing will be held in Boston, MA, at the Fairmont Copley Plaza, 138 St. James Avenue, Boston, MA.

FOR FURTHER INFORMATION CONTACT: Cheryl Oldham, Executive Director, A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education, 400 Maryland Avenue, SW., Washington, DC 20202–3510; telephone: (202) 205–8741.

SUPPLEMENTARY INFORMATION: The Commission is established by the Secretary of Education to begin a national dialogue about the future of higher education in this country. The purpose of this Commission is to consider how best to improve our system of higher education to ensure that our graduates are well prepared to meet our future workforce needs and are able to participate fully in the changing economy. The Commission shall consider Federal, State, local and institutional roles in higher education an analyze whether the current goals of higher education are appropriate and achievable. The Commission will also focus on the increasing tuition costs and the perception of many families, particularly low-income families, that higher education is inaccessible.

The agenda for this public hearing will begin with presentations from panels of invited speakers addressing the four areas of focus for the Commission: access, accountability, affordability, and quality. After the presentations by invited speakers, there will be time reserved for comments from the public.

If you are interested in participating in the public comment period to present comments to the Commission, you are requested to reserve time on the agenda of the meeting by e-mail or phone. Please include your name, the organization you represent if appropriate, and a brief description of the issue you would like to present. participants will be allowed approximately three to five minutes to present their comments, depending on the number of individuals who reserve time on the agenda. At the meeting, participants are also encouraged to submit four written copies of their comments. Persons interested in making comments are encouraged to address the following issues and questions:

(1) How accessible is higher education today? Is this changing?

(2) Do students have access to the institutions best suited to their needs and abilities?

(3) What is the real cost of educating college students? How fast is it rising?

(4) What is the true price of a college education?

(5) What is the quality of higher education in America?

(6) How well are universities meeting specific national needs?

Given the expected number of individuals interested in providing comments at the meeting, reservations for presenting comments should be made as soon as possible. Persons who are unable to obtain reservations to speak during the meeting are encouraged to submit written comments. Written comments will be accepted at the meeting site or may be mailed to the Commission at the address listed above.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.*, interpreting services, assistive listening devices, or materials in alternative format) should notify Carrie Marsh at (202) 205–8741 no later than March 3, 2006. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Individuals interested in attending the meeting must register in advance because of limited space issues. Please contact Carrie Marsh at (202) 205–8741 or by e-mail at *Carrie.Marsh@ed.gov*.

Opportunities for public comment are available through the Commission's Web site at *http://www.ed.gov/about/bdscomm/list/hiedfuture/index.html*. Records are kept of all Commission proceedings and are available for public inspection at the staff office for the Commission from the hours of 9 a.m. to 5 p.m.

Dated: February 13, 2006.

Margaret Spellings,

Secretary, U.S. Department of Education.

[FR Doc. 06–1534 Filed 2–17–06; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Environmental Management; Environmental Management Advisory Board Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Advisory Board (EMAB). The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, March 22, 2006, 9 a.m.–5 p.m., Thursday, March 23, 2006, 9 a.m.–12 p.m.

ADDRESSES: Augusta Towers Hotel and Convention Center, 2652 Perimeter Parkway, Augusta, GA 30909.

FOR FURTHER INFORMATION CONTACT: Terri Lamb, Executive Director of the Environmental Management Advisory Board (EM–30.1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Phone (202) 586–9007; Fax (202) 586–0293 or e-mail: *terri.lamb@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide the DOE Assistant Secretary for Environmental Management with information, advice, and recommendations concerning issues affecting the EM program.

The Board will contribute to the effective operation of the Environmental Management Program by providing individual citizens and representatives of interested groups an opportunity to present their views on issues facing the Office of Environmental Management and by helping to secure advice on those issues.

Tentative Agenda

Wednesday, March 22, 2006

9 a.m. Welcome and Remarks; Opening Remarks; EM Program Update; EM Re-Organization; Human Capital Development Presentation; Roundtable Discussion; Public Comment Period
12 p.m. Lunch Break
1 p.m. Waste Disposition and Strategy Presentation; Roundtable Discussion; Lessons Learned from Small Business Contracting; Roundtable Discussion; Public Comment Period
5 p.m. Adjournment

Thursday, March 23, 2006

9 a.m. Board Business
11:30 p.m. Public Comment
12 p.m. Adjournment

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Terri Lamb at the address or telephone number above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. Those who call in and register in advance will be given the opportunity to speak first. Others will be accommodated as time permits. The Board Chair is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of the meeting will be available for viewing and copying at the U.S. Department of Energy Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by calling Terri Lamb at (202) 586–9007. Board meeting minutes are posted on the EMAB Web site within one month following each meeting at: *http://web.em.doe.gov/emab/products.html.*

Issued at Washington, DC on February 15, 2006.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–2402 Filed 2–17–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC06–76–000]

DeGreeffpa, LLC; Bendwind, LLC; Sierra Wind, LLC; Groen Wind, LLC; Larswind, LLC; TAIR Windfarm, LLC; Hillcrest Wind, LLC; East Ridge Transmission, LLC; and Storm Lake Power Partners I LLC; Notice of Filing

February 13, 2006.

Take notice that on February 8, 2006, DeGreeffpa, LLC (DeGreeffpa), Bendwind, LLC (Bendwind), Sierra Wind, LLC (Sierra), Groen Wind, LLC (Groen), Larswind, LLC (Larswind), TAIR Windfarm, LLC (TAIR), Hillcrest Wind, LLC (Hillcrest) (collectively, East Ridge Projects), East Ridge Transmission, LLC (East Ridge Transmission), and Storm Lake Power Partners I LLC (Storm Lake) (the East Ridge Projects, East Ridge Transmission, and Storm Lake, together, Applicants) submitted an application pursuant to section 203 of the Federal Power Act for authorization for the indirect disposition of jurisdictional facilities resulting from a corporate reorganization that will transfer Edison Capital's indirect upstream ownership interests in Applicants from Edison Capital to its affiliate Edison Mission Energy.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicants. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicants.

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, D.C. There is an "eSubscription" link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 1, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–2376 Filed 2–17–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–130–000, CP05–132–000, CP05 395–000, CP06–26–000 and CP05–131–000 (Not consolidated)]

Dominion Cove Point LNG, L.P. and Dominion Transmission, Inc.; Supplemental Notice of Procedural Conference, Conference Agenda, and Further Order on Late Intervention

February 13, 2006.

Take notice that as previously announced on February 2, 2006, the Federal Energy Regulatory Commission (Commission) will hold a procedural

conference in the above-captioned proceedings on February 22, 2006. As stated in the February 2, 2006 Notice, the purpose of the conference is to allow the parties and Commission staff to discuss: (1) The pleadings filed in these proceedings regarding the quality of the natural gas delivered, and proposed to be delivered, to Washington Gas Light Company (WGL) from the liquefied natural gas (LNG) import terminal owned and operated by Dominion Cove Point LNG, LP (Cove Point), and the potential effects of the proposed expansion and modification of Cove Point's LNG import terminal on certain facilities owned by WGL, and (2) the procedural options for the continued timely processing of Cove Point's requests for expansion and modification of its LNG import facility. By this supplemental notice, the Commission provides further information and an agenda for the conference.

Conference Information

Date: February 22, 2006.
Time: 10 a.m. (EST).
Location: Federal Energy Regulatory Commission, 888 First Street, NE., Room 3M–4, Washington, DC 20426.

Procedural Conference Agenda

Only the parties identified below shall be allowed to make presentations at the conference. Those presentations should be limited to the issues raised in the pleadings regarding the quality of the natural gas delivered, and proposed to be delivered, to WGL from the LNG import terminal owned and operated by Cove Point, and the potential effects of the proposed expansion and modifications of Cove Point's LNG import terminal on certain facilities owned by WGL, and the procedural options for the continued timely processing of Cove Point's requests for expansion and modification of its LNG import facility. Parties who intend to include power point presentations or other visual aids should advise the contact person(s) identified below in advance.

Following opening remarks from Commission staff at 10 a.m., the following parties will be permitted to make presentations in the order listed herein, limited to 45 minutes each, with Commission staff questions to follow each presentation: Washington Gas Light Company, Norton McMurray Manufacturing Company, Dominion Cove Point LNG, LP, LTD–1 Shippers.

Following the presentations and questions, Commission staff will close the conference, as appropriate in light of the presentations. Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available to the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript. For information about this proceeding, interested persons may go to the Commission's Web site, *http://www.ferc.gov,* and search under the docket number for this proceeding, Docket No. CP05–130–000, *et al.*

Norton McMurray Manufacturing Company (Norton McMurray) and the City of Richmond, Virginia (City of Richmond) filed motions to intervene out of time in these proceedings on February 8, and February 10, 2006, respectively. The Commission, pursuant to Rule 214(d)(3)(i) of the Commission's Rules of Practice and Procedure, hereby grants Norton McMurray's and City of Richmond's motions to intervene out of time for the limited purpose of participating in the Procedural Conference. The Commission reserves the right to grant or deny further party status of Norton McMurray and/or City of Richmond, as may be appropriate.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send and e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 208–1659 (TTY), or send a FAX to (202) 208–2106.

Any questions about this procedural conference may be directed to: Whit Holden, 202–502–8089, *edwin.holden@ferc.gov* or Richard Foley, 202–502–8955, *richard.foley@ferc.gov*.

Magalie R. Salas,
Secretary.
[FR Doc. E6–2379 Filed 2–17–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC06–77–000]

FPL Group, Inc., Constellation Energy Group, Inc.; Notice of Filing

February 13, 2006.

Take notice that on February 9, 2006, FPL Group, Inc. and Constellation Energy Group, Inc. (collectively, Applicants) made a filing pursuant to section 203 of the Federal Power Act for authorization of a consolidation of jurisdictional facilities in which the Applicants will merge through an all-stock transaction.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. on April 10, 2006.

Magalie R. Salas,
Secretary.
[FR Doc. E6–2377 Filed 2–17–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–605–000]

New York Independent System Operator, Inc.; Notice of Filing

February 13, 2006.

Take notice that on February 2, 2006, the New York Independent System Operator, Inc. (NYISO) on behalf of the Long Island Power Authority hereby submits revisions to it Open Access

Transmission tariff to revise LIPA's wholesale transmission service charge.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 23, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–2375 Filed 2–17–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–52–000]

New York Power Authority, Complainant v. Consolidated Edison Company of New York, Respondent; Notice of Complaint

February 13, 2006.

Take notice that on February 10, 2006, New York Power Authority (NYPA) filed a formal Complaint against Consolidated Edison Company of New York, Inc. (Con Edison) pursuant to Rule 206 of the Commission's Rule of Practice and Procedures, 18 CFR § 385.206 (2005), alleging that Con Edison violated the Federal Power Act by illegally charging NYPA a wholesale transmission rate for deliveries to NYPA's customers in Long Island that exceeded the lawful tariff rate for the period of November 18, 1999 through December 31, 2004. NYPA requests refunds for the overcharged amounts, plus all applicable interest.

NYPA states that copies of the complaint were served on the contacts for Con Edison.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on March 2, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–2378 Filed 2–17–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

February 13, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–3251–011; ER99–754–013; ER98–1734–011; ER01–1919–008; ER99–2404–008; ER01–513–011; ER01–513–012; ER01–513–013; ER01–513–014; ER01–513–015.

Applicants: Exelon Generating Company, LLC; AmerGen Energy Company, LLC; Commonwealth Edison Company; Exelon Energy Company; Exelon New England Power Marketing, L.P.; Exelon Edgar, LLC; Exelon West Medway, LLC; Exelon Wyman, LLC; Exelon New Boston, LLC Exelon Framingham, LLC.

Description: Exelon Generation Co. LLC et al. submits revised tariff sheets to correct the error noted in its 1/19/06 filing as part of the market-based rate.

Filed Date: 02/06/2006.

Accession Number: 20060208–0314.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 21, 2006.

Docket Numbers: ER05–1249–002.

Applicants: Granite State Electric Company *et al.*

Description: Granite State Electric Co. d/b/a National Grid submits its refund compliance report two business days out of time.

Filed Date: 02/06/2006.

Accession Number: 20060206–5053.

Comment Date: 5 p.m. Eastern Time on Monday, February 27, 2006.

Docket Numbers: ER06–185–001.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits requested information pertaining to its 11/08/05 filing and requests privileged and confidential treatment to the data.

Filed Date: 02/06/2006.

Accession Number: 20060208–0243.

Comment Date: 5 p.m. Eastern Time on Monday, February 27, 2006.

Docket Numbers: ER06–380–001; ER06–381–001; ER06–382–001; ER06–383–001; ER06–388–001; ER06–389–001; ER06–390–001; ER06–391–001; ER06–392–001; ER06–393–001; ER06–394–001; ER06–395–001.

Applicants: Kentucky Utilities Company.

Description: Kentucky Utilities Co.'s submits informational supplement to its 12/23/05 filing.

Filed Date: 02/03/2006.

Accession Number: 20060213–0007.

Comment Date: 5 p.m. Eastern Time on Friday, February 24, 2006.

Docket Numbers: ER06–429–002.

Applicants: Florida Power Corporation.

Description: Florida Power Corp. dba Progress Energy Florida, Inc. submits corrected sheet in compliance with Orders 661 and 661–A, issued 6/2/05.

Filed Date: 02/06/2006.

Accession Number: 20060208–0276.

Comment Date: 5 p.m. Eastern Time on Monday, February 27, 2006.

Docket Numbers: ER06–430–002.

Applicants: Progress Energy Services Company, LLC.

Description: Progress Energy Service Co., LLC on behalf of Carolina Power & Light Co. dba Progress Energy Carolinas, Inc. submits a corrected tariff sheet to its FERC Electric Tariff, Third Revised Volume No. 3.

Filed Date: 02/06/2006.

Accession Number: 20060210–0027.

Comment Date: 5 p.m. Eastern Time on Monday, February 27, 2006.

Docket Numbers: ER06–611–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection LLC submits an interconnection service agreement among PJM, Southeastern Chester County Refuse Authority and PECO Energy Co.

Filed Date: 02/06/2006.

Accession Number: 20060208–0170.

Comment Date: 5 p.m. Eastern Time on Monday, February 27, 2006.

Docket Numbers: ER06–612–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Co. submits a Letter Agreement with Garnet Energy Corporation.

Filed Date: 02/06/2006.

Accession Number: 20060208–0172.

Comment Date: 5 p.m. Eastern Time on Monday, February 27, 2006.

Docket Numbers: ER06–613–000.

Applicants: ISO New England Inc.

Description: ISO New England In.c et al. submits a package of market improvements that have been developed as Phase II of the Ancillary Service Market Project.

Filed Date: 02/06/2006.

Accession Number: 20060208–0386.

Comment Date: 5 p.m. Eastern Time on Monday, February 27, 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. E6–2380 Filed 2–17–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2005–0031; FRL–8034–6]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Municipal Solid Waste Landfills (Renewal), ICR Number 1938.03, OMB Number 2060–0505

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on April 30, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 23, 2006.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2005–0031, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, (Mail Code 2223A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 6, 2005 (70 *FR* 24020), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number EPA–HQ–OECA 2005–0031, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday,

excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *http://www.regulations.gov*. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing at *http://www.regulations.gov*. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NESHAP for Municipal Solid Waste Landfills (Renewal).

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for municipal solid waste landfills were proposed on November 7, 2000, and promulgated on January 16, 2003. These standards apply to each existing and new municipal solid waste (MSW) landfills. This subpart applies to a MSW landfill that has accepted waste since November 8, 1987 or has additional capacity for waste deposition, a major source, collocated with a major source, and an area source landfill with a design capacity equal to or greater than 2.5 million megagrams (Mg) and 2.5 million cubic meters (m^3), and has estimated uncontrolled emissions equal to or greater than 50 megagrams per year (Mg/yr) of nonmethane organic compounds (NMOC), or a MSW landfill that has accepted waste since November 8, 1987 or has additional capacity for waste deposition, that includes a bioreactor, is a major source, collocated with a major source, and an area source with a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3 that is not permanently closed as of January 16, 2003.

Owners or operators of the affected facilities would be required to submit semiannual compliance reports for control device operating parameters prepare a startup, shutdown, and malfunction (SSM) plan and prepare semiannual SSM reports.

Any owner or operator subject to the provisions of this subpart must maintain a file of these measurements, and retain the file for at least two years following the collection of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the regional EPA office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average five hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owner or operator of each municipal solid waste landfill.

Estimated Number of Respondents: 1,121.

Frequency of Response: On occasion, semi-annually, and annually.

Estimated Total Annual Hour Burden: 18,234 hours.

Estimated Total Annual Costs: $1,489,837, which includes $0 annualized capital/startup costs, $17,000 annual O&M costs, and $1,472,837 annual labor costs.

Changes in the Estimates: There was a decrease of 21,126 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The adjustment decrease in burden from the most recently approved ICR is due to a decrease in the number of sources. After we conducted a thorough analysis with the municipal solid waste landfills industry and obtained their spreadsheet that depicts MSW landfills whose capacity met or exceeded 2.5 million Mg, we were able to determine that there are 1,119 active landfills with a projection of one additional landfill per year over the next three years, for a total average of 1,121, as compared to 1,330 in the previous ICR. In addition, the startup, shutdown and malfunction plan has been completed for existing facilities. This only applies to a facility when it first becomes subject to the standard. The plans were completed, by in large, during the last ICR cycle.

The capital/startup costs are not included because this NESHAP does not require MSW landfills to purchase or operate additional control equipment or monitoring devices.

Dated: February 7, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–2407 Filed 2–17–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2005–0045; FRL–8034–5]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Hot Mix Asphalt Facilities (Renewal); ICR Number 1127.08, OMB Number 2060–0083

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on April 30, 2006. Under OMB regulations, the Agency may continue to

conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 23, 2006.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2005–0045, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: María Malavé;, Compliance Assessment and Media Programs Division (Mail Code 2223A), Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7027; fax number: (202) 564–0050; e-mail address: *malave.maria@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 6, 2005 (70 *FR* 24020), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number EPA–HQ–OECA–2005–0045, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available at *http://www.regulations.gov*. Use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *http://www.regulations.gov*. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in *http://www.regulations.gov*. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.regulations.gov*.

Title: NSPS for Hot Mix Asphalt Facilities (Renewal).

Abstract: The New Source Performance Standards (NSPS) for the regulations published at 40 CFR part 60, subpart I were proposed on June 11, 1973, and promulgated on July 25, 1977. These regulations apply to hot mix asphalt facilities comprised only of a combination of the following: Dryers; systems for screening, handling, storing, and weighing hot aggregate; systems for loading, transferring, and storing mineral filler; systems for mixing hot mix asphalt; and the loading, transfer, and storage systems associated with emission control systems.

In general, all NSPS standards require initial notifications, performance tests, and periodic reports. Owners or operators of the affected facilities described must make the following one-time-only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. In general, these notifications, reports and records are required of all sources subject to NSPS.

This information is being collected to assure compliance with 40 CFR part 60, subpart I. Any owner or operator subject to the provisions of this part will maintain a file of these records, and retain the file for at least two years following the date of such records. The reporting requirements for this industry currently include only the initial notifications and initial performance test report listed above. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Hot mix asphalt facilities.

Estimated Average Number of Respondents: 4,010.

Frequency of Response: Initially, on occasion.

Estimated Total Annual Hour Burden: 17,318 hours.

Estimated Total Annual Costs: $1,411,959, which includes $0 annualized capital/startup costs, $0 annual O&M costs, and $1,411,959 annual labor costs.

Changes in the Estimates: There is an increase in burden of 7,015 hours from the most recently approved ICR, due primarily to the assumption that there will be approximately 105 new sources each year that will become subject to this rule and, therefore, will be required to submit the appropriate notifications and conduct performance tests. As in the active ICR, we have assumed that there will be a number of existing sources (*i.e.*, 140 facilities) conducting modifications of their facilities and, therefore, will be required to submit appropriate notifications and conduct performance tests.

There are no annualized capital and operations and maintenance costs for this ICR because the rule does not require the use of continuous emission monitoring equipment, as stated in the active ICR.

The use of updated higher labor rates and the inclusion of managerial and clerical labor categories in the burden calculation also affected both industry and the Federal government costs for complying with the recordkeeping and reporting requirements of the rule. We also deleted any burden associated with the Agency conducting inspection activities, such as travel costs and labor burden, which are activities that are exempt under the Paperwork Reduction Act. These changes resulted in a decrease in the Federal Government burden even when the number of sources submitting reports increased significantly, as discussed above.

Dated: February 7, 2006.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. E6–2408 Filed 2–17–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2002–2005; FRL–8034–3]

National Emission Standards for Hazardous Air Pollutants (Radionuclides), Availability of Updated Compliance Model

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Pursuant to section 112 of the Clean Air Act, the Environmental Protection Agency is announcing the availability of Version 3 of the CAP88–PC model used to demonstrate compliance with the National Emission Standards for Hazardous Air Pollutants (NESHAPs) applicable to radionuclides. CAP88-PC is approved for this use by EPA. Version 3 includes an expanded library of radionuclides and incorporates updated radionuclide risk conversion factors. Hence, it is recommended that Version 3 be used for future compliance demonstrations.

FOR FURTHER INFORMATION CONTACT: Behram Shroff, Office of Radiation and Indoor Air, Radiation Protection Division (6608J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460–0001; telephone number: (202) 343–9707; fax number: (202) 343–2304; e-mail address: *shroff.behram@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you are subject to the reporting requirements for radionuclide NESHAPs found in 40 CFR part 61, subpart H. This subpart applies to Department of Energy (DOE) facilities.

B. How Can I Get Copies of the Model and Related Information?

1. *Docket.* EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2002–0050; FRL–XXXX–X. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 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 and Radiation Docket is (202) 566–1742.

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/.*

3. *EPA Web site.* You may download the CAP88–PC model and documentation from EPA's Web site at *http://www.epa.gov/radiation/assessment/CAP88/index.html.*

II. Background

On October 31, 1989, EPA promulgated the National Emissions Standards for Hazardous Air Pollutants (NESHAPs) under Section 112 of the Clean Air Act to control radionuclide emissions to the ambient air from a number of different source categories (54 FR 51654, December 15, 1989 (Docket EPA–HQ–OAR–2002–0050, Item 0028)). Subpart H of 40 CFR part 61 is one of the source categories covered in this 1989 final rule. Facilities owned and operated by the Department of Energy (DOE) are covered by subpart H. DOE administers many facilities, including government-owned, contractor-operated facilities across the country. Some of these DOE facilities handle significant amounts of radioactive material and can emit radionuclides into the air in various physical and chemical states. The purpose of subpart H is to limit radionuclide emissions (not including radon) from the stacks and vents at DOE facilities so that no member of the public receives an effective dose equivalent of more than 10 millirem per year (mrem/yr).

III. CAP88–PC Model for Demonstrating Compliance

A. CAP88–PC Model History

EPA is today announcing the availability of Version 3 of the CAP88–PC model for use in demonstrating compliance with the requirements of 40 CFR part 61, subpart H. CAP88 (Clean Air Act Assessment Package—1988) (Docket EPA–HQ–OAR–2002–0050, Items 0033 through 0036) is a set of computer programs, databases and associated utility programs for estimation of dose and risk from radionuclide emissions to air. CAP88–PC implements, on the personal computer platform, modified versions of the AIRDOS–EPA and DARTAB codes that were written in FORTRAN 77 and executed in a mainframe computing environment. CAP88–PC provides for dose and risk assessments of collective populations, maximally-exposed individuals, and selected individuals. The complete set of dose and risk factors is provided.

The original CAP88-PC software package, Version 1.0 (Docket EPA–HQ–OAR–2002–0050, Items 0040 and 0041), allowed users to perform full-featured dose and risk assessments in a DOS environment for the purpose of demonstrating compliance with 40 CFR 61.93(a); it was approved for compliance demonstration in February 1992.

CAP88–PC Version 2.0 (Docket EPA–HQ–OAR–2002–0050, Items 0042 and 0043) provided a framework for developing inputs to perform full-featured dose and risk assessments in a Windows environment for the purpose of demonstrating compliance with 40 CFR 61.93(a). Version 2.0 was approved for compliance demonstration in 1999. Version 2.1 included some additional changes compared to the DOS version and the previous Windows version, 2.0.

The changes included the addition of more decay chains, improvements in the Windows code error handling, and a modified nuclide data input form. Section 1.6 of the CAP88–PC Version 3 User's Guide (Docket EPA–HQ–OAR–2002–0050, Item 0047) provides a summary of the changes incorporated into Version 2.1 relative to Version 2.0.

CAP88–PC Version 3.0 is a significant update to Version 2.1. Version 3 incorporates dose and risk factors from Federal Guidance Report 13, "Cancer Risk Coefficients for Environmental Exposure to Radionuclides" (FGR 13, Docket EPA–HQ–OAR–2002–0050, Items 0037 through 0039, also available at *http://www.epa.gov/radiation/federal/techdocs.htm*), in place of the RADRISK data that was used in previous versions. The FGR 13 factors are based on the methods in Publication 72 of the International Commission on Radiological Protection (ICRP), "Age-Dependent Doses to Members of the Public from Intake of Radionuclides". In addition, the CAP88–PC database, the user interface, input files, and output files, were modified to accommodate the FGR 13 data formats and nomenclature. Section 1.7 of the CAP88–PC Version 3 User's Guide (Docket EPA–HQ–OAR–2002–0050, Item 0047) describes the modifications incorporated into Version 3 relative to Version 2.1.

B. CAP88–PC Model Summary

All versions of CAP–88 PC use a modified Gaussian plume equation to estimate the average dispersion of radionuclides released from up to six types of sources. The sources may be either elevated stacks, such as a smokestack, or uniform area sources, such as a pile of uranium mill tailings. Plume rise can be calculated assuming either a momentum or buoyant-driven plume. Assessments are made for a circular grid of distances and directions for a radius of up to 80 kilometers (50 miles) around the source. The Gaussian plume model produces results that agree with experimental data as well as any model, is fairly easy to work with, and is consistent with the random nature of turbulence. Site specific information on population locations and meteorological conditions are provided to CAP88–PC as input files developed by the user. The formats for these input files have not changed from the original mainframe version of the CAP88 code package.

There are a few differences between CAP88–PC and earlier mainframe versions. When performing population dose assessments, CAP88–PC uses the distances in the population array to determine the sector midpoint distances where the code calculates concentrations. When an individual assessment is run, the sector midpoint distances are input by the user on the Run Option tab form. CAP88–PC only uses circular grids, whereas the mainframe version allowed users to define a square grid. Also, direct user input of radionuclide concentrations in each sector is not an option in CAP88–PC.

CAP88–PC is also modified to do either "Radon-only" or "Non-Radon" runs to conform to the format of the 1988 Clean Air Act NESHAPs Rulemaking. "Radon-only" assessments, which only have Rn-222 in the source term, automatically include working level calculations; any other source term ignores working levels. When performing "Radon-only" runs, CAP88–PC has the capability to vary the equilibrium fractions for the Radon daughters based on the distance from the source; previously the equilibrium fractions were set to a constant of 0.7. Synopsis reports customized to both "Radon Only" and "Non-Radon" formats are automatically generated. Input of any additional radionuclides, even Rn–220, will cause CAP88–PC to omit working level calculations. Version 3 has not changed the "Radon Only" methodology relative to the previous Versions 2.0 and 2.1.

The calculation of deposition velocity and the default scavenging coefficient in CAP88–PC is defined by current EPA policy. Deposition velocity is set to 3.5×10^{-2} (0.035) m/sec for Iodine, 1.8×10^{-3} (0.0018) m/sec for particulate, and 0.0 m/sec for gas. The default scavenging coefficient is calculated as a function of annual precipitation, which is input on the Meteorological Data tab form. Version 3 has not modified these calculations.

Organs and weighting factors have been modified in Version 3 to follow the FGR 13 method. In accordance with the FGR 13 dose model, the code now calculates dose for twenty-three (23) internal organs, rather than the seven (7) organs used in earlier versions. A twenty-fourth organ is also calculated, which is the total effective dose equivalent. The code now reports cancer risk for the fifteen (15) target cancer sites used in FGR 13. As was the case in Version 2, changing the organs and weights will invalidate the results.

C. Validation of the CAP88–PC Model

The CAP88–PC programs represent one of the best available validated codes for the purpose of making comprehensive dose and risk assessments. The Gaussian plume model used in CAP88-PC to estimate dispersion of radionuclides in air is one of the most commonly used models in government guidebooks. It produces results that agree with experimental data as well as any model, is fairly easy to work with, and is consistent with the random nature of turbulence. Version 3 has not modified the basic Gaussian plume algorithm used by the AIRDOS module of CAP88–PC, and comparison of cases between Versions 2 and 3 has shown no significant changes in the dispersion calculations.

The Office of Radiation and Indoor Air has made comparisons between the predictions of annual average ground-level concentration to actual environmental measurements and found very good agreement. In the paper "Comparison of AIRDOS–EPA Prediction of Ground-Level Airborne Radionuclide Concentrations to Measured Values" (Docket EPA–HQ–OAR–2002–0050, Item 0048), environmental monitoring data at five DOE sites were compared to AIRDOS–EPA predictions. EPA concluded that the concentrations predicted by AIRDOS–EPA are in substantial agreement to the measured concentrations, within an acceptable uncertainty level.

D. Limitations of the CAP88–PC Model

Like all models, there are some limitations in the CAP88–PC system. While up to six stack or area sources can be modeled, all the sources are modeled as if located at the same point; that is, stacks cannot be located in different areas of a facility. The same plume rise mechanism (buoyant or momentum) is used for each source. Also, area sources are treated as uniform. Variation in radionuclide concentrations due to complex terrain cannot be modeled. Errors arising from these assumptions will have a negligible effect for assessments where the distance to exposed individuals is large compared to the stack height, area or facility size.

Dose and risk estimates from CAP88–PC are applicable only to low-level chronic exposures, since the health effects and dosimetric data are based on low-level chronic intakes. CAP88–PC cannot be used for either short-term or high-level radionuclide intakes.

These limitations, common to all versions of CAP88, have not changed in Version 3.

E. Summary of CAP88–PC Changes From Version 2.1 to Version 3

Version 3 of CAP88–PC is a significant update to Version 2.1. The most significant change is the incorporation of the FGR 13 dose and risk factors. FGR 13 includes both dose and risk factors for 825 isotopes rather

than the 265 previously available. The decay chains for these 825 isotopes are now modeled using a full [illegible] implementation of the Bateman decay equations to replace the predefined decay chains in previous versions. The FGR 13 dose and risk factors also introduce new functionality and terminology. Ingestion and inhalation factors are now a function of the chemical form of the isotope, which is entered by the user. The radionuclide inhalation absorption "Class" terminology has been replaced by the new "Type" nomenclature. The new types are F (fast), M (medium), and S (slow), analogous to the older classes D (day), W (week), and Y (year). FGR 13 assumes a 1.0 micron size for inhaled particles, so Version 3 sets all particle sizes to 1.0 micron. Gas and vapor forms use a particle size of 0.0. Although not implemented in Version 3, CAP88–PC now also contains additional functionality that may be added in later versions, including age dependent factors, factors for morbidity in addition to mortality, and factors for additional exposure pathways.

To accommodate the FGR 13 methodology, CAP88–PC Version 3 also now calculates dose equivalent to 23 internal organs, and estimates the risk of cancer for 15 potential cancer induction sites. Additionally, CAP88–PC Version 3 no longer estimates genetic effects because genetic effects are not part of the FGR 13 dose and risk factor dataset.

The pathway transfer factors for all elements in the CAP88–PC database have been updated in Version 3 to the values from the National Council on Radiation Protection and Measurement (NCRP) report number 123, "Screening Models for Releases of Radionuclides to Atmosphere, Surface Water, and Ground". This was done to ensure that all the elements represented by the 825 isotopes in FGR 13 have appropriate elemental transfer factors.

CAP88–PC Version 3 still reports data in the same report structure used by previous versions of CAP88–PC. This has been done to retain conformance of the model to the applicable regulation, 40 CFR part 61, subpart H. Accordingly, the dose factors used in Version 3 are the values in FGR 13 for adults, and the risk values reported by Version 3 are those for mortality, not morbidity, although additional dose factor sets are now included in CAP88–PC Version 3. It is important to note that because of the extensive data modifications, Version 3 does not allow the use of case input files created under earlier versions to be used as input for Version 3. Previous POP and WIND files are still usable with Version 3.

CAP88–PC Version 3 will generate dose and risk results that differ from those results calculated by previous versions. The primary reason for this difference is the change in dose and risk conversion factors. Revisions of CAP88–PC up to Version 3 used dose factors generated by the RADRISK code, which was based upon the uptake and dose models contained in ICRP Publications 26 and 30. Risk was calculated in the earlier versions from dose using a constant conversion factor of 0.0004 risk per rem of whole body dose. Version 3 of CAP88–PC implements the dose conversion factors of FGR 13, which are calculated using models from more recent publications of the ICRP such as Publications 56, 66, 67, 69, and 71, and calculates risk using risk factors that are specific to the isotope rather than using the conversion factor method of previous versions. The effective dose coefficient in FGR 13 is calculated using the tissue weighting factors of ICRP publication 60. Dose factors in CAP88–PC Version 3 are also now in many cases a function of the chemical form of the isotope. This functionality was not present in previous versions of CAP88–PC.

Dose and risk results from CAP88–PC Version 3 also will differ from those calculated using previous versions because of a change in the elemental transfer factors. CAP88–PC Version 3 contains isotopes representing many more elements in the periodic table than were represented in previous versions of CAP88–PC. A new set of elemental transfer factors were required to support these new elements. CAP88–PC Version 3 replaces the transfer factors from the previous version of CAP88–PC with the factors listed in NCRP Publication 123.

Dose and risk results calculated by CAP88–PC Version 3 may also differ from those calculated by previous versions because Version 3 provides for a full incorporation of the decay chains for the radioisotopes represented in FGR–13. The new decay chain representation will most directly affect calculations that involve those radioisotopes that were not part of the decay chains represented in the earlier versions.

The changes implemented in Version 3 of CAP88–PC improve the code by bringing both the software code base and the modeling data used by the code up to the latest standards. The updated code base makes CAP88–PC Version 3 run faster and with greater stability on the latest Windows platforms, and provides improved debugging and troubleshooting tools. The updated code base also eases future coding modifications to make code support easier. By implementing the dose and risk factor data from FGR 13 and the elemental transport factors from NCRP 123, CAP88–PC Version 3 now incorporates the latest dose and risk modeling data recommended by EPA. The new data, combined with the improved methods for calculating decay chains, provides Version 3 of CAP88 with a much larger library of radioisotopes and a more current scientific methodology for calculating dose and risk.

Dated: February 7, 2006.

Bonnie C. Gitlin,

Acting Director, Radiation Protection Division, Office of Radiation and Indoor Air.

[FR Doc. E6–2405 Filed 2–17–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8034–4]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held February 28, March 1, and March 2, 2006 at the Hotel Washington, Washington, DC. The CHPAC was created to advise the Environmental Protection Agency on science, regulations, and other issues relating to children's environmental health.

DATES: The Emerging Chemicals of Concern, Voluntary Children's Chemical Evaluation Program (VCCEP), and National Ambient Air Quality for Particulate Matter task groups will meet Tuesday February 28, 2006. Plenary sessions will take place Wednesday, March 1, 2006 and Thursday, March 2, 2006.

ADDRESSES: Hotel Washington, 515 15th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Contact Joanne Rodman, Office of Children's Health Protection, USEPA, MC 1107A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–2188, *rodman.joanne@epa.gov.*

SUPPLEMENTARY INFORMATION: The meetings of the CHPAC are open to the public. The Science and Regulatory Work Groups will meet Tuesday, February 28, 2006 8:30 a.m. to 5:30 p.m.

The plenary CHPAC will meet on Wednesday, March 1, 2006 9 a.m. to 5:45 p.m., with a public comment period at 5:30 p.m., and on Thursday, March 2, 2006 from 8:30 a.m. to 12:30 a.m.

The plenary session will open with introductions and a review of the agenda and objectives for the meeting. Agenda items include a presentation on the EPA's Human Subjects Final Rule, discussions of comments on (1) EPA's actions relating to perchlorate; (2) evaluation of EPA's Voluntary Children's Chemical Evaluation Program; and (3) EPA's National Ambient Air Quality Standards for Particulate Matter. Agenda attached.

Dated: February 14, 2006.

Joanne K. Rodman,

Designated Federal Official.

Children's Health Protection Advisory Committee, Hotel Washington, 515 15th Street, NW., Washington, DC 20004–1099, February 28–March 2, 2006

Draft Agenda

Tuesday, February 28, 2006

Task Group Meetings

8:30 a.m.–12:30 p.m. National Ambient Air Quality Standards (NAAQS) for Particulate Matter
8:00 a.m.–12:30 p.m. Emerging Chemicals of Concern
12:30 p.m. Lunch
1:15 p.m.–5:30 p.m. Voluntary Children's Chemical Evaluation Program (VCCEP)

Wednesday, March 1, 2006

9 a.m. Welcome, Introductions, Review Meeting Agenda
9:15 a.m. Panel: Adding Insights and Perspectives from Public Health Nursing and Tribes
9:30 a.m. Highlights of Recent OCHP Activities
10 a.m. Human Subjects Final Rule
10:45 a.m. Break
11 a.m. Emerging Chemicals of Concern Task Group Update and Comment Letter
12:30 p.m. Lunch
2 p.m. VCCEP Task Group Update and Discussion
3:15 p.m. Break
3:30 p.m. NAAQS for Particulate Matter Task Group Update and Comment Letter
4:45 p.m. Presentation and Update: NAS Panel on Toxicity Testing
5:30 p.m. Public Comment
5:45 p.m. Adjourn

Thursday, March 2, 2006

8:30 a.m. Discussion of Day One
8:40 a.m. Presentation on National Environmental Education Advisory Council
9:15 a.m. Discuss and Agree on Perchlorate Recommendations
10:15 a.m. Break
10:30 a.m. NAAQS for Particulate Recommendations
11:30 a.m. VCCEP Recommendations
12:15 p.m. Wrap up/Next Steps
12:30 p.m. Adjourn

[FR Doc. E6–2409 Filed 2–17–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8034–1]

Identification of Crittenden County, AR as a Zone Targeted for Economic Development

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the letter and technical support document (TSD) approving Arkansas' request to identify Crittenden County, Arkansas in the Memphis 8-Hour Ozone Nonattainment Area as a zone targeted for economic development under section 173(a)(1)(B) of the Clean Air Act. Arkansas will be responsible for developing New Source Review (NSR) regulations for the zone that the Environmental Protection Agency (EPA) will review and consider for approval as a revision of Arkansas' State Implementation Plan (SIP). The State rulemaking and EPA's SIP review process will provide the public opportunities to participate in the process to consider implementing regulations for the zone.

ADDRESSES: A copy of the approval letter and TSD may be accessed at the following Web site: *http://www.epa.gov/earth1r6/6pd/air/pd-r/crittendencountyedz.htm*. You may also obtain a copy of the documents or arrange to view them by contacting the following:

- *E-mail:* Jeff Robinson at *robinson.jeffrey@epa.gov*.
- *Fax:* Mr. Jeff Robinson, Air Permits Section (6PD–R), at fax number 214–665–6762.
- *Mail:* Mr. Jeff Robinson, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Robinson, U.S. EPA, Region 6, Multimedia Planning and Permitting Division (6PD), 1445 Ross Avenue, Dallas, TX 75202–2733, telephone (214) 665–6435; fax number 214–665–7263; or electronic mail at *robinson.jeffrey@epa.gov*.

SUPPLEMENTARY INFORMATION: Section 173(a)(1)(B) of the Clean Air Act allows the Administrator to identify, in consultation with the Secretary of Housing and Urban Development, zones within non-attainment areas that should be targeted for economic development. Under Section 173(a)(1)(B), new or modified major stationary sources that locate in such a zone are relieved of the NSR requirement to obtain emission offsets if (1) the relevant SIP includes an NSR nonattainment program that has established emission levels for new and modified major sources in the zone ("growth allowance"), and (2) the emissions from new or modified stationary sources in the zone will not cause or contribute to emission levels that exceed such growth allowance. Section 172(c)(4) of the CAA requires that the growth allowance be consistent with the achievement of reasonable further progress, and will not interfere with attainment of the applicable National Ambient Air Quality Standard (NAAQS) by the applicable attainment date for the nonattainment area.

The EPA has completed its review of an application from Arkansas requesting that EPA consider identification of Crittenden County as a zone targeted for economic development under the Clean Air Act (CAA). In a letter dated February 13, 2006, EPA approved Arkansas' request to identify Crittenden County, Arkansas in the Memphis 8-Hour Ozone Nonattainment Area as a zone targeted for economic development under Section 173(a)(1)(B) of the Clean Air Act. Arkansas will be responsible for developing NSR regulations for the zone that EPA will review and consider for approval as a revision of Arkansas' SIP. The State rulemaking and EPA's SIP review process will provide the public opportunities to participate in the process to develop implementing regulations for the zone. The requirement to obtain offsets for new and modified sources subject to NSR permitting requirements in Crittenden County remains in effect until Arkansas adopts and EPA approves NSR program revisions necessary to implement the EDZ determination.

List of Subjects

Environmental protection, Air pollution control, Zone Targeted for Economic Development, Nonattainment.

Dated: February 13, 2006.

Stephen Johnson,

Administrator.

[FR Doc. E6–2410 Filed 2–17–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee; 60 Day Notice of Intent To Request Clearance for Extension of Collection of Information; Opportunity for Public Comment

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice of intent to request clearance for extension of a currently approved collection of information and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC") is soliciting comments on the need for the collection of information contained in 12 CFR part 1102, subpart B, Rules of Practice for Proceedings. The ASC also requests comments on the practical utility of the collection of information; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

DATES: Comments on this information collection must be received on or before April 24, 2006.

ADDRESSES: Send comments to Ben Henson, Executive Director, Appraisal Subcommittee, 2000 K Street, NW., Suite 310, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, General Counsel, Appraisal Subcommittee, at 2000 K Street, NW., Suite 310, Washington, DC 20006 or 202–293–6250.

SUPPLEMENTARY INFORMATION:

Title: 12 CFR part 1102, subpart B; Rules of Practice for Proceedings.

ASC Form Number: None.

OMB Number: 3139–0005.

Expiration Date: To be requested.

Type of Request: Extension of currently approved collection of information.

Description of Need: The information is used by the ASC in determining whether the ASC should initiate a non-recognition proceeding or "take further action" against a State appraisal regulatory agency ("State agency") and other persons under section 1118 of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3337). The collection of information also sets out detailed procedures for such actions.

Automated Data Collection: None.

Description of Respondents: State, local or tribal government.

Estimated Average Number of Respondents: 2 respondents.

Estimated Average Number of Responses: Each respondent will be required to respond throughout the single proceeding initiated under 12 CFR part 1102, subpart.

Estimated Average Burden Hours per Response: 60 hours for each proceeding.

Estimated Annual Reporting Burden: 120 hours.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Dated: February 15, 2006.

Ben Henson,

Executive Director.

[FR Doc. E6–2427 Filed 2–17–06; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 7, 2006.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Banco Latinoamericano de Exportaciones, S.A., Panama City, Republic of Panama; to engage *de novo* through its subsidiary, Clavex, Miami, Florida, in certification authority and related data processing activities. See *Bayerische Hypo– und Vereinsbank AG et al., 86 Federal Reserve Bulletin 56 (2000)*; *The Royal Bank of Scotland Group plc*, 86 Federal Reserve Bulletin 655 (2000); *Bank One Corporation, Inc.*, 83 Federal Reserve Bulletin 602, 606 (1997); and *Citigroup*, 68 Federal Reserve Bulletin 505, 510 (1982).

Board of Governors of the Federal Reserve System, February 15, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–2395 Filed 2–17–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator; American Health Information Community Electronic Health Record Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the third meeting of the American Health Information Community Electronic Health Record Workgroup in accordance with the Federal Adivsory Committee Act (Pub. L. 92–463, 5 U.S.C., App.)

DATES: March 21, 2006 from 1 p.m. to 5 p.m.

ADDRESSES: Hubert H. Humphrey Building (200 Independence Ave., SW., Washington, DC 20201), Conference Room 800.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit.*

SUPPLEMENTARY INFORMATION: A Web address for the meeting will be available at: *http://www.hhs.gov/healthit.*

Dated: February 10, 2006.

Dana Haza,

Office of Programs and Coordination, Office of the National Coordinator.

[FR Doc. 06–1551 Filed 2–17–06; 8:45am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator; American Health Information Community Chronic Care Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the third meeting of the American Health Information Community Chronic Care Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.)

DATES: March 22, 2006 from 1 p.m. to 5 p.m.

ADDRESSES: Hubert H. Humphrey Building (200 Independence Ave., SW., Washington, DC 20201), Conference Room 705A.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit.*

SUPPLEMENTARY INFORMATION: A web address for the meeting will be available at: *http://www.hhs.gov/healthit.*

Dated: February 10, 2006.

Dana Haza,

Office of Programs and Coordination, Office of the National Coordinator.

[FR Doc. 06–1552 Filed 2–17–06; 8:45am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator; American Health Information Community Biosurveillance Workgroup Meeting

SUMMARY: This notice announces the third meeting of the American Health Information Community Biosurveillance Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.)

DATES: March 23, 2006 from 1 p.m. to 5 p.m.

ADDRESSES: Hubert H. Humphrey Building (200 Independence Ave., SW., Washington, DC 20201), Conference Room 800.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit.*

SUPPLEMENTARY INFORMATION: A Web address for the meeting will be available at: *http://www.hhs.gov/healthit.*

Dated: February 10, 2006.

Dana Haza,

Office of Programs and Coordination, Office of the National Coordinator.

[FR Doc. 06–1553 Filed 2–17–05; 8:45am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator; American Health Information Community Consumer Empowerment Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the third meeting of the American Health Information Community Consumer Empowerment Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.)

DATES: March 20, 2006 from 1 p.m. to 5 p.m.

ADDRESSES: Hubert H. Humphrey Building (200 Independence Ave., SW., Washington, DC 20201), Conference Room 705A.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit.*

SUPPLEMENTARY INFORMATION: A Web address for the meeting will be available at: *http://www.hhs.gov/healthit.*

Dated: February 10, 2006.

Dana Haza,

Office of Programs and Coordination, Office of the National Coordinator.

[FR Doc. 06–1554 Filed 2–17–06 8:45am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health

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 committee meeting:

Name: Board of Scientific Counselors (BSC), National Institute for Occupational Safety and Health (NIOSH).

Time and Date: 9 a.m.–3 p.m., March 30, 2006.

Place: Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The Secretary, Department of Health and Human Services, the Assistant Secretary for Health, and by delegation the Director, CDC, are authorized under Sections 301 and 308 of the Public Health Service Act to conduct directly or by grants or contracts, research, experiments, and demonstrations relating to occupational safety and health and to mine health. The BSC shall provide guidance to the Director, NIOSH on research and prevention programs. Specifically, the board shall provide guidance on the institute's research activities related to developing and evaluating hypotheses, systematically documenting findings and disseminating results. The board shall evaluate the degree to which the activities of NIOSH: (1) Conform to appropriate scientific standards, (2) address current, relevant needs, and (3) produce intended results.

Matters to be Discussed: Agenda items include a report from the Director, NIOSH; progress report by BSC working group on the health hazard evaluation program; update on revisions to the National Occupational Research Agenda; Research to Practice Strategic Plan; and closing remarks.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Roger Rosa, Executive Secretary, BSC, NIOSH, CDC, 200 Independence Avenue, SW., Room 715H, Washington, DC 20201, telephone (202) 205–7856, fax (202) 260–4464.

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: February 14, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 06–1543 Filed 2–17–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Information on Waste Halogenated Anesthetic Agents: Isoflurane, Desflurane, and Sevoflurane

SUMMARY: NIOSH intends to review and evaluate toxicity data for the halogenated anesthetic agents of isoflurane, desflurane, and sevoflurane.

The current NIOSH recommended exposure limit (REL) of 2 parts per million (ppm) as a 60-minute ceiling for

the halogenated gases (chloroform, trichloroethylene, halothane, methoxyflurane, fluroxene, and enflurane) was established in 1977 [NIOSH 1977]. The halogenated anesthetic agents, isoflurane, desflurane, and sevoflurane, were subsequently introduced and are not included in the 1977 NIOSH recommendation. Isoflurane, desflurane, and sevoflurane are commonly used for anesthesia in modern hospitals; however, no occupational exposure limits exist for these agents. NIOSH is requesting: (1) Comments and information relevant to the evaluation of health risks associated with occupational exposure to isoflurane, desflurane, and sevoflurane, (2) reports or other data that demonstrate adverse health effects in workers exposed to isoflurane, desflurane, and sevoflurane, and (3) information pertinent to establishing a REL for isoflurane, desflurane, and sevoflurane.

ADDRESSES: Comments should be transmitted to the NIOSH Docket Office, M/S C–34, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/533–8303, fax: 513/533–8285.

Comments may also be submitted directly through the Web site (*http://www.cdc.gov/niosh/review/public/Waste-Anesthetic-Gases/*), by e-mail to *nioshdocket@cdc.gov*, or by fax to 513/533–8285. E-mail attachments should be formatted as Microsoft Word. Comments concerning this notice must be received on or before April 18, 2006 and should reference docket number NIOSH–064.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, Room 111, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

FOR FURTHER INFORMATION CONTACT: Henryka Nagy, Ph.D., M/S C–32, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/533–8369, e-mail *HUB1@cdc.gov*.

SUPPLEMENTARY INFORMATION: During patient anesthetization, small amounts of anesthetic gases can escape from the anesthetic delivery system and the patient's respiratory system. Waste anesthetic gases may become a source of harmful exposures for operating room personnel.

Anesthesiologists, veterinarians, dentists, anesthetic nurses, operating room nurses, surgeons, operating room technicians, and other operating room personnel are at risk of exposure to waste anesthetic gases. A concern about harm to the reproductive system, central nervous system, liver, and kidneys prompted NIOSH to develop RELs for waste anesthetic gases [NIOSH 1977]. In 1977, the current NIOSH REL of 2 parts per million (ppm) as a 60-minute ceiling was established for the halogenated gases chloroform, trichloroethylene, halothane, methoxyflurane, fluroxene, and enflurane [NIOSH 1977]. Isoflurane, desflurane, and sevoflurane were subsequently introduced and are not included in the 1977 NIOSH recommendation.

NIOSH has not yet developed RELs for isoflurane, desflurane, and sevoflurane. Furthermore, the Occupational Safety and Health Administration (OSHA) has no permissible exposure limits (PELs) for these agents. The Netherlands' 1998 Dutch Expert Committee on Occupational Standards (DECOS) derived an occupational exposure limit of 20 ppm for enflurane on the basis of reproductive toxicologic data [DECOS 1998]. For isoflurane (an isomer of enflurane), DECOS also recommended an occupational exposure limit of 20 ppm on the basis of assumed structure-related activity [DECOS 1998]. No epidemiologic studies are available on the health effects of the halogenated agents, isoflurane, desflurane, and sevoflurane.

NIOSH seeks to obtain materials, including published and unpublished reports and research findings, to evaluate the possible health risks of occupational exposure to these gases. Examples of requested information include, but are not limited to, the following: (1) Identification of industries or occupations in which exposures to isoflurane, desflurane, or sevoflurane may occur; (2) trends in production and use of isoflurane, desflurane, or sevoflurane over the past 10 years; (3) descriptions of procedures with a potential for exposure to isoflurane, desflurane, or sevoflurane; (4) current occupational exposure concentrations of isoflurane, desflurane, or sevoflurane in various types of occupational scenarios and, if available, data to document these concentrations (5) case reports or other health data that demonstrate adverse health effects in workers exposed to isoflurane, desflurane, or sevoflurane, or animal data (published or peer-reviewed data are preferred); (6) descriptions of work practices and engineering controls used to reduce or prevent workplace exposure; (7) educational materials for worker safety or training on the safe handling of these halogenated agents; (8) data pertaining to the technical feasibility of establishing a more protective REL for isoflurane, desflurane, and sevoflurane.

NIOSH will use this information to determine the need for developing recommendations for reducing occupational exposure to isoflurane, desflurane, and sevoflurane.

References: DECOS [1998]. Enflurane, isoflurane and cyclopropane: health-based recommended occupational exposure limits. Report of the Dutch Expert Committee on Occupational Standards, a committee of the Health Council of the Netherlands.

NIOSH [1977]. Criteria for a recommended standard * * * occupational exposure to waste anesthetic gases and vapors. Cincinnati, OH: U.S. Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, National Institute for Occupational Safety and Health, DHEW (NIOSH) Publication No. 77–140.

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: February 14, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 06–1542 Filed 2–17–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0488]

Animal Drug User Fee Act; Public Meeting; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is canceling the meeting on the Animal Drug User Fee Act scheduled for February 24, 2006. This meeting was announced in the **Federal Register** of December 28, 2005 (70 FR 76851). FDA will continue to seek public comments relative to the program's overall performance and reauthorization as directed by Congress. FDA will publish another notice in the **Federal Register** announcing any plans for rescheduling the public meeting.

DATES: Written comments may be submitted at any time.

ADDRESSES: You may submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Aleta Sindelar, Center for Veterinary Medicine (HFV–3), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9004, FAX: 240–276–9020, e-mail: *aleta.sindela@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: If you would like to submit written comments to the docket regarding the Animal Drug User Fee Act, please send your comments to the Division of Dockets Management (see **ADDRESSES**). Submit a single copy of electronic comments or two paper copies of any written comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be reviewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 15, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 06–1571 Filed 2–15–06; 2:42 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methodology for Large Scale Manufacture of Stable Disulfide-Conjugated Antibody-Ribonuclease

David F. Nellis, Dianne L. Newton, Susanna M. Rybak (NCI)

U.S. Provisional Application filed 30 Sep 2005 (HHS Reference No. E–218–2005/0–US–01)

Licensing Contact: David A. Lambertson; 301/435–4632; *lambertsond@mail.nih.gov*

Large scale clinical production of disulfide-conjugated antibody-RNase therapeutics using previously reported technologies usually results in an unstable product that forms undesired multimeric antibody/RNase species. This invention describes improved methods for the large scale manufacture of stable disulfide-conjugated antibody therapeutics. Antibody-RNase conjugates produced by this method were specific and highly active in vitro in killing selected carcinoma, and also showed in vivo activity in the treatment of disseminated B-cell lymphoma. These methods are broadly applicable to disulfide-linked conjugation of cytotoxic proteins. The claims for this invention encompass methods for preparing a protein for disulfide conjugation with another molecule, such as an RNase to an antibody.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Identification of Biomarkers by Serum Protein Profiling

Thomas Ried and Jens Habermann (NCI)

U.S. Provisional Application No. 60/664,681 filed 22 Mar 2005 (HHS Reference No. E–106–2005/0-US–01)

Licensing Contact: Thomas P. Clouse; 301/435–4076; *clouset@mail.nih.gov*

This invention describes serum features that distinguish colorectal carcinoma malignant patient samples versus healthy samples using surface-enhanced laser desorption ionization time-of-flight (SELDI-TOF) mass spectrometry. By comparing healthy versus malignant samples, the investigators were able to identify thirteen (13) serum features that have been validated using an independently collected, blinded validation set of 55 sera samples. The features are characterized by the mass to charge ratio (m/z ratio). The investigators have shown that SELDI-TOF based serum marker protein profiling enables minimally invasive detection of colon cancer with 96.7 percent sensitivity and 100 percent specificity.

Colorectal cancer is the third most common cancer and the third leading cause of cancer-related mortality in the United States. Current diagnostic methods for colorectal cancer have a large non-compliance rate because of discomfort, e.g., sigmoidoscopy or colonoscopy, or have a high rate of false positive results, e.g., fecal occult blood tests. The claimed invention has the potential to be a widely used, easy-to-use, and inexpensive diagnostic.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Novel Form of Interleukin–15, Fc–IL–15, and Methods of Use

Morihiro Watanabe *et al.* (NCI)

U.S. Provisional Application No. 60/670,862 filed 12 Apr 2005 (HHS Reference No. E–296–2004/0–US–01)

Licensing Contact: Thomas P. Clouse, J.D.; 301/435–4076; *clouset@mail.nih.gov*

Interleukin–15 (IL–15) is a potent cytokine that enhances host immune system function by proliferating and activating leukocytes. IL–15 increases innate immunity and CD8 memory. The investigators fused IL–15 with protein Fc, a fragment of immunoglobulin. The new fused moiety, Fc–IL–15, has a longer half life in vivo than naturally occurring IL–15 in a gene therapy setting and has more potent anti-tumor effects than IL–15 in some mouse tumor models. The new moiety can serve as an alternative to IL–15, particularly if long term delivery is essential for a therapy. The moiety can serve as a therapeutic for both tumors and viral infections. The moiety can include peptide linkers such as, for example, a T cell inert sequence or a non-immunogenic sequence.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

ELISA Assay of Serum Soluble CD22 To Assess Tumor Burden/Relapse in Subjects with Leukemia and Lymphoma

Robert J. Kreitman *et al.* (NCI)

U.S. Patent Application No. 10/514,910 filed 16 Nov 2004 (HHS Reference No. E–065–2002/0–US–03), with priority to 20 May 2002

Licensing Contact: Jesse Kindra; 301/435–5559; *kindraj@mail.nih.gov*

Disclosed are methods of using previously unknown soluble forms of CD22 (sCD22) present in the serum of subjects with B-cell leukemias and lymphomas to assess tumor burden in the subjects. Also disclosed are methods of diagnosing or prognosing development or progression of a B-cell lymphoma or leukemia in a subject, including detecting sCD22 in a body fluid sample taken or derived from the subject, for instance serum. In some embodiments, soluble CD22 levels are quantified. By way of example, the B-cell lymphoma or leukemia can be hairy cell leukemia, chronic lymphocytic leukemia, or non-Hodgkin's lymphoma. Soluble CD22 in some embodiments is detected by a specific binding agent, and optionally, the specific binding agent can be detectably labeled.

Also disclosed are methods of selecting a B-cell lymphoma or leukemia therapy that include detecting an increase or decrease in sCD22 levels in a subject compared to a control, and, if such increase or decrease is identified, selecting a treatment to prevent or reduce B-cell lymphoma or leukemia or to delay the onset of B-cell lymphoma or leukemia.

Other embodiments are kits for measuring a soluble CD22 level, which kits include a specific binding molecule that selectively binds to the CD22, e.g. an antibody or antibody fragment that selectively binds CD22.

Further disclosed methods are methods for screening for a compound useful in treating, reducing, or preventing B-cell lymphomas or leukemias, or development or progression of B-cell lymphomas or leukemias, which methods include determining if application of a test compound lowers soluble CD22 levels in a subject, and selecting a compound that so lowers sCD22 levels.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Dated: February 10, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–2362 Filed 2–17–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Human Sweet and Umami Taste Receptor Variants

Dennis Drayna and Un-Kyung Kim (NIDCD)

U.S. Provisional Application No. 60/671,173 filed 13 Apr 2005 (HHS Reference No. E–099–2005/0–US–01)

Licensing Contact: Susan Carson; 301/435–5020; *carsonsu@mail.nih.gov*

The complexity of taste discrimination (salty, sour, sweet, umami and bitter) varies between human individuals and populations. Sweet and umami (the taste of glutamate) tastes play a major role in the perception of calorically-rich and essential nutrients and there are well-documented differences in individual perception of sweet and umami flavorings, many of which appear to be genetic in origin. Studies of individuals within and between populations that vary in any of the taste receptors should be of direct interest to the multi-billion dollar food and flavoring industry as the characterization of such variants could be used to aid in the development of a variety of taste improvements in foods and orally administered medications. NIH researchers previously characterized bitter taste receptor variants in world wide populations [Human Mutation 26, 199–204; HHS Ref. No. E–222–2003/0] and have now extended their studies to the sweet and umami receptors in global populations.

The group of Dr. Dennis Drayna at NIDCD have now discovered novel coding sequence polymorphisms in the human TAS1R genes. These genes encode dimeric receptors that sense sweet taste (as TAS1R2+TAS1R3) and the taste of umami (as TAS1R1+TAS1R3). To achieve maximum genetic diversity, TAS1R receptors from a panel of 30 Europeans, 20 East Asian, 10 Native Americans, 8 South Asians and 20 sub-Saharan Africans were sequenced. Approximately 60% of the identified SNPs caused an amino acid substitution in the encoded receptor protein. This variation may account for individual preferences in sweet and umami tastes in foods and could be of use in the understanding and control of dietary preferences that lead to obesity and diabetes.

These novel variants and methods of use are available for licensing and should be of particular use to those using sensorial analysis in the food and flavoring industry where the use of taster panels in the development of flavors and flavor enhancers for different foods is key to the development of new food products and taste masking compounds. The ability, for example, to genetically match taster individuals employed by industry with the target consumer populations can both guide improved formulations and marketing decisions as well as reducing the total sample size in the testing of new products in this highly competitive industry.

The Human Taste Receptor Haplotype patent portfolio is also available for licensing and includes: HHS Ref No. E–169–2001/0–PCT–02, Phenylthiocarbamide Taste Receptor, International Publication No. WO 2003/008627, PCT filed 19 July 2002 and global IP and HHS Ref. No 222–2003/1: Variants of Human Taste Receptor Genes, International Publication No. WO 2005/007891, PCT filed 18 June 2004 and global IP.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Genes for Niemann-Pick Type C Disease

Eugene D. Carstea (NINDS) *et al.*

U.S. Patent No. 6,426,198 issued 30 Jul 2002 (HHS Reference No. E–122–1997/0–US–03)

U.S. Patent Application No. 10/208,731 filed 29 Jul 2002, allowed (HHS Reference No. E–122–1997/0–US–04)

Licensing Contact: Marlene Astor; 301/435–4426; *shinnm@mail.nih.gov*

Niemann-Pick disease is a class of inherited lipid storage diseases. Niemann-Pick Type C disease is an autosomal recessive neurovisceral lipid storage disorder which leads to systemic and neurological abnormalities including ataxia, seizures, and loss of speech. Patients with the disease typically die as children. The biochemical hallmark of Niemann-Pick Type C cells is the abnormal accumulation of unesterified cholesterol in lysosomes, which results in the delayed homeostatic regulation of both uptake and esterification of low density lipoprotein (LDL) cholesterol. Niemann-Pick Type C is characterized by phenotypic variability. The disease appears at random in families that have no history of the disorder, making diagnosis problematic. This invention provides the human gene for Niemann-Pick Type C disease and the nucleic acid sequences corresponding to the human gene for Niemann-Pick Type C disease. Also provided is the mouse homolog of the human gene. The invention could lead to improved diagnosis and the design of therapies for the disease and improved means of detection of carriers of the gene. In addition, this invention may contribute to the understanding and development of treatments for atherosclerosis, a more common disorder associated with cholesterol buildup that involves the accumulation of fatty tissue inside arteries that blocks blood flow, leading to heart disease and stroke. The invention may also lead to additional discoveries concerning how cholesterol is processed in the body.

This invention is described, in part, in: S.K. Loftus et al., "Murine model of Niemann-Pick C disease: Mutation in a cholesterol homeostasis gene," Science 277(5323):232–235, 1997; S.K. Loftus et al., "Rescue of neurodegeneration in Niemann Pick-C mice by a prion-promoter driven Npc1 cDNA transgene," Human Molec. Genet. 11(24):3107–14, 2002.

The NHGRI Genetic Disease Research Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize Niemann-Pick Type C disease diagnostics and therapies as well as potential applications of the Niemann-Pick Type C gene related to atherosclerosis and cholesterol processing. Please contact Claire T. Driscoll for more information (telephone: 301/594–2235; e-mail: *cdriscol@mail.nih.gov*).

Dated: February 10, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–2363 Filed 2–17–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Device for Cell Culturing, Monitoring and Containment

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive worldwide license to practice the invention embodied in: E–171–2002, "Cell Culturing and Storage Systems, Devices and Methods" U.S. Patent Application 10/334,565 filed December 30, 2002; European Patent Application 03808601.3; rights are also pending in Canada and Australia; to KW Company, LLC, a New York company having its headquarters in Woodstock, New York. The United States of America is the assignee of the patent rights of the above invention. The contemplated exclusive license may be granted in the field of sales of devices for cell culturing, monitoring and containment.

DATES: Only written comments and/or applications for a license received by the NIH Office of Technology Transfer on or before April 24, 2006 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Michael A. Shmilovich, Esq., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5019; Facsimile: (301) 402–0220; E-mail: *shmilovm@mail.nih.gov*. A signed confidentiality nondisclosure agreement will be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: The patent applications intended for licensure disclose and/or cover the following: *E–171–2002/0, "Cell Culturing and Storage Systems, Devices and Methods;"*

The invention pertains to a closed chamber that provides an environment for long-term culture of cells such as stems cells of central nervous system (CNS) origin, embryonic stem cells, and other cells. The chamber is designed with top and bottom mounted cover slips that permit the observation of cells in culture under an optical microscope. This chamber has the ability to control volume and pressure of liquids and gases by an inlet tube and outlet tubes at two different vertical positions. The chamber also includes a ball joint assembly that allows for the manipulation of a glass microcapillary/microelectrode to come in close contact with the developing cells. This microcapillary/microelectrode assembly can be used to either administer growth factors (e.g., monitoring growth factor levels such as BMP and CNTF) and also for electrical recording from the cells.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: February 10, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. E6–2360 Filed 2–17–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–08]

Notice of Submission of Proposed Information Collection to OMB; Universities Rebuilding America Partnerships: Community Design Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Information provided will allow public or private accredited nonprofit institutions of higher education granting associate degrees or higher in architecture, urban planning and design, or construction to establish and operate partnerships with and for communities affect by Hurricanes Katrina or Rita or both. Information will enable HUD to select a grantee under a competitive selection process.

DATES: *Comments Due Date:* March 23, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0241) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Universities Rebuilding America Partnerships: Community Design Program.

OMB Approval Number: 2528–0241.

Form Numbers: SF–424, SF–424–Supplement, HUD–424–CB, SF–LLL, HUD–27300, HUD–2880, HUD–96010.

Description of the Need for the Information and Its Proposed Use: Information provided will allow public or private accredited nonprofit institutions of higher education granting associate degrees or higher in architecture, urban planning and design, or construction to establish and operate partnerships will and for communities affect by Hurricanes Katrina or Rita or both. Information will enable HUD to select a grantee under a competitive selection process.

Frequency of Submission: Semi-annually, Annually.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	20		2.5		44.8		2,240

Total Estimated Burden Hours: 2,240.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 13, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–2358 Filed 2–17–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Safe Harbor Agreement and Application for an Enhancement of Survival Permit for the Ocelot in South Texas

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application.

SUMMARY: Environmental Defense, Inc. (ED) (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit under section 10(a)(1)(A) of the Endangered Species Act (Act) of 1973, as amended. The requested permit, which is for a period of 30 years, would authorize the Applicant to issue certificates of inclusion under a Safe Harbor Agreement (SHA) to private landowners who would voluntarily agree to carry out habitat improvements for the Texas ocelot subspecies (*Leopardus pardalis albescens*). We invite the public to review and comment on the permit application and the associated draft SHA.

DATES: To ensure consideration, written comments must be received on or before March 23, 2006.

ADDRESSES: Persons wishing to review the application, draft SHA, or other related documents may obtain a copy by written or telephone request to Robyn Cobb, U.S. Fish and Wildlife Service, c/o TAMU–CC, 6300 Ocean Drive, USFWS–Unit 5837, Corpus Christi, Texas 78412–5837 (361/994–9005). The application will also be available for public inspection, by appointment only, during normal business hours (8 a.m. to 4:30 p.m.) at the Service's Corpus Christi Office. Comments concerning the application, draft SHA, or other related documents should be submitted in writing to the Field Supervisor at the above address. Please refer to permit number TE–117030–0 when submitting comments. All comments received, including names and addresses, will become a part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Robyn Cobb at the U.S. Fish and Wildlife Service Corpus Christi Office, c/o TAMU–CC, 6300 Ocean Drive, USFWS–Unit 5837, Corpus Christi, Texas 78412–5837 (361/994–9005).

SUPPLEMENTARY INFORMATION: The ocelot was listed as endangered throughout its entire range in 1982. However, this action is proposed for the Texas ocelot subspecies, whose range included much of south, central, and east Texas, and into western Louisiana and Arkansas, as well as much of northern Mexico east of

the Sierra Madre Oriental. Habitat can be characterized by dense thornscrub, including a variety of thorny, scrubby vegetation.

Currently, the U.S. population of ocelots is known only from two populations in three counties. The two largest remaining habitat "islands," Laguna Atascosa National Wildlife Refuge (LANWR) and a private ranch in Willacy County, support a combined total of approximately 50 to 100 ocelots. On-going threats to the ocelot include conversion of habitat to agricultural and residential development uses, vehicle strikes, disease, and genetic inbreeding.

The future existence of the ocelot in south Texas will require a system of interconnected habitat blocks that support sub-populations by enabling interbreeding. The majority of land within the current range of the ocelot in South Texas is privately owned. Therefore, the participation of private landowners is critical to the recovery of this subspecies.

Habitat enhancement activities could cover all, or portions of the following Texas counties: Cameron, Hidalgo, Kenedy, Starr, and Willacy. Habitat enhancement activities could include, but are not limited to, site preparation to facilitate planting and survival of native thornscrub seedlings; planting of native thornscrub seedlings; designing, installing, and maintaining water systems to enhance seedling and sapling survival; and post-planting shredding, prescribed fire, and/or application of herbicides to enhance seedling and sapling survival.

All properties to be enrolled will have a zero baseline. Zero baseline will be any property with less than 50 percent shrub and tree (combined) canopy cover. Properties that exceed 50 percent shrub and tree (combined) canopy cover that are dominated by one species (e.g., huisache (*Acacia smalli*) or honey mesquite (*Prosopis glandulosa*)) may also be enrolled as zero baseline. Enrolled properties that exceed 20 acres in extent can include no more than 10 contiguous acres of optimal habitat. Tewes and Everett (1986) classified optimal habitat as 95 percent or greater canopy cover of the shrub layer (Class A); suboptimal habitat as 75 percent to 95 percent canopy cover (Class B); and inadequate cover was 75 percent or less (Class C).

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4371 *et seq.*), and its implementing regulations (40 CFR 1506.6).

Geoffrey L. Haskett,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. E6–2394 Filed 2–17–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK964–1410–HY–P; F–14844–A]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to AHTNA, Incorporated (Successor in Interest to Cantwell Yedatene Na Corporation). The lands are located in T. 18 S., R. 7 W., Fairbanks Meridian, in the vicinity of Cantwell, Alaska, and contain approximately 160 acres. Notice of the decision will also be published four times in the *Fairbanks Daily News-Miner.*

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 23, 2006 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of this decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION, CONTACT: Dina Torres, by phone at (907) 271–3248, or by e-mail at *Dina_Torres@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact Mrs. Torres.

Dina L. Torres,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E6–2383 Filed 2–17–06; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK964–1410–HY–P; F–14893–B2.]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI

ACTION: Notice of decision approving lands for conveyance

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Mary's Igloo Native Corporation. The lands are located in T. 2 S., R. 29 W., and T. 5 S., R. 30 W., Kateel River Meridian, Alaska, in the vicinity of Mary's Igloo, Alaska, and containing 7,758.50 acres. Notice of the decision will also be published four times in the *Nome Nugget.*

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until March 23, 2006 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION, CONTACT: John Leaf, by phone at (907) 271–3283. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Leaf.

John Leaf,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E6–2371 Filed 2–17–06; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1310–PP–ARAC]

Notice of Call for Nominations, Elected Official for the BLM Alaska Resource Advisory Council (RAC)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to solicit nominations for the vacant elected official seat on the Bureau of Land Management's Alaska Resource Advisory Council. The council provides advice and recommendations to BLM on management of public lands in Alaska.

DATES: Submit a completed nomination form to the address listed below no later than March 23, 2006. Nomination forms are available at *http://www.blm.gov/rac/ak/ak_index.htm*, click on "Alaska" or contact the BLM Alaska RAC coordinator listed below.

FOR FURTHER INFORMATION CONTACT: Danielle Allen, BLM Alaska RAC Coordinator, Office of Communications (912), Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK 99513; telephone 907–271–3335.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1730) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are consistent with the requirements of Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix 1). Members serve without monetary compensation, but will be reimbursed for travel and per diem expenses at current rates for Government employees. As required by the FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. BLM regulations governing RACs are found at 43 CFR Subpart 1784. Section 309 (a) of FLPMA, which states that at least one member of the advisory council must be an elected official of general purpose government serving the people within the jurisdiction of the council. The vacant seat on the Alaska Resource Advisory Council falls in category three as described in the regulations at 43 CFR 1784.6–1 (c) (3). Individuals may nominate themselves or others to serve on the RAC. Nominees must be residents of Alaska. The BLM will evaluate nominees based on their education, training, and experience and their knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making.

The following must accompany all nominations:

—Letters of reference from represented interests or organizations,
—A completed background information nomination form,
—Any other information that speaks to the nominee's qualifications.

Nomination forms are available from Danielle Allen, BLM Alaska RAC Coordinator, Office of Communications (912), Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK 99513; telephone 907–271–3335. Completed applications should be sent to the same address. Internet users may download the form from: *http://www.blm.gov/rac/ak/ak_index.htm*.

Authority: 43 CFR 1784.4–1.

Dated: December 27, 2005.

Henri R. Bisson,

State Director.

[FR Doc. E6–2389 Filed 2–17–06; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Call for Nomination To Fill the Position of Public Interest for the Wild Horse and Burro Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Wild Horse and Burro Advisory Board Call for a Nomination to fill the position of Public Interest.

SUMMARY: The purpose of this notice is to solicit public nominations for the position representing the Public Interest (previously listed as Public at Large) on the Wild Horse and Burro Advisory Board. The Board provides advice concerning management, protection, and control of wild free-roaming horses and burros on the public lands administered by the Department of the Interior, through the Bureau of Land Management, and the Department of Agriculture, through the Forest Service.

DATES: Nominations should be submitted to the address listed below no later than March 31, 2006.

ADDRESSES: National Wild Horse and Burro Program, Bureau of Land Management, Department of the Interior, P.O. Box 12000, Reno, Nevada 89520–0006, Attn: Ramona Delorme; FAX 775–861–6618.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Rawson, Group Manager, Wild Horse and Burro Group, (202) 452–0379. Individuals who use a telecommunications device for the deaf (TDD) may contact Mr. Rawson at any time by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Nominations will be for the remainder of the vacated term representing the Public Interest category. The term of this position will be from the date of appointment until the expiration date of July 8, 2008.

Any individual or organization may nominate one or more persons to serve on the Wild Horse and Burro Advisory Board. Individuals may also nominate themselves for Board membership. All nomination letters/or resumes should include the nominees: (1) Name, address, phone, and e-mail address if applicable; (2) present occupation; (3) explanation of qualifications to represent the public interest (4) nominating organization, individual or by self; and (5) list of endorsements by qualified individuals and/or letters of endorsement.

As appropriate, certain Board members may be appointed as Special Government Employees. Special Government Employees serve on the board without compensation, and are subject to financial disclosure requirements in the Ethics in Government Act and 5 CFR 2634. Nominations are to be sent to the address listed under **ADDRESSES**, above.

Each nominee will be considered for selection according to their ability to represent their designated constituency, analyze and interpret data and information, evaluate programs, identify problems, work collaboratively in seeking solutions and formulate and recommend corrective actions. Pursuant to Section 7 of the Wild Free-Roaming Horses and Burros Act, members of the Board cannot be employed by either Federal or State Government. Members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees. The Board will meet no less than two times annually. The Director, Bureau of Land Management may call additional meetings in connection with special needs for advice.

Dated: January 25, 2006.

Ed Shepard,

Assistant Director, Renewable Resources and Planning.

[FR Doc. E6–2391 Filed 2–17–06; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–5420–M103]

Notice of Application for Recordable Disclaimer of Interest, Louisiana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: New Way Investments, Inc. has submitted an application for a recordable disclaimer of interest pursuant to section 315 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1745), and the regulations contained in 43 CFR Part 1864. A recordable disclaimer, if issued, will confirm that the United States has no valid interest in the subject lands. This notice is intended to inform the public of the pending application.

DATES: A final decision on the merit of the application will not be made until 90 days after the date of publication of this notice. During the 90-day period, interested parties may submit comments on New Way Investments, Inc.'s application, with a reference to serial No. LAES 53473.

ADDRESSES: Comments should be sent to: Theresa R. Coleman, Deputy State Director, Division of Land Resources, Bureau of Land Management-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153.

FOR FURTHER INFORMATION CONTACT: Ida V. Doup, Chief, Branch of Lands and Realty, Bureau of Land Management-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153; 703–440–1541.

SUPPLEMENTARY INFORMATION: On April 5, 2005, New Way Investments, Inc. filed an application for disclaimer of interest for the lands described as follows:

Louisiana Meridian, Louisiana beginning at the Southwest corner of Section 47, T. 4 N., R 3 W., Rapides Parish, Louisiana common with the Southeast corner of Section 36, T. 4 N., R. 4 W., Rapides Parish, Louisiana, for the point of beginning and thence proceed along the South line of Section 47, T. 4 N., R.3 W., Rapides Parish, Louisiana, as recognized by Jerry Boswell on plat of survey dated September 30, 1992, South 89 degrees 11 minutes 54 seconds East a distance of 2,206.27 feet to a point and corner; thence proceed South 00 degrees 19 minutes 26 seconds West a distance of 23.90 feet to a point on the North line of Section 6, T. 3 N., R. 3 W., as recognized by Jerry Boswell on plat of survey dated September 30, 1992, thence proceed along the North line of Section 6, T. 3 N., R. 3 W., as recognized by Jerry Boswell on plat of survey dated September 30, 1992, North 89 degrees 23 minutes 26 seconds West a distance of 2,206.31 feet to a point and corner, thence proceed North 00 degrees 28 minutes 51 seconds East a distance of 31.33 feet back to the point of beginning of the 1.40 acres tract shown on the Certificate of Survey by Jessie P. Lachney dated February 3, 2005.

Bureau of Land Management-Eastern States' review of the official survey records on file indicates that the line between Townships 3 and 4 North is a line common to both section 6 and section 47. There is no indication of a gap or hiatus. As lands for section 47, Township 4 North, Range 3 West and section 6, Township 3 North, Range 3 West have been patented into private ownership, it is the opinion of this office that the Federal government no longer has an interest in this 1.40-acre parcel. The proposed recordable disclaimer of interest, if issued, will state the United States does not have a valid interest in this land.

All persons who wish to present comments, suggestions, or objections, in connection with the pending application and proposed disclaimer may do so by writing to Theresa R. Coleman, Deputy State Director, Division of Land Resources, at the above address.

Michael D. Nedd,

State Director, Eastern States.

[FR Doc. 06–1537 Filed 2–17–06; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–921–06–5104–EL; COC 67514]

Notice of Availability of the Environmental Assessment and Public Hearing for Coal Lease Application COC 67514. Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Twenty Mile Coal Company Coal Lease By Application COC 67514 Environmental Assessment and Federal Coal Notice of Public Hearing, and Request for Environmental Assessment, Maximum Economic Recovery Report, and Fair Market Value Comments.

SUMMARY: Pursuant to 43 Code of Federal Regulations (CFR) 3425.4, the Bureau of Land Management (BLM), Colorado State Office, Lakewood, Colorado, hereby gives notice that an Environmental Assessment (EA) is available and a public hearing will be held to lease Federal coal. The EA analyzes and discloses direct, indirect, and cumulative environmental impacts of issuing a Federal coal lease competitively for 200.36 acres in Routt County, Colorado. The purpose of the public hearing is to solicit comments from the public on (1) The proposal to issue a Federal coal lease; (2) the proposed competitive lease sale; (3) the Fair Market Value (FMV) of the Federal coal; and (4) Maximum Economic Recovery (MER) of the Federal coal included in the Federal tract.

DATES: Written comments should be received no later than April 13, 2006. The public hearing will be held at 7 p.m., Thursday, March 30, 2006.

ADDRESSES: Written comments should be addressed to the Little Snake Field Office Manager, Little Snake Field Office, 455 Emerson Street, Craig, Colorado 81625 where copies of the EA are available for inspection or copies provided upon request. The public hearing will be held in the Routt County Commissioners Hearing Room, located in the Annex Building behind the Routt County Courthouse, at 136–6th St., Suite 206, Steamboat Springs, Colorado.

FOR FURTHER INFORMATION CONTACT: Field Office Manager, Little Snake Field Office at the address above, or by telephone at 970–826–5000.

SUPPLEMENTARY INFORMATION: On February 14, 2004 Twenty Mile Coal Company applied for a Federal coal lease. The Federal tract was assigned case number COC 67514. The following lands are contained in the LBA:

T. 5 N., R. 86 W., 6th P.M.
sec. 5, lot 4, SW¼NE¼, S½NW¼, and NW¼SE¼.

Containing approximately 200.36 acres in Routt County, Colorado.

The EA analyzes environmental impacts that could result from leasing Federal coal and several alternatives. The alternatives considered are the no action alternative, and the proposed alternative to lease the coal. In accordance with Federal coal management regulations 43 CFR 3422 and 3425, not less than 30 days prior to the publication of a notice of sale, the Secretary shall solicit public comments on FMV appraisal and MER. BLM hereby gives notice that a public hearing will be held on Thursday, March 30, 2006, at 7 p.m., at the Routt County Commissioners Hearing Room at the address given above. The coal resource

to be offered is limited to coal recoverable by underground mining methods. One purpose of the hearing is to obtain public comments on the EA and on the following items:

(1) The method of mining to be employed to obtain maximum economic recovery of the coal,

(2) The impact that mining the coal in the proposed leasehold may have on the area, and

(3) The methods of determining the fair market value of the coal to be offered.

In addition, the public is invited to submit written comments concerning the MER and FMV of the coal resource. Public comments will be utilized in establishing FMV for the coal resource in the described lands. Comments should address specific factors related to fair market value including, but not limited to:

1. The quality and quantity of the coal resource.

2. The price that the mined coal would bring in the market place.

3. The cost of producing the coal.

4. The interest rate at which anticipated income streams would be discounted.

5. Depreciation and other accounting factors.

6. The mining method or methods which would achieve maximum economic recovery of the coal.

7. Documented information on the terms and conditions of recent and similar coal land transactions in the lease area, and

8. Any comparable sales data of similar coal lands in the lease area.

Written requests to testify orally at the March 30, 2006, public hearing should be received at the Little Snake Field Office prior to the close of business March 30, 2006. Those who indicate they wish to testify when they register at the hearing may have an opportunity if time is available.

As provided by 43 CFR 3422.1(a), proprietary data marked as confidential may be provided in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on FMV and MER, except those portions identified as proprietary and meeting exemptions stated in the Freedom of Information Act (FOIA), will be available for public inspection at the BLM office noted above. If you wish to withhold your name or address from public review or from disclosure under the FOIA, you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by the FOIA. All submissions from organizations, businesses and individuals identifying themselves as representatives or officials of organizations or businesses will be available for public inspection in its entirety. Written comments on the EA, MER, and FMV should be sent to the Little Snake Field Office at the above address prior to the close of business on April 13, 2006, the end of the 30 day public comment period.

Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering. A copy of the EA, the case file, and the comments submitted by the public, except those portions identified as proprietary by the commenter and meeting exemptions stated in the FOIA, will be available for public inspection after June 1, 2006, at the Colorado State Office, 2850 Youngfield, Lakewood, Colorado, 80215.

December 27, 2005.

Karen Zurek,

Solid Minerals Staff, Division of Energy, Lands and Minerals.

[FR Doc. E6–2387 Filed 2–17–06; 8:45 am]

BILLING CODE 3410–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[4310–32–P HAG–06–0036]

Notice of Intent To Prepare a Resource Management Plan for the John Day Basin Portion of the Central Oregon Resource Area and Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM), Prineville District Office, intends to prepare a Resource Management Plan (RMP) with an associated Environmental Impact Statement (EIS) for the John Day Basin, and by this notice is announcing public scoping meetings. The RMP will amend or replace certain decisions within the John Day RMP (1985) and the portions of the Two Rivers RMP (1986) and Baker RMP (1989) that guide the management of public lands located in the Planning Area.

DATES: The BLM will announce public scoping meetings through local news media, newsletters, and the BLM Web site at *http://www.or.blm.gov/landuseplanning.htm* at least 15 days prior to the first meeting. We will provide formal opportunities for public participation upon publication of the Draft RMP/EIS.

ADDRESSES: You may submit scoping comments by any of the following methods:

- E-mail: *John_Day_Basin_RMP@blm.gov.*
- Fax: (541) 416–6798.
- Mail: BLM, Prineville District Office, 3050 NE 3rd St., Prineville, OR 97754.

Documents pertinent to this proposal may be examined at the BLM Prineville Field Office.

FOR FURTHER INFORMATION CONTACT: For further information or to have your name added to our mailing list, please contact Brent Ralston, Planning Team Leader, telephone (541) 416–6713; or e-mail: *John_Day_Basin_RMP@blm.gov.*

SUPPLEMENTARY INFORMATION: The planning area is located in parts of Sherman, Gilliam, Morrow, Umatilla, Grant, Wheeler, Jefferson, and Wasco Counties in the State of Oregon. This planning area encompasses approximately 452,000 acres of BLM-managed land. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The public scoping process identifies relevant issues that will influence the scope of the environmental analysis and EIS alternatives. These issues also guide the planning process. You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit formal scoping comments within 30 days after the last public meeting. The minutes and list of attendees for each meeting will be available to the public and open for 30 days after the meeting to any participants who wish to clarify the views they expressed. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals

identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and various individuals and user groups. The major preliminary issues to be addressed in this planning effort include: vegetation management (including upland and watershed management, riparian areas and wetlands, forests and woodlands, fire and fuels management, wildlife habitat management, special status species, and noxious weeds), water quality/aquatic resources/fisheries, special management areas (including Areas of Critical Environmental Concern, significant caves, wild and scenic rivers, and wilderness study areas); recreation management; cultural and paleontological resources; socioeconomics and environmental justice; energy and minerals; lands and realty; and transportation (including off highway vehicle management and public access).

After public comments are gathered on these and other issues that the plan should address, they will be placed in one of three categories:

1. Issues to be resolved in the plan;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this plan.

The BLM will provide an explanation in the plan as to why we placed an issue in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase.

The BLM will use an interdisciplinary approach to develop the plan in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Rangeland management, minerals and geology, forestry, fire and fuels, botany, outdoor recreation, archaeology, paleontology, wildlife and fisheries, lands and realty, hydrology, soils, civil engineering, sociology, and economics.

Dated: December 19, 2005.

Elaine M. Brong,

State Director, Oregon/Washington BLM.

[FR Doc. E6–2388 Filed 2–17–06; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–5101–ER–F336; 6–08807]

Notice of Intent To Prepare an Environmental Impact Statement for a Proposed Coal-Fired Electric Power Generating Plant In Southeastern Lincoln County and Notice of Public Scoping Meetings; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement and Initiate Scoping.

SUMMARY: Pursuant to section 102 (2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM), Ely Field Office, will be directing the preparation of an environmental impact statement (EIS) and conducting public scoping meetings for the proposed Toquop Energy Power Project, which is a coal-fired electric power generating plant and associated ancillary facilities. BLM has received right-of-way applicants for this project from Toquop Energy Inc. The EIS will assess the potential impacts of a right-of-way for a proposed coal-fired facility and a new railroad line to transport coal to the facility. The Toquop Energy Power Project was previously analyzed in a March 2003 EIS as an 1100 MW gas-fired electric generating facility. Use of an alternative fuel such as coal was eliminated from the 2003 EIS and never analyzed due to economics and other factors at the time.

DATES: The publication of this notice initiates the public scoping comment period. Comments on the scope of the EIS, including concerns, issues, or proposed alternatives that should be considered in the EIS must be submitted in writing to the address below. Comments will be accepted until March 23, 2006. Four public scoping meetings are planned during the 30-day scoping period. The meetings will provide the public an opportunity to present comments concerning the Proposed Action that will be addressed in the EIS. The meetings will be held in Reno, Caliente, Mesquite, and Las Vegas, Nevada. The dates, locations, and times of the meetings will be distributed by mail and announced in the local news media on or about the date of this notice.

All comments received at the public scoping meetings or through submitted written comments will aid the BLM in identifying alternatives and mitigating measures to assure all issues are analyzed in the EIS.

ADDRESSES: Please mail written comments to the BLM, Ely Field Office, HC 33 Box 33500, Ely, NV 89301, or by visiting the Ely Field Office at 702 North Industrial Way. Comments submitted during this EIS process, including names and street addresses of respondents, will be available for public review at the Ely Field Office during regular business hours 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name and address from public review or disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or business, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Doris Metcalf at (775) 289–1852, or e-mail *Doris_Metcalf@nv.blm.gov*. You may also contact Ms. Metcalf at the address above.

SUPPLEMENTARY INFORMATION: On June 15 and June 28, 2001, Toquop Energy Inc. filed applications for Federal Land Policy and Management Act rights-of-way and a temporary use permit to construct and operate an 1100 MW gas-fired power plant to be located in southeast Lincoln County. The applications sought rights-of-way for: (1) An access road from Interstate 15 to the planned project site; (2) a water pipeline, electrical line and well field access road easement running from the proposed power plant site to a terminus point in a proposed well field site in the Tule Desert Area; and (3) a well field in the Tule Desert area and an associated water pump station and equalizer tank. In March 2003, the BLM completed a Final EIS in support of this request. The EIS evaluated the proposed rights-of-way and a No Action alternative. The BLM granted Toquop Energy Inc. the rights-of-way in 2003.

The March 2003 EIS considered evaluating several project and right-of-way alternatives, among which was the use of an alternative fuel such as coal. This alternative was eliminated from the 2003 EIS because project economics did not support such an alternative at the time. Therefore, a coal-fired plant was never analyzed. However, a recent change in market conditions, driven by the ever higher and volatile prices of natural gas, is making this alternative more desirable and economically viable.

The BLM intends to prepare an EIS to re-evaluate the alternative of constructing a 750 MW coal-fired power plant in lieu of an 1100 MW gas-fired power plant and complete studies necessary for a new 36-mile long railroad right-of-way connecting the project site to the existing Union Pacific Railway siding near Leith, NV. The EIS will evaluate, among other things, the alternative of constructing a 750 MW coal-fired power plant, a new railroad access line, coal unloading/handling/storage facilities, a solid waste disposal facility, water storage and treatment facilities, evaporation pond, cooling towers, and electric switchyard and support buildings. The facilities would be generally located within and/or across the following sections of public land:

Mount Diablo Meridian

Power Plant
T. 11 S., R 69 E., Section 36.
Railroad
T. 8 S., R. 67 E., Sections 14, 15, 23, 26, and 35;
T. 9 S., R. 67 E., Sections 1, 2, 12, and 13;
T. 9 S., R. 68 E., Sections 7, 16, 17, 18, 21, 22, 23, 24, 25, 26, and 36;
T. 9 S., R. 69 E., Section 31;
T. 10 S., R. 69 E., Sections 6, 7, 8, 17, 20, 29, 32, and 33;
T. 11 S., R. 69 E., Sections 3, 4, 9, 10, 14, 16, 21, 22, 23, 24, 25, 34, 35, and 36.

A map of the proposed project is available for viewing at the Bureau of Land Management, Ely Field Office, 702 North Industrial Way, Ely, NV 89301.

Dated: December 15, 2005.

Gene A. Kolkman,

Field Manager.

[FR Doc. E6–2384 Filed 2–17–06; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–936–06–1430–FM; GP6–0023]

Termination of Classification and Order Providing for Opening of Land, OR 02752

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: This notice terminates the existing classification for 80.00 acres of public land that was classified as suitable for disposal through exchange under section 8 of the Taylor Grazing Act (43 U.S.C. 315g) and opens the land to operation of the public land laws and location and entry under the mining laws, subject to the existing laws, rules, and regulations applicable to public lands administered by the BLM. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: February 21, 2006.

FOR FURTHER INFORMATION CONTACT: Phyllis Gregory, BLM, Oregon/Washington State Office, P.O. Box 2965, Portland, OR 97208, 503–808–6188.

SUPPLEMENTARY INFORMATION: By notice published in the **Federal Register** (34 FR 1194) on January 24, 1969, 2,632.83 acres of public land under the jurisdiction of the BLM were classified as suitable for exchange under section 8 of the Taylor Grazing Act (43 U.S.C. 315g). On September 19, 1977, an Order Providing for Opening of Public Lands was published in the **Federal Register** (42 FR 46958) opening 2,360 acres of reconveyed land to entry. However, 80 acres listed in the original Notice of Classification were not included in the exchange and were omitted in the opening order of September 19, 1977. Consequently, these 80 acres are still classified for disposal.

Notice: Pursuant to 43 CFR 2091.7–1 (b) (3), the classification is terminated upon publication of this notice in the **Federal Register** for the subject land and is described as follows:

Willamette Meridian, Oregon

T. 20 S., R. 44 E.,
Sec. 2, SW¼NE¼, NW¼SE¼.

The area described contains 80.00 acres in Malheur County, Oregon.

Order: At 8:30 a.m. on February 21, 2006 the land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on March 23, 2006 will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing. At 8:30 a.m. on February 21, 2006 the land will be opened to location and entry under the United States mining laws. Appropriation under the mining laws prior to the date and time of restoration and opening is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The BLM will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Authority: 43 CFR 2091.1(b).

Dated: February 1, 2006.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. E6–2374 Filed 2–17–06; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–500–1430–EU]

Notice of Realty Action: Proposed Modified Competitive Sale and Competitive Sale of Public Lands, Rio Grande and Conejos Counties, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) hereby provides notice that it will offer two parcels of public lands located in Rio Grande and Conejos Counties, Colorado, for sale at not less than their respective appraised fair market values. The Del Norte Field Manager has determined that because Parcel 1 has no legal access via any public road and is surrounded by private lands, it will be offered for sale only to the current adjoining landowners under modified competitive sale procedures. The La Jara Field Manager has determined that Parcel 2 has legal access via a public road and will be sold individually under competitive sale procedures open to any person or entity qualified to bid. Sales of both parcels will be by sealed bid only.

DATES: Comments regarding the proposed sales must be in writing and received by BLM not later than April 7, 2006.

Sealed bids must be received by BLM not later than 4:30 p.m. MDT, April 24, 2006.

ADDRESSES: Address all written comments regarding the proposed sales to BLM San Luis Valley Public Lands Center Manager, Attn: Bill Miller, 1803 West Highway 160, Monte Vista, Colorado 81144. Comments received in electronic form such as email or facsimile will not be considered. Address all sealed bids, marked as specified below, to the SLV PLC at the address above.

FOR FURTHER INFORMATION, CONTACT: Bill Miller, Realty Specialist, at (719) 852–6219.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of 43 CFR parts 2710 and 2720, the following described lands in Rio Grande and Conejos Counties, Colorado, are

proposed to be sold pursuant to authority provided in secs. 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended (43 U.S.C. 1713, 1719). The parcels to be sold are identified as suitable for disposal in the San Luis Resource Management Plan (1991). Proceeds from sale of these public lands will be deposited in the Federal Land Disposal Account under sec. 206 of the Federal Land Transaction Facilitation Act (43 U.S.C. 2305).

Publication of this notice in the **Federal Register** shall segregate the lands described below from appropriation under the public land laws, including the mining laws. The segregative effect of this notice shall terminate upon issuance of patent or upon expiration 270 days from the date of publication in the **Federal Register**, whichever occurs first.

Modified Competitive Sale

Parcel 1 (COC–68879)

New Mexico Principal Meridian, Colorado

T. 39 N., R. 6 E.
Sec. 5, NE¼SW¼

The area described contains 40.00 acres. The appraised market value for Parcel 1 is $46,000. This parcel cannot be legally accessed by any public road. It is surrounded by private property and isolated from other federal lands. There are no encumbrances of record. There are at least 3 adjacent landowners who are eligible to bid on this parcel.

Offers to purchase the parcel will be made by sealed bid only. All bids must be received at the BLM SLV PLC, Attention: Bill Miller, 1803 West Highway 160, Monte Vista, Colorado 81144, not later than 4:30 p.m. MDT, April 24, 2006.

Sealed bids for Parcel 1 will be opened to determine the high bid at 10 a.m. MDT, April 25, 2006, at the SLV PLC Office.

The outside of each bid envelope must be clearly marked on the front lower left-hand corner with "SEALED BID," Parcel Number, and bid opening date. Bids must be for not less than the appraised market value for the parcel. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable in U.S. currency to "DOI—Bureau of Land Management" for an amount not less than 30 percent of the total amount of the bid. Personal checks will not be accepted.

The bid envelope also must contain a signed statement giving the total amount bid for the Parcel and the bidder's name, mailing address, and phone number. As provided in the regulations at 43 CFR 2711.3–2(a)(1)(ii), bidders for Parcel 1 shall be designated by the BLM and limited to adjoining landowners. Bids for Parcel 1 submitted by persons or entities other than the designated bidders will be rejected. If BLM receives two or more valid high bids offering an identical amount for a parcel, BLM will notify the apparent high bidders of further procedures to determine the highest qualifying bid.

Competitive Sale

Parcel 2 (COC–68880)

New Mexico Principal Meridian, Colorado

T. 35 N. R. 7 E.,
Sec. 12, NE¼NE¼.

The area described contains 40.00 acres. The appraised market value for Parcel 2 is $22,000. This parcel is isolated from other federal lands but has legal access by a paved public (county) road. There is one encumbrance of record, BLM R/W COC–040111 which is a telephone line along the paved county road. There is also a county road along the north boundary of the parcel which accesses a private residence.

Offers to purchase Parcel 2 will be made by sealed bid only. All bids must be received at the BLM SLV PLC, Attention: Bill Miller, 1803 West Highway 160, Monte Vista, Colorado 81144, not later than 4:30 p.m. MDT, April 24, 2006.

Sealed bids for Parcel 2 will be opened to determine the high bidder at 10 a.m. MDT, April 25, 2006, at the BLM SLVPLC Field Office.

The outside of each bid envelope must be clearly marked on the front lower left-hand corner with "SEALED BID," Parcel Number, and bid opening date. Bids must be for not less than the appraised market value for the parcel. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable in U.S. currency to "DOI—Bureau of Land Management" for an amount not less than 30 percent of the total amount of the bid. Personal checks will not be accepted.

The bid envelope also must contain a signed statement giving the total amount bid for the Parcel and the bidder's name, mailing address, and phone number. Certification of bidder's qualifications must accompany the bid deposit. Evidence of authorization to bid for a corporation or other entity must be included. If BLM receives two or more valid high bids offering an identical amount for a parcel, BLM will notify the apparent high bidders of further procedures to determine the highest qualifying bid.

Additional Terms and Conditions of Sale

Successful bidders will be allowed 90 days from the date of sale to submit the remainder of the full bid price. Failure to timely submit full payment for a parcel shall result in forfeiture of the bid deposit to the BLM, and the parcel will be offered to the second highest qualifying bidder at their original bid. If there are no other acceptable bids, the parcel may continue to be offered by sealed bid on the first Friday of each month at not less than the minimum bid until the offer is canceled.

By law, public lands may be conveyed only to (1) citizens of the United States who are 18 years old or older, (2) a corporation subject to the laws of any State or of the United States, (3) an entity including, but not limited to, associations or partnerships capable of acquiring and owning real property, or interests therein, under the laws of the State of Colorado, or (4) a State, State instrumentality, or political subdivision authorized to hold real property.

The following reservations, rights, and conditions will be included in the patents that may be issued for the above parcels of Federal land:

1. A reservation to the United States for a right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. Parcel 2 will be subject to rights-of-way for valid existing rights listed above.

No warranty of any kind, express or implied, is given by the United States as to the title, physical condition, or potential uses of the parcels proposed for sale.

The federal mineral interests underlying these parcels have minimal mineral values and will be conveyed with each parcel sold. A sealed bid for the above described parcels constitutes an application for conveyance of the mineral interest for that parcel. In addition to the full purchase price, a successful bidder must pay a separate nonrefundable filing fee of $50 for the mineral interests to be conveyed simultaneously with the sale of the land.

Public Comments

Detailed information concerning the proposed land sales, including reservations, sale procedures, appraisals, planning and environmental documents, and mineral reports, is available for review at the SLV PLC Office, 1803 West Highway 160, Monte Vista, Colorado. Normal business hours are 8 a.m. to 4:30 p.m. MDT, Monday through Friday, except Federal holidays.

The general public and interested parties may submit written comments regarding the proposed sales to the SLV PLC Manager, Monte Vista Office, not later than 45 days after publication of this Notice in the **Federal Register**. Comments received during this process, including respondent's name, address, and other contact information, will be available for public review. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, address, and other contact information (phone number, e-mail address, or fax number, etc.) from public review or disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. The BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. The BLM will make available for public review, in their entirety, all comments submitted by businesses or organizations, including comments by individuals in their capacity as an official or representative of a business or organization.

Any adverse comments will be reviewed by the BLM State Director, Colorado, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Dated: December 8, 2005.

Cindy Rivera,

Acting Manager, SLV PLC Office.

[FR Doc. E6–2382 Filed 2–17–06; 8:45 am]

BILLING CODE 4130–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–056–5853–ES; N–58877]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes (R&PP); Correction; Termination of Classification; Nevada

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: This notice corrects the legal land description for R&PP application N–58877 for lease/conveyance of a parcel of land and terminates the classification for other lands no longer needed for R&PP purposes.

DATES: Effective February 21, 2006.

ADDRESSES: Any comments should be sent to the BLM, Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130.

FOR FURTHER INFORMATION CONTACT: Brenda Warner, BLM Realty Specialist, (702) 515–5084.

SUPPLEMENTARY INFORMATION: This action corrects errors in the legal description in the notice published as FR Doc. 98–3683 in 63 FR 7479–7480, February 13, 1998. The described land in this notice was segregated from all other forms of appropriation under the public land laws, including the general mining laws except for lease/conveyance under the Recreation and Public Purposes Act.

Page 7479, first column, line 34 from the bottom of the column, which reads "T. 19 S., R. 62 E.," is hereby corrected to read "T. 19 S., R. 61 E.,"

Page 7479, first column, line 28 from the bottom of the column, which reads "Section 19, lot 15;" is hereby corrected to read "Section 19, lots 27 and 29." This correction only pertains to the land identified in case file N–58877.

Excepting the legal land description being corrected, the classification for the remaining lands in the aforementioned notice is hereby terminated. Upon publication of this notice, these remaining lands will be available for disposition under the Southern Nevada Public Lands Management Act of 1998 (112 Stat. 2343) "The Act", as amended by the Clark County Conservation of Public Land and Natural Resources Act of 2002 (116 Stat. 1994) and managed consistent with the Las Vegas RMP and final EIS dated October 5, 1998. The lands are withdrawn from location and entry, under the mining laws and from operation under the mineral leasing and geothermal leasing in accordance with the Act (112 Stat. 2343), as amended.

Dated: November 18, 2005.

Sharon DiPinto,

Assistant Field Manager, Division of Lands.

[FR Doc. E6–2381 Filed 2–17–06; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–080–1430–ES; UTU–81574]

Notice of Realty Action; Recreation and Public Purposes Act Classification, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for lease or conveyance under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*), 1,228.92 acres of public land in Uintah County, Utah. Uintah County proposes to use the land for a recreation park which would include a Supercross, Motocross, Pee Wee Track, Open Ride Area, Flat Track, Mud Bogs, Indoor Supercross, Rock Crawling, Tough Truck, Ultralight Flight Park, Cabanas, Rest Rooms, Seating, and Parking.

DATES: Comments should be received by April 7, 2006.

ADDRESSES: Comments should be sent to Bureau of Land Management, Vernal Field Office, 170 South 500 East, Vernal, Utah 84078.

FOR FURTHER INFORMATION CONTACT: Naomi Hatch, BLM Realty Specialist at (435) 781–4454.

SUPPLEMENTARY INFORMATION: Uintah County purposes to use the following lands, containing 1,228.92 acres more or less, located within Uintah County, Utah to construct, operate, and maintain a recreation park within:

Salt Lake Meridian, Utah

T. 4 S., R. 22 E.,
Sec. 10, lots 1 to 4, inclusive, SE¼SW¼SE¼NE¼, NE¼SE¼SE¼NE¼, S½SE¼SE¼NE¼, S½NE¼NW¼SE¼, NE¼SW¼NW¼SE¼, S½SW¼NW¼SE¼, SE¼NW¼SE¼, and NE¼SE¼;
Sec. 15;
Sec. 22, NE¼, NE¼NW¼, NE¼NW¼NW¼, N½NW¼NW¼NW¼, E½SE¼NW¼NW¼, NE¼SE¼NW¼, N½NW¼SE¼NW¼, SE¼NW¼SE¼NW¼, N½SE¼SE¼NW¼, SE¼SE¼SE¼NW¼, NE¼SE¼, N½NW¼SE¼, NE¼SW¼NW¼SE¼, SE¼NW¼SE¼, NE¼NE¼SW¼SE¼, N½SE¼SE¼, NE¼SW¼SE¼SE¼, and SE¼SE¼SE¼.

The area described contains 1,228.92 acres in Uintah County.

The BLM does not need this land for Federal purposes and leasing or conveying title to the affected public land is consistent with current BLM land use planning and would be in the public interest.

The lease, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and the following terms:

1. All valid existing rights-of-way of record.

2. Provisions that the lease be operated in compliance with the approved Development Plan.

3. The lease shall contain terms and conditions which the authorized officer

considers necessary for the proper development of the land, and for the protection of Federal property and the public interest.

The patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will be subject to the following terms, conditions, and reservations:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

3. Those rights for a natural gas pipeline granted by right-of-way UTU–018084 to Questar Gas Company.

4. Those rights for a telephone line granted by right-of-way UTU–09017 to Qwest Corporation.

5. Those rights for a natural gas pipeline granted by right-of-way UTU–049527 to EOG Resources Inc.

6. Those rights for road purposes granted by right-of-way UTU–73611 to Uintah County.

7. Those rights for a natural gas pipeline granted by right-of-way UTU–23779 to Questar Gas Company.

8. Those rights for a transmission line granted by right-of-way UTU–0144547 to Western Area Power Administration.

9. Those rights for a water pipeline and storage tank by right-of-way UTU–52122 to Jensen Water District.

10. Those rights for an oil and gas leases UTU–80607 and UTU–80608 to William P. Harris.

11. Any other valid and existing rights of record not yet identified.

12. Provisions that if the patentee or its successor attempts to transfer title to or control over the land to another or the land is developed to a use other than that for which the land was conveyed, without the consent of the Secretary of the Interior or his delegate, or prohibits or restricts, directly or indirectly, or permits its agents, employees, contractors, or subcontractors, including without limitation, lessees sub-lessees and permittees, to prohibit or restrict, directly or indirectly, the use of any part of the patented lands or any of the facilities whereon by any person because of such person's race, creed, color, or national origin, title shall revert to the United States.

Upon publication of this notice in the **Federal Register**, the public lands described above is segregated from all other forms of appropriation under the public land laws, mining laws and leasing under the mineral leasing laws, except for leasing or conveyance under the Recreation and Public Purposes Act for a period of 18 months.

Classification Comments

Interested parties may submit comments regarding the suitability of the land for a recreation park. Comments on the classification are restricted to whether the land is physically suited for the proposed use, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a recreation park.

All submissions from organizations or businesses will be made available for public inspection in their entirety. Individuals may request confidentiality with respect to their name, address, and phone number. If you wish to have your name or street address withheld from public review, or from disclosure under the Freedom of Information Act, the first line of the comment should start with the words "CONFIDENTIALITY REQUEST" in uppercase letters in order for BLM to comply with your request. Such requests will be honored to the extent allowed by law. Comment contents will not be kept confidential. Any objections will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective on April 24, 2006.

Authority: 43 CFR 2741.5.

Dated: January 6, 2006.

William Stringer,

Vernal Field Manager.

[FR Doc. E6–2372 Filed 2–17–06; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Red River Valley Water Supply Project, ND

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice for extension of the public comment period for the Draft Environmental Impact Statement (DEIS) and two additional public hearings to receive comment on the DEIS.

SUMMARY: The Bureau of Reclamation is announcing a 30-day extension of the public comment period for the Red River Valley Water Supply Project DEIS. The originally announced comment period ends on February 28, 2006, but has been extended until March 30, 2006. The original notice of availability of the DEIS, notice of public hearings, and additional information on the Red River Valley Water Supply Project were published in the **Federal Register** on December 30, 2005 (70 FR 250, 77425–77427).

DATES: Comments on the DEIS should be postmarked by March 30, 2006.

The two additional public hearings will be held on:

- Thursday, March 9, 2006, 1 p.m., Fort Yates, ND
- Monday, March 20, 2006, 7 p.m., New Town, ND

ADDRESSES: Send comments on the DEIS to Red River Valley Water Supply Project EIS, Bureau of Reclamation, Dakotas Area Office, P.O. Box 1017, Bismarck, ND 58502.

The additional public hearings will be held at:

- Fort Yates-Prairie Knights Casino and Resort, 7932 Highway 24, Fort Yates, ND
- 4 Bears Casino, Mandan-Hidatsa Room, 202 Frontage Road, New Town, ND

FOR FURTHER INFORMATION CONTACT: Ms. Signe Snortland, telephone: (701) 250–4242 extension 3621, or Fax to (701) 250–4326. You may submit e-mail comments to *ssnortland@gp.usbr.gov* or comments may be submitted through the Red River Valley Water Supply Project Web site at *http://www.rrvwsp.com* by March 30, 2006.

SUPPLEMENTARY INFORMATION: Reclamation's practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There may be other circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: February 9, 2006.

Craig G. Peterson,

Manager, Infrastructure and Engineering Services, Great Plains Region, Bureau of Reclamation.

[FR Doc. E6–2393 Filed 2–17–06; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. AA1921–197 (Second Review); 701–TA–319, 320, 325–328, 348, and 350 (Second Review); and 731–TA–573, 574, 576, 578, 582–587, 612, and 614–618 (Second Review)]

Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and The United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the countervailing duty and antidumping duty orders on certain carbon steel products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty and antidumping duty orders on certain carbon steel products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: Effective February 6, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On February 6, 2006, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. With respect to corrosion-resistant carbon steel flat products, the Commission found that the domestic and respondent interested party group responses to its notice of institution (70 FR 62324, October 31, 2005) were adequate. With respect to cut-to-length carbon steel plate, the Commission found that the domestic interested party group response to its notice of institution was adequate and that the respondent interested party group responses with respect to Belgium, Brazil, Finland, Germany, Mexico, Poland, and the United Kingdom were adequate, but found that the respondent interested party group responses with respect to Romania, Spain, Sweden, and Taiwan were inadequate. However, the Commission determined to conduct full reviews concerning cut-to-length carbon steel plate from Romania, Spain, Sweden, and Taiwan to promote administrative efficiency in light of its decision to conduct full reviews with respect to cut-to-length carbon steel plate from Belgium, Brazil, Finland, Germany, Mexico, Poland, and the United Kingdom. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: February 14, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–2359 Filed 2–17–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

February 14, 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 calling the Department of Labor and contacting Ira Mills on 202–693–4122 (this is not a toll-free number) or by E-Mail: *Mills.Ira@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: Unemployment Insurance Trust Fund Activity.

OMB Number: 1205–0154.

Frequency: On occasion; Monthly.

Affected Public: State, Local or Tribal govt.

Type of Response: Reporting.

Number of Respondents: 53.

Annual Responses: 3,498.

Average Response time: ½ hour.

Total Annual Burden Hours: 1,749.
Total Annualized Capital/Startup Costs: 0.
Total Annual Costs (operating/maintaining systems or purchasing services): 0.
Description: Collection of State financial activity operating the Unemployment Insurance Program.

Ira L. Mills,
Departmental Clearance Officer.
[FR Doc. 06–1544 Filed 2–17–06; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Bridger Coal Company

[Docket No. M–2006–004–C]

Bridger Coal Company, P.O. Box 68, Point of Rocks, Wyoming 82942 has filed a petition to modify the application of 30 CFR 75.1902(c)(2)(i), (ii), and (iii) (Underground diesel fuel storage-general requirements) to its Bridger Coal Underground Mine (MSHA I.D. No. 48–01646) located in Sweetwater County, Wyoming. The petitioner requests a modification of the existing standard as it pertains to temporary underground diesel fuel storage area location. The petitioner proposes to: (i) Store the temporary diesel transportation unit no more than 1,000 feet from the section loading point, or projected loading point during equipment installation, or the last designated loading point during equipment removal; (ii) equip the diesel fuel transportation unit with an MSHA approved automatic fire suppression system that meets the requirements of 30 CFR 75.1911; (iii) equip the diesel fuel storage tank with an MSHA-approved automatic fire suppression system that is installed to meet the requirements of 30 CFR 75.1911; and (iv) permit a certified person to examine the temporary diesel fuel storage area twice at each shift as required by 30 CFR 75.362, when work is being performed inby the temporary diesel fuel storage area, and conduct a pre-shift examination of the diesel fuel storage area as required by 30 CFR 75.360, when work is performed in the area. The petitioner has listed specific procedures in this petition that will be followed when the proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Rosebud Mining Company

[Docket No. M–2006–005–C]

Rosebud Mining Company, P.O. Box 1025, Northern Cambria, Pennsylvania 15714 has filed a petition to modify the application of 30 CFR 75.1710–1 (Canopies or cabs; self-propelled electric face equipment; installation requirements) to its Clementine Mine (MSHA I.D. No. 36–08862) located in Armstrong County, Pennsylvania. The petitioner proposes to use the Long-Airdox Mobile Bridge Carrier, Model Number MBC–27L (frame height 25.5 inches) and the Fletcher Roof Bolter, Model RRII–13, C-F (frame height 30 inches) without canopies in specific areas of the mine, due to widely varying mining heights. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. CONSOL Energy, Inc.

[Docket No. M–2006–006–C]

CONSOL Energy, Inc., 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) to its Blacksville No. 2 Mine (MSHA I.D. No. 46–01968) located in Monongalia County, West Virginia. The petitioner requests a modification of the existing standard to permit the use of a non-permissible battery-operated surveying instrument inby the last open crosscut. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via E-mail: *zzMSHA-Comments@dol.gov*; Fax: (202) 693–9441; or Regular Mail/Hand Delivery/Courier: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before March 23, 2006.

Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 10th day of February 2006.

Robert F. Stone,
Acting Director, Office of Standards, Regulations, and Variances.
[FR Doc. E6–2396 Filed 2–17–06; 8:45 am]
BILLING CODE 4510–43–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53276; File No. SR–NASD–2005–098]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Submission of SEC Rule 15c2–11 Information on Non-Nasdaq Securities

February 13, 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 August 18, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") proposed rule change SR–NASD–2005–098 as described in Items I, II, and III below, which Items have been prepared by NASD. On January 10, 2006, NASD filed Amendment No. 1 to the proposed rule change.[3] 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 amend NASD Rule 6740 to (1) relieve members of the obligation to file with NASD copies of certain information that is electronically accessible through the SEC's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system; and (2) exclude from NASD Rule 6740 quotation activity for which the SEC has granted an exemption under SEC Rule 15c2–11(h). Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made certain technical and clarifying changes to the original rule filing of August 18, 2005. Amendment No. 1 supersedes and replaces the original rule filing in its entirety.

6740. Submission of Rule 15c2–11 Information on Non-Nasdaq Securities

(a) Except as provided in SEC Rule 15c2–11(f)(1), (2), (3), and (5) *and 15c2–11(h)* under the Act, no member shall initiate or resume the quotation of a non-Nasdaq security in any quotation medium unless the member has demonstrated compliance with this rule and the applicable requirements for information maintenance under Rule 15c2–11. A member shall demonstrate compliance by making a filing with, and in the form required by, [the Association] *NASD*, which filing must be received at least three business days before the member's quotation is published or displayed in the quotation medium.

(b) The information to be filed shall contain one copy of all information required to be maintained under SEC Rule 15c2–11(a)(1), (2), (3)(iii), (4)(ii), or (5), including any information that may be required by future amendments thereto. *Members are not required to file with NASD copies of any information that is available through the SEC's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system; provided, however, that the filing with NASD shall contain identifying information for each issuer report or statement available through EDGAR that was relied upon in satisfying the member's obligations under this Rule and SEC Rule 15c2–11(a), including the type of report, report date and any other information as may be requested by NASD.* In addition, this filing shall identify the issuer, the issuer's predecessor in the event of a merger or reorganization within the previous 12 months, the type of non-Nasdaq security to be quoted (*e.g.*, ADR, warrant, unit, or common stock), the quotation medium to be used, the member's initial or resumed quotation, and the particular subsection of Rule 15c2–11 with which the member is demonstrating compliance. Additionally, if a member is initiating or resuming quotation of a non-Nasdaq security with a priced entry, the member's filing must specify the basis upon which that priced entry was determined and the factors considered in making that determination.

(c) If a member's initial or resumed quotation does not include a priced entry, a member shall supplement its prior filing under this Rule, in the form required by [the Association] *NASD*, before inserting a priced entry for the affected non-Nasdaq security in a quotation medium. The supplemental filing shall specify the basis upon which the proposed priced entry was determined and the factors considered in making that determination. The supplemental filing must be received by [the Association] *NASD* at least three business days before the member's priced entry first appears in a quotation medium.

(d) All filings made with [the Association] NASD under this Rule must be reviewed and signed by a principal of the member firm.

* * * * *

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 Rule 6740 prohibits a member from initiating or resuming the quotation of a non-Nasdaq security [4] in a quotation medium unless the member has demonstrated compliance with the requirements of SEC Rule 15c2–11 pertaining to the review and maintenance of specified information about the security and issuer. To demonstrate compliance with both NASD Rule 6740 and SEC Rule 15c2–11, a member must file with NASD a Form 211, together with the information required under SEC Rule 15c2–11(a), at least three business days before the quotation is published or displayed.

Much of the information that is required under SEC Rule 15c2–11(a) for reporting issuers, such as prospectuses, offering circulars and annual reports, is publicly available through the SEC's EDGAR system. NASD believes that there is no policy purpose served in requiring members to file with NASD copies of such information. Accordingly, NASD is proposing to relieve members of the obligation to file with NASD copies of information that is electronically accessible through the SEC's EDGAR system. NASD believes the proposed rule change, as amended, will eliminate the administrative burden and cost imposed on members in furnishing such information to NASD. Although members will not be required to file the information with NASD, they will nonetheless remain obligated under NASD Rule 6740 to review and maintain information as required by SEC Rule 15c2–11.

In addition, members currently are required to identify on the Form 211 the type and date of each report or statement that is submitted to NASD. Under the proposed rule change, as amended, where copies of documents are not submitted to NASD because they are available through EDGAR, members will continue to be required to provide on the Form 211 the type and date of each report or statement, as well as other information as may be requested by NASD relating to each report or statement for the reporting issuer that the member relied upon in satisfying its information review obligations under NASD Rule 6740 and SEC Rule 15c2–11(a).[5]

In addition, paragraphs (f) and (h) of SEC Rule 15c2–11 set forth the exclusions to the rule's information review and maintenance requirements. NASD Rule 6740(a) tracks the SEC Rule 15c2–11(f) exceptions,[6] but does not contain an exclusion for those quotations pursuant to which the Commission has granted an exemption, upon request or its own motion, under SEC Rule 15c2–11(h). NASD believes that the terms for filing a Form 211 under NASD Rule 6740 should conform to SEC Rule 15c2–11; members should not be required to review, maintain and file information under the NASD rule if there is no similar obligation under the SEC rule. Accordingly, NASD is proposing to amend NASD Rule 6740 to relieve members of their obligations under the rule in the event that the Commission has granted an exemption to any quotation under SEC Rule 15c2–11(h). To the extent that the Commission's exemptive relief applies any terms and conditions to such relief, those same terms and conditions would apply to the exclusion under NASD Rule 6740.

Finally, NASD no longer refers to itself using its full corporate name, "the

[4] For purposes of this rule, "non-Nasdaq security" is defined in NASD Rule 6710(c) as "any equity security that is neither included in The Nasdaq Stock Market nor traded on any national securities exchange."

[5] If information other than the type and date of the statement or report is required to be submitted by members under this proposed provision, NASD will provide notice of these additional requirements in a Notice to Members.

[6] Because the definition of "non-Nasdaq security" under NASD Rule 6710(c) excludes debt instruments, NASD Rule 6740 does not refer to subsection (f)(4) of SEC Rule 15c2–11, which relates to municipal securities.

Association," or "the NASD." Instead, NASD uses the name "NASD" unless otherwise appropriate for corporate or regulatory reasons. Accordingly, the proposed rule change, as amended, replaces, as a technical change, several references in NASD Rule 6740 to "the Association" with the name "NASD."

NASD will announce the effective date of the proposed rule change, as amended, 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, as amended, 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 harmonizing NASD Rule 6740 and SEC Rule 15c2–11, so that members are not required to review, maintain and file information under the NASD rule when they are not required to review and maintain such information under the SEC rule, is consistent with the Act. Moreover, SEC Rule 15c2–11 is, by its terms, "a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices," and thus, NASD believes that harmonizing NASD Rule 6740 and SEC Rule 15c2–11 is consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change, as amended, 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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–098 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–2005–098. 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–2005–098 and should be submitted on or before March 10, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Nancy M. Morris,

Secretary.

[FR Doc. E6–2368 Filed 2–17–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53277; File No. SR–NYSE–2006–03]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend for an Additional Six Months the Pilot Program Permitting a Floor Broker and an RCMM To Use an Exchange Authorized and Provided Portable Telephone on the Exchange Floor

February 13, 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 January 31, 2006, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to extend its pilot program that amends NYSE Rule 36 (Communication Between Exchange and Members' Offices) to allow Floor brokers and Registered Competitive Market Makers ("RCMMs") to use Exchange authorized and provided portable telephones on the Exchange Floor upon approval by the Exchange ("Pilot") for an additional six months, until July 31, 2006. The last extension of the Pilot was in effect on a six-month pilot basis expiring on January 31, 2006.[3] The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52188 (August 1, 2005), 70 FR 46252 (August 9, 2005) (SR–NYSE–2005–53).

Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Commission originally approved the Pilot to be implemented as a six-month pilot [4] beginning no later than June 23, 2003. [5] Since the inception of the Pilot, the Exchange has extended the Pilot five times, with the current Pilot expiring on January 31, 2006.[6] Most recently, the Exchange incorporated RCMMs into the Pilot and clarified the conditions under which a Floor broker may use an Exchange authorized and provided portable phone.[7] The Exchange has also filed for permanent approval of NYSE Rule 36, as amended.[8]

With respect to regulatory actions concerning the Pilot, there is an open investigation into possible insider trading in an NYSE listed security in which the trading activity of two RCMMs has been identified and is under review. The use of an Exchange authorized and provided portable phone by one of the RCMMs in or about January 2005 is under review as part of the investigation. No administrative or technical problems, other than routine telephone maintenance issues, have resulted from the Pilot over the past few months.[9] Therefore, the Exchange seeks to extend the Pilot for an additional six months, until July 31, 2006.

NYSE Rule 36

NYSE Rule 36 governs the establishment of telephone or electronic communications between the Exchange Floor and any other location. Prior to the Pilot, NYSE Rule 36.20 prohibited the use of portable telephone communications between the Exchange Floor and any off-Floor location. The only way that voice communication could be conducted by Floor brokers between the Exchange Floor and an off-Floor location prior to the Pilot was by means of a telephone located at a broker's booth. These communications often involved a customer calling a broker at the booth for "market look" information. Prior to the Pilot, a broker could not use a portable phone at the point of sale in the trading crowd to speak with a person located off the Exchange Floor.

Furthermore, until recently, NYSE Rule 36.20 only applied to a Floor broker's ability to use an Exchange authorized and provided portable phone.[10] RCMMs are non-specialist members of the Exchange and do not have the same type of information (*i.e.*, access to the Display Book®) that a specialist has. As such, the Exchange believes it is appropriate for RCMMs to participate in the Pilot so that they can communicate with their offices in order to, among other things, enter off-Floor orders and better monitor their positions.[11]

The Exchange proposes to extend the Pilot for an additional six months, expiring on July 31, 2006. The Pilot would amend NYSE Rule 36 to permit Floor brokers and RCMMs to use Exchange authorized and issued portable telephones on the Exchange Floor. Thus, with the approval of the Exchange, a Floor broker would be permitted to engage in direct voice communication from the point of sale to an off-Floor location, such as a member firm's trading desk or the office of one of the broker's customers. Such communications would permit the broker to accept orders consistent with Exchange rules [12] and provide status and oral execution reports of orders previously received, as well as "market look" observations as have historically been routinely transmitted from a broker's booth location. Moreover, the Pilot would allow RCMMs to use an Exchange authorized and portable phone solely to communicate with their or their member organizations' off-Floor office and the off-Floor office of their clearing member organization, to enter off-Floor orders, and to discuss matters related to the clearance and settlement of transactions, provided the off-Floor office uses a wired telephone line for these discussions. RCMMs, however, would not be allowed to use a portable phone to conduct any agency business until issues involving the use of portable phones by RCMMs acting in the capacity of agent have been fully reviewed and resolved by NYSE Regulation in consultation with the Commission.[13] For both RCMMs and Floor brokers, use of a portable telephone on the Exchange Floor other than one authorized and issued by the Exchange would continue to be prohibited.

Furthermore, both incoming and outgoing calls would continue to be allowed, provided the requirements of all other Exchange rules have been met. Under NYSE Rule 123(e), a broker would not be permitted to represent and execute any order received as a result of such voice communication unless the order was first properly recorded by the member and entered into the Exchange's Front End Systemic Capture ("FESC") electronic database.[14] In addition, Exchange rules require that any Floor

[4] *See* Securities Exchange Act Release No. 47671 (April 11, 2003), 68 FR 19048 (April 17, 2003) (SR–NYSE–2002–11) ("Original Order").

[5] *See* Securities Exchange Act Release No. 47992 (June 5, 2003), 68 FR 35047 (June 11, 2003) (SR–NYSE–2003–19) (delaying the implementation date for portable phones from on or about May 1, 2003 to no later than June 23, 2003).

[6] *See* Securities Exchange Act Release Nos. 48919 (December 12, 2003), 68 FR 70853 (December 19, 2003) (SR–NYSE–2003–38) (extending the Pilot for an additional six months ending on June 16, 2004); 49954 (July 1, 2004), 69 FR 41323 (July 8, 2004) (SR–NYSE–2004–30) (extending the Pilot for an additional five months ending on November 30, 2004); 50777 (December 1, 2004), 69 FR 71090 (December 8, 2004) (SR–NYSE–2004–67) (extending the Pilot for an additional four months ending March 31, 2005); 51464 (March 31, 2005), 70 FR 17746 (April 7, 2005) (SR–NYSE–2005–20) (extending the Pilot for additional four months ending July 31, 2005); and 52188, *supra* note 3.

[7] *See* Securities Exchange Act Release No. 53213 (February 2, 2006) (SR–NYSE–2005–80).

[8] *See* SR–NYSE–2004–52 (September 7, 2004).

[9] The Exchange notes that it has received incoming telephone records for Floor brokers for the period of July 4, 2005 through January 31, 2006, and for RCMMs for the period of November 22, 2005 through January 31, 2006, and will continue to receive monthly updates.

[10] Telephone conversation between Jeff Rosenstrock, Senior Counsel, NYSE, and Molly M. Kim, Attorney, Division of Market Regulation, Commission, on February 8, 2006.

[11] The Exchange has developed surveillance and examination procedures to monitor the activities of RCMMs, including their use of Exchange authorized and provided portable phones.

[12] Floor brokers receiving orders from the public over portable phones must be properly qualified to engage in such "direct access" business under NYSE Rules 342 and 345, among others.

[13] Allowing RCMMs acting as Floor brokers to use Exchange authorized and provided portable phones would involve further discussions with the Commission and would be the subject of a separate filing with the Commission.

[14] *See* Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000) (SR–NYSE–98–25). *See also* Securities Exchange Act Release No. 44943 (October 16, 2001), 66 FR 53820 (October 24, 2001) (SR–NYSE–2001–39) (discussing certain exceptions to FESC, such as orders to offset an error or a bona fide arbitrage, which may be entered within 60 second after a trade is executed).

broker receiving orders from the public over portable phones must be properly qualified to engage in such direct access business under NYSE Rules 342 and 345, among others.[15]

In addition, NYSE Rule 36 does not apply to specialists, who are prohibited from speaking from the post to upstairs trading desks or customers.[16] The Exchange notes that specialists are subject to separate restrictions in NYSE Rule 36 on their ability to engage in voice communications from the specialist post to an off-Floor location.[17]

By enabling customers to speak directly to a Floor broker in a trading crowd on an Exchange authorized and issued portable telephone and by allowing RCMMs to communicate with their upstairs office's land line and the land line of their clearing member organization's upstairs office, the Exchange believes that the proposed rule change would expedite and make more direct the free flow of information which, prior to the Pilot, had to be transmitted somewhat more circuitously via the booth. The Exchange believes that an extension of the Pilot for an additional six months would enable the Exchange to provide more direct, efficient access to its trading crowds and customers, increase the speed of transmittal of orders and the execution of trades, and provide an enhanced level of service to customers in an increasingly competitive environment.[18]

Pilot Program Results

Since the Pilot's inception, the Exchange represents that there have been approximately 800 portable phone subscribers.[19] In addition, with regard to portable phone usage, for a sample week of December 5, 2005 through December 9, 2005, an average of 10,951 calls per day were originated from portable phones, and an average of 4,932 calls per day were received on portable phones. Of the calls originated from portable phones, an average of 7,216 calls per day was internal calls to the booth, and 3,735 calls per day were external calls. Thus, approximately 66% of the calls originated from portable phones were internal calls to the booth. With regard to received calls, of the 4,932 average calls per days received, an average of 2,472 calls per day was external calls and an average of 2,460 calls per day was internal calls received from the booth. Thus, approximately 50% of all received calls were internally generated and 50% were calls from the outside.

Therefore, the Exchange believes that the Pilot appears to be successful in that there is a reasonable degree of usage of portable phones. Furthermore, except as noted above, there have been no other regulatory, administrative, or other technical problems identified with their usage. The Exchange also believes that the Pilot appears to facilitate communication on the Exchange Floor for both Floor brokers and RCMMs without any corresponding drawbacks. Therefore, the Exchange believes it is appropriate to extend the Pilot for an additional six months, expiring on July 31, 2006.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[20] in general, and further the objectives of Section 6(b)(5) of the Act[21] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the amendment to NYSE Rule 36 would support the mechanism of free and open markets by providing for increased means by which communications to and from the Exchange Floor could take place.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[22] and Rule 19b–4(f)(6) thereunder.[23] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange requests that the Commission waive the 30-day operative period under Rule 19b–4(f)(6)(iii).[24] The Exchange believes that the continuation of the Pilot is in the public interest as it will avoid inconvenience and interruption to the public. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and make this proposed rule change immediately effective upon filing on January 31, 2006.[25] The Commission believes that the waiver of the 30-day operative delay will allow the Exchange to continue, without interruption, the

[15] *See* Information Memos 01–41 (November 21, 2001), 01–18 (July 11, 2001) (available on *http://www.nyse.com*) and 91–25 (July 8, 1991) for more information regarding Exchange requirements for conducting a public business on the Exchange Floor.

[16] NYSE Rule 36.30 provides that, with the approval of the Exchange, a specialist unit may maintain a telephone line at its stock trading post location to the off-Floor offices of the specialist unit or the unit's clearing firm. Such telephone connection shall not be used for the purpose of transmitting to the Floor orders for the purchase or sale of securities, but may be used to enter options or futures hedging orders through the unit's off-Floor office or the unit's clearing firm, or through a member (on the Exchange Floor) of an options or futures exchange.

[17] *See* Securities Exchange Act Release No. 46560 (September 26, 2002), 67 FR 62088 (October 3, 2002) (SR–NYSE–00–31) (discussing restrictions on specialists' communications from the post).

[18] *See, e.g.*, Securities Exchange Act Release Nos. 43493 (October 30, 2000), 65 FR 67022 (November 8, 2000) (SR–CBOE–00–04) (expanding the Chicago Board Options Exchange, Inc.'s existing policy and rules governing the use of telephones at equity option trading posts by allowing for the receipt of orders over outside telephone lines from any source, directly at equity trading posts) and 43836 (January 11, 2001), 66 FR 6727 (January 22, 2001) (SR–PCS–00–33) (discussing and approving the Pacific Exchange's proposal to remove current prohibitions against Floor brokers' use of cellular or cordless phones to make calls to persons located off the trading floor).

[19] The data includes both Floor brokers' and RCMMs' usage of Exchange authorized and provided phones. Telephone conversation between Jeff Rosenstrock, Senior Special Counsel, NYSE, and Molly M. Kim, Attorney, Division of Market Regulation, Commission, on February 7, 2006.

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] For purposes only of waiving, the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

existing operation of its Pilot until July 31, 2006.

The Commission notes that proper surveillance is an essential component of any telephone access policy to an exchange trading floor. Surveillance procedures should help to ensure that Floor brokers and RCMMs use portable phones as authorized by NYSE Rule 36[26] and that orders are being handled in compliance with NYSE rules. The Commission expects the Exchange to actively review these procedures and address any potential concerns that have arisen during the Pilot. In this regard, the Commission notes that the Exchange should address whether telephone records are adequate for surveillance purposes.

The Commission also requests that the Exchange report any problems, surveillance, or enforcement matters associated with the Floor brokers' and RCMMs' use of an Exchange authorized and provided portable telephone on the Exchange Floor. As stated in the Original Order, the NYSE should also address whether additional surveillance would be needed because of the derivative nature of the ETFs. Furthermore, in any future additional filings on the Pilot, the Commission would expect that the NYSE submit information documenting the usage of the phones, any problems that have occurred, including, among other things, any regulatory actions or concerns, and any advantages or disadvantages that have resulted.[27]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NYSE–2006–03 and should be submitted on or before March 14, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Nancy M. Morris,

Secretary.

[FR Doc. E6–2367 Filed 2–17–06; 8:45 am]

BILLING CODE 8010–01–P

[26] *See* note 11 *supra* and accompanying text for other NYSE requirements that Floor brokers be properly qualified before doing public customer business.

[27] In the future, the Commission expects the information to distinguish between Floor brokers' and RCMMs' usage of the phones.

[28] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA. Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235. Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. Letter to Employer Requesting Wage Information—20 CFR 404.726—0960–0138. The information collected on Form SSA–L4201 is used by SSA to collect wage information from employers to establish and/or verify wage information for Supplemental Security Income (SSI) claimants and beneficiaries. Form SSA–L4201 is also used to determine eligibility and proper payment for SSI applicants/recipients. The respondents are employers of applicants and recipients of SSI payments.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 133,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 66,500 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at

410–965–0454, or by writing to the address listed above.

1. Workers' Compensation/Public Disability Questionnaire—20 CFR 404.408–0960–0247. Section 224 of the Social Security Act provides for the reduction of disability insurance benefits (DIB) when the combination of DIB and any workers' compensation (WC) and/or certain Federal, State or local public disability benefits (PDB) exceeds 80% of the worker's predisability earnings. Form SSA–546 is used to collect the data necessary to determine whether or not the worker's receipt of WC/PDB payments will cause a reduction of DIB. The respondents are applicants for the Title II DIB.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 25,000 hours.

2. Medicaid Use Report—20 CFR 416.268–0960–0267. The information required by this regulation is used by SSA to determine if an individual is entitled to special Title XVI Supplemental Security Income (SSI) payments and, consequently, to Medicaid benefits. The Respondents are SSI recipients whose payments were stopped based on earnings.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 60,000.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 3,000 hours.

6. Supplemental Security System (SSI) Claim Information Notice—20 CFR 416.210–0960–0324. Form SSA–L8050–U3 is used by SSA to ensure that all sources of potential income that can be used to provide for an SSI beneficiary's own support and maintenance are utilized. SSI is intended to supplement other income an individual has available. Respondents are businesses and applicants/recipients of SSI who may be eligible for benefits from public or private programs.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 7,500.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 1,250 hours.

7. Certification of Low Birth Weight for SSI Eligibility—20 CFR 416.931, 416.926a (m)(7) & (8) and 416.924–0960–NEW. Form SSA–3830 is designed to assist hospitals and claimants who file on behalf of low birth weight infants in providing local field offices (FOs) and Disability Determination Services (DDSs) with medical information for determining disability of low birth weight infants. FOs use the forms as protective filing statements, and the medical information for making presumptive disability findings, which allow expedited payment to eligible claimants. DDSs use the medical information to formally determine disability and to establish the most appropriate continuing disability review diaries. The respondents are hospitals that have information identifying low birth weight babies and medical conditions those babies may have. We estimate it will take 10 to 15 minutes to complete the form. Below, we use the higher number for our public burden computation.

Type of Request: New information collection.

Number of Respondents: 24,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 6,000 hours.

8. Reporting Changes That Affect Your Social Security Payment—20 CFR 404.301–305, .310–311, .330–.333, .335–.341, .350–.352, .370–.371, .401–.402, .408(a), .421–.425, .428–.430, .434–.437, .439–.441, .446–.447, .450–.455, .468—0960–0073. SSA uses the information collected on Form SSA–1425 to determine continuing entitlement to Title II Social Security benefits and to determine the proper benefit amount. The respondents are Social Security beneficiaries receiving SSA retirement, disability or survivor's auxiliary benefits who need to report an event that could affect payments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 70,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 5,833 hours.

9. National Employment Activity and Disability Survey—0960–0666.

Background: The Ticket to Work (TTW) program was established by the Ticket to Work and Work Incentives Improvement Act of 1999. The program will provide eligible Social Security Disability Insurance (SSDI) and SSI disability beneficiaries with a Ticket, which can be used to obtain vocational rehabilitation (VR) or employment services through participating providers, called Employment Networks (ENs). The goal of the TTW program is to assist participants in returning to work at a level above the Substantial Gainful Activity (SGA) level. The program is expected to increase beneficiary demand for employment-related services and activities. It is also expected to increase the number and diversity of providers in response to the less restrictive participation requirements and increased consumer demand for services.

The National Employment Activity and Disability Survey: The National Employment Activity and Disability Survey will collect data on the work-related activities of SSI and SSDI beneficiaries as the TTW program, and other initiatives designed to improve beneficiary employment outcomes, are implemented. The TTW Survey is specifically designed to be a significant resource for the formal evaluation of TTW, but SSA anticipates that the survey will provide useful information for a variety of evaluation and policy analysis purposes, especially related to current efforts that attempt to improve return to work. The survey questionnaire focuses on information about beneficiaries and their work-related activities that cannot be obtained from SSA's administrative records. The survey will provide information about: (1) Beneficiaries who assign their Tickets to ENs, and their experience in the program; (2) beneficiaries who do not assign their Tickets, and the reasons why they do not, including involuntary non-participants; (3) the employment outcomes of Ticket users and other beneficiaries; and (4) the use of employment services by Ticket users and other beneficiaries. The respondents will be selected from SSI and SSDI disabled beneficiaries who meet the Ticket to Work program eligibility requirements.

Type of Request: Extension of an OMB-approved information collection.

BENEFICIARY SURVEY DATA COLLECTION

Survey activity	Respondents	Frequency of response	Average time (minutes)	Total burden hours
National Beneficiary Sample	2,400		45	1,800
TTW Participant Sample (Baseline)	2,000		55	1,833
TTW Participant Sample (Follow-up)	1,772		45	1,329
Total for Survey Data	6,172			4,962
Service Provider Qualitative Collection				
Site Visits	10		6	60
Focus Groups	12		40	480
Phone Interviews	130		2	260
Total for Qualitative Data	152			800
Total Burden Hours for all Collection Activities				5,762

Dated: February 14, 2006.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E6–2397 Filed 2–17–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5314]

Culturally Significant Objects Imported for Exhibition Determinations: "Tempo! Tempo!: The Bauhaus Photomontages of Marianne Brandt"

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 "Tempo! Tempo!: The Bauhaus Photomontages of Marianne Brandt," 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 Busch-Reising Museum at Harvard University, Cambridge, MA, from on or about March 11, 2006, until on or about May 21, 2006, and at the International Canter for Photography, New York, NY, from on or about June 9, 2006, until on or about August 27, 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: February 10, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–2412 Filed 2–17–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5317]

State-14 Foreign Service Institute Records

SUMMARY: Notice is hereby given that the Department of State proposes to alter an existing system of records, STATE–14, pursuant to the Provisions of the Privacy Act of 1974, as amended (5 U.S.C.(r)), and the Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on February 9, 2006.

It is proposed that the current system will retain the name "Foreign Service Institute Records." It is also proposed that due to the expanded scope of the current system, the altered system description will include revisions and/or additions to the following sections: System Location; Categories of Individuals Covered by the System; Authority for Maintenance of the System; and Routine Uses of Records Maintained in the System, Including Categories of Users and Purposes of such Uses. Changes to the existing system description are proposed in order to reflect more accurately the Foreign Service Institute's record-keeping system, the Authority establishing its existence and responsibilities, and the uses and users of the system.

Any persons interested in commenting on the altered system of records may do so by submitting comments in writing to Margaret P. Grafeld, Director; Office of Information Programs and Services; A/RPS/IPS; Department of State, SA–2; Washington, DC 20522–8100. This system of records will be effective 40 days from the date of publication, unless we receive comments that will result in a contrary determination.

The altered system description, "Foreign Service Institute Records," will read as set forth below.

Dated: February 8, 2006.

Frank Coulter,

Acting Assistant Secretary for the Bureau of Administration, Department of State.

STATE–14

SYSTEM NAME:

Foreign Service Institute Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The George P. Shultz National Foreign Affairs Training Center, 4000 Arlington Boulevard, Arlington, VA; Warrenton Training Center, Warrenton, VA; Tunis Field School, American Embassy Tunis, Tunisia; Yokohama Field School,

American Embassy Tokyo, Japan; and Seoul Field School, American Embassy Seoul, Korea.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who requested and/or received training from the Foreign Service Institute, took a language proficiency test given by the Foreign Service Institute, or received external training (including at colleges and universities) sponsored or approved by the Institute including: (1) Employees (and eligible family members thereof) of the Department of State; (2) employees (and eligible family members thereof) of other agencies of the Federal executive, legislative and judicial branches; (3) members (and eligible family members thereof) of the U.S. military; (4) citizens or nationals of the United States, or employees of any corporation, company, partnership, association or other legal entity that is 50 percent or more beneficially owned by citizens or nationals of the United States, that is engaged in business abroad, as well as any family member of such individuals; (5) citizens or nationals of the United States, or employees of any corporation, company, partnership, association or other legal entity that is 50 percent or more beneficially owned by citizens or nationals of the United States, under contract to provide services to the United States Government or to any employee thereof that is performing such services; and (6) applicants for employment at the Department of State.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 (Management of Executive Agencies); 22 U.S.C. 4021–4028 (Chapter 7 of the Foreign Service Act of 1980).

CATEGORIES OF RECORDS IN THE SYSTEM:

Training request forms and supporting documentation; progress reports; evaluation reports; course grades and/or test scores; general correspondence; biographic information; educational and employment history; security clearance data; travel vouchers; fiscal, *i.e.*, payment or billing, information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in this system is used to document assignments to training and students' progress, and for operation of the training program. The principal users of this information outside the Department are: (1) Other agencies of the legislative, executive and judicial branches that send students to the Institute for training; (2) non-Federal organizations that send students to the Institute for training; (3) universities to whom the Institute sends students for training; and (4) other training vendors to whom the Institute sends students for training." Also see "Routine Uses" paragraph of the Prefatory Statement published in the **Federal Register**.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media; hard copy.

RETRIEVABILITY:

Individual name, Social Security Number.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough personnel security background investigation. Access to the Department of State building and the annexes is controlled by security guards, and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured filing cabinets or in restricted areas, access to which is limited to authorized personnel. Access to electronic files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be destroyed or retired in accordance with published record disposition schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director, Office of Information Programs and Services, A/RPS/IPS, SA–2, Department of State, Washington, DC 20522–8100.

SYSTEM MANAGER AND ADDRESS:

Executive Director for Management, Foreign Service Institute, George P. Shultz National Foreign Affairs Training Center, Room F–2205, Washington, DC 20522–4201.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Foreign Service Institute might have records pertaining to them should write to the Director, Office of Information Programs and Services, A/RPS/IPS, SA–2, Department of State, Washington, DC 20522–8100. The individual must specify that he or she wishes the records of the Foreign Service Institute to be checked. At a minimum, the individual should include: name; date and place of birth; Social Security Number; current mailing address and zip code; signature; a brief description of the circumstances that caused the creation of the record (including the city and/or country and the approximate dates) which gives the individual cause to believe that the Foreign Service Institute has records pertaining to him or her.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or to amend records pertaining to themselves should write to the Director, Office of Information Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information that is primarily obtained from the individual who is the subject of the records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(6) records in this system of records may be exempted from 5 U.S.C. 552a(c)(3).(d).(e)(l).(e)(4)(G).(H). and (I) and (f).

[FR Doc. 06–1624 Filed 2–17–06; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 5318]

State–69 WebMove Records

SUMMARY: Notice is hereby given that the Department of State proposes to create a new system of records, STATE–69, pursuant to the Provisions of the Privacy Act of 1974 as amended (5 U.S.C.(r)), and the Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on February 9, 2006.

It is proposed that the new system will be named "WebMove Records." This system description is proposed in order to reflect more accurately the Office of Logistics Management Transportation Management Office and the General Services Officers at Posts' record-keeping system, activities and operations. Any persons interested in commenting on this new system of records may do so by submitting comments in writing to Margaret P. Grafeld, Director; Office of Information Programs and Services; A/RPS/IPS;

Department of State, SA–2; Washington, DC 20522–6001. This system of records will be effective 40 days from the date of publication, unless we receive comments that will result in a contrary determination.

This new system description, "WebMove Records, State–69" will read as set forth below.

Dated: February 8, 2006.

Frank Coulter,

Acting Assistant Secretary for the Bureau of Administration, Department of State.

STATE–69

SYSTEM NAME:

WebMove Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of State; 2201 C Street, NW., Washington, DC 20520.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of the Department of State who are undergoing a job transfer, retirement or supplemental shipment that involves a Department of State funded relocation.

CATEGORIES OF RECORDS IN THE SYSTEM:

POV transfer, Home Service Transfer Allowance, Foreign Transfer Allowance, Travel Authorization forms. Shipment Request—name, social security number, travel authorization number, billing, shipment types and expenses, vendor name and travel dates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 4081, Travel and Related Expenses; 22 U.S.C. 5724a, Relocation Expenses of Employees Transferred or Reemployed; 5 U.S.C. 301, 302, Management of the Department of State; 22 U.S.C. 2581, General Authority; 22 U.S.C. 2651a, Organization of the Department of State; 22 U.S.C. 2677, Availability of Funds for the Department of State; 22 U.S.C. 3921, Management of the Foreign Service; 22 U.S.C. 3927, Responsibility of Chief of Mission; Executive Order 9397 (Numbering System for Federal Accounts Relating to Individual Persons); Executive Order 9830 (as amended) (Amending the Civil Service Rules and Providing for Federal Personnel Administration); and Executive Order 12107 (as amended) (Relating to the Civil Service Commission and Labor-Management in the Federal Service).

PURPOSE(S):

The information contained in this system of records is collected and maintained by the Office of Logistics Management Transportation Management Office and General Service Officers at Posts in the administration of their responsibility for maintaining the State Department's centralized relocation and transportation management office. The information contained in this system of records assists in facilitating Department of State employee move requests. This information is maintained in a database and is accessible only by the employee and other appropriate personnel. Home and designated contact information not publicly accessible is solicited for travel-related matters only.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Records in the system of records are used for relocation purposes. The principal users of this system of records are Department personnel and their agents involved in processing a move. This information may also be released on a need-to-know basis to other government agencies when the information is necessary for services regarding a relocation. See also the "Routine Uses" paragraphs from the Department's Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media only.

RETRIEVABILITY:

Individual name.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough background security investigation. Access to the Department and its annexes is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage. To ensure that your data is private and secure, we use a government computer system that employs industry standard encryption technology. All access to data is provided via secure features that require a log-in with a user ID and password.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with published records schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director; Office of Information Programs and Services; SA–2; Department of State; 515 22nd Street, NW., Washington, DC 20522–8100.

SYSTEM MANAGER AND ADDRESS:

Office Director, Program Management and Policy (A/LM/PMP); Department of State; 2201 C Street, NW., Washington, DC 20522.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Office of Logistics Management might have records pertaining to themselves should write to the Director; Office of Information Programs and Services; SA–2; Department of State; 515 22nd Street, NW., Washington, DC 20522–8100. The individual must specify that he/she wishes the WebMove system to be checked. At a minimum, the individual should include: Name; date and place of birth; current mailing address and zip code; signature; and preferably his/her social security number; if appropriate add: A brief description of the circumstances, including the city and/or country and approximate dates, which gives the individual cause to believe that the Office of Logistics Management has records pertaining to him or her that is listed in the WebMove system.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to them should write to the Director; Office of Information Programs and Services; SA–2; Department of State; 515 22nd Street, NW., Washington, DC 20522–8100.

RECORD SOURCE CATEGORIES:

These records contain information obtained primarily from the individual who is the subject of these records and his/her spouse and/or dependent(s).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 06–1625 Filed 2–17–06; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 5316]

State-70 Integrated Logistics Management System Records

SUMMARY: Notice is hereby given that the Department of State proposes to create a new system of records, STATE–70, pursuant to the Provisions of the Privacy Act of 1974, as amended (5 U.S.C.(r)), and the Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on February 9, 2006.

It is proposed that the new system will be named "Integrated Logistics Management System Records." This system description is proposed in order to reflect more accurately the Office of Logistics Transportation Management, Office and the General Services Offices at Posts' record-keeping system, activities and operations.

Any persons interested in commenting on this new system of records may do so by submitting comments in writing to Margaret P. Grafeld, Director; Office of Information Programs and Services; A/RPS/IPS; Department of State, SA–2; Washington, DC 20522–8100. This system of records will be effective 40 days from the date of publication, unless we receive comments that will result in a contrary determination.

This new system description, "Integrated Logistics Management System Records, State-70" will read as set forth below.

Dated: February 8, 2006.

Frank Coulter,

Acting Assistant Secretary for the Bureau of Administration, Department of State.

STATE–70

SYSTEM NAME:

Integrated Logistics Management System Records (ILMS).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of State, 2201 C Street, NW., Washington, DC 20520; Overseas at U.S. Embassies, U.S. Consulates General, and U.S. Consulates; and U.S. Missions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Civil Service (CS) and Foreign Service (FS) employees of the Department of State (DOS) including members of the Senior Executive Service, Presidential appointees, employees under full-time, part-time, intermittent, temporary, and limited appointments; anyone serving in an advisory capacity (compensated and uncompensated); other agency employees on detail to the Department or stationed at U.S. Missions abroad who use DOS transportation services; former Foreign Service Reserve Officers; Presidential Management Interns, Foreign Affairs Fellowship Program Fellows, student interns and other student summer hires, Stay-in-School student employees, and Cooperative Education Program participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel data and Travel Authorizations (TAs).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 4081, Travel and Related Expenses; 22 U.S.C. 5724, Travel and Transportation Expenses of Employees Transferred; 5 U.S.C. 301, 302, Management of the Department of State; 22 U.S.C. 2581, General Authority; 22 U.S.C. 2651a, Organization of the Department of State; 22 U.S.C. 2677, Availability of Funds for the Department of State; 22 U.S.C. 3921, Management of the Foreign Service; 22 U.S.C. 3927, Responsibility of Chief of Mission; Executive Order 9397 (Numbering System for Federal Accounts Relating to Individual Persons); Executive Order 9830 (as amended) (Amending the Civil Service Rules and Providing for Federal Personnel Administration); and Executive Order 12107 (as amended) (Relating to the Civil Service Commission and Labor-Management in the Federal Service).

PURPOSE(S):

The information contained in this system of records is collected and maintained by the Office of Logistics Management, Office of Program Management and Policy (A/LM/PMP) in the administration of its responsibility for providing worldwide logistics services, professional development, and integrated support. The information collected and maintained in this system of records is necessary to ensure fiscal accountability in transporting the effects of Department of State and other Embassy employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Records in the system of records (ILMS) are used by the Department of State to ensure fiscal accountability in transporting the effects of Department of State and other Embassy employees. Users at the Department of State fall into three categories: Transportation Counselors, Shipping Contractors, and System Administrators. Transportation Counselors are Department and other USG personnel who assist with "Employee Logistics—Transportation" activities (see 14 FAM 500). Typically, Transportation Counselors assist Department of State and other Embassy employees with making shipping arrangements for unaccompanied baggage, household effects, and privately owned motor vehicles. Transportation Counselors in DOS Washington have full access to record fields related to transporting the effects of DOS and other Embassy employees. Transportation Counselors at DOS Dispatch Agencies have limited access to certain record fields. Transportation Counselors at other U.S. Government agencies are provided with limited information from certain record fields as needed. Transportation Counselors at U.S. Missions abroad (i.e., DOS general services officers and locally engaged staff in the shipping section) have read-only access to the "status tracking" portion of ILMS. Shipping Contractors are DOS and other agency contractors (consolidated receiving points at the Dispatch Agencies and commercial moving companies under contract to the U.S. Government). Shipping Contractors are provided with limited information in certain record fields, such as delivery address and telephone number. System Administrators are Department personnel and contractors who operate, support, and maintain the system of records (ILMS). System Administrators will access records only for purposes of remedying problems as a result of the activity. See also the "Routine Uses" paragraphs from the Department's Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media.

RETRIEVABILITY:

By individual name or other personal identifiers.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough background security investigation. Access to the Department and its annexes is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured file cabinets or in restricted

areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and *ad hoc* monitoring of computer usage.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with published records schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director, Office of Information Programs and Services, SA–2, Department of State, 515 22nd Street, NW., Washington, DC 20522–8100.

SYSTEM MANAGER AND ADDRESS:

Office Director, Program Management and Policy (A/LM/PMP); Department of State; 2201 C Street, NW., Washington, DC 20522.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the A/LM might have records pertaining to themselves should write to the Director; Office of Information Programs and Services; SA–2; Department of State; 515 22nd Street, NW., Washington, DC 20522–8100. The individual must specify that he/she wishes the Integrated Logistics Management System (ILMS) to be checked. At a minimum, the individual should include: name; date and place of birth; current mailing address and zip code; signature; and preferably his/her social security number; if appropriate add: a brief description of the circumstances that caused the creation of the record.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to them should write to the Director; Office of Information Programs and Services; SA–2; Department of State; 515 22nd Street, NW.; Washington, DC 20522–8100.

RECORD SOURCE CATEGORIES:

These records contain information obtained primarily from the individual who is the subject of these records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 06–1626 Filed 2–17–06; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Availability of the 2005 Federal Radionavigation Plan

AGENCY: Office of the Assistant Secretary for Transportation Policy, DOT.

ACTION: Notice of Availability of the 2005 Federal Radionavigation Plan.

SUMMARY: The 2005 edition of the Federal Radionavigation Plan (FRP) has been published and is available for comment. All comments, concerns, and suggestions regarding the current policies and plans in the 2005 FRP will be considered in formulation of the 2007 FRP. The policies in the 2005 FRP focus on transition to GPS based services, recognizing the need to maintain backup navigation aids and provide redundant radionavigation service where required. The FRP is the official source of radionavigation policy and planning for the Federal Government, as directed by the National Defense Authorization Act for Fiscal Year 1998 (10 U.S.C. 2281(c)). It is prepared jointly by the U.S. Departments of Defense (DoD), U.S. Department of Transportation (DOT), and Homeland Security (DHS) with the assistance of other government agencies. This edition of the FRP updates and replaces the 2001 FRP and covers common-use radionavigation systems (i.e., systems used by both civil and military sectors). Systems used exclusively by the military are covered in the Chairman, Joint Chiefs of Staff (CJCS) Master Positioning, Navigation, and Timing Plan (MPNTP). The FRP includes the introduction, policies, operating plans, system selection considerations, and research and development sections. The companion document entitled Federal Radionavigation Systems (FRS) contains information on government roles and responsibilities, user requirements, and systems descriptions, and is published separately from the FRP. The FRS is periodically updated as necessary.

DATES: Comments must be received by July 31 for consideration in development of the 2007 FRP.

ADDRESSES: Comments should be forwarded to Chairman, DOT POS/NAV Working Group, U.S. Department of Transportation, Navigation and Spectrum Policy (P–50), Room 6423–F, 400 7th Street, SW., Washington, DC 20590. E-mail: *John.Augustine@dot.gov.*

FOR FURTHER INFORMATION CONTACT: John Augustine, U.S. Department of Transportation, Navigation and Spectrum Policy (P–50), 400 7th Street, SW., Washington, DC 20590, (202) 366–0353.

SUPPLEMENTARY INFORMATION: Copies of the 2005 FRP can be obtained at: *http://www.navcen.uscg.gov.*

Issued in Washington, DC on February 10, 2006.

Tyler D. Duvall,

Acting Assistant Secretary for Transportation Policy.

[FR Doc. E6–2413 Filed 2–17–06; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Conditions of Airport Property at the Colorado Springs Airport, Colorado Springs, 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 Colorado Springs Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR21).

DATES: Comments must be received on or before March 23, 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. Mark Earle, Aviation Director, Colorado Springs Municipal Airport, 7770 Drennan Road, Suite 50, Colorado Springs, Colorado, 80916.

FOR FURTHER INFORMATION CONTACT: Ms. Mindy Lee, 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 Colorado

Springs Airport under the provisions of the AIR 21.

On February 3, 2006, the FAA determined that the request to release property at the Colorado Springs Airport submitted by the city of Colorado Springs 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 March 31, 2006.

The following is a brief overview of the request:

The Colorado Springs Airport requests the release of 1,457.2 acres of airport property (Tract I—Parcel 10–B, Tract VII—Parcel 17, Tract IX–A—Parcel 19A–B), Tract X–A—Parcel 20A–B), Tract XII A—Parcel 21A, Tract XII–B—Parcel 21b.2–B) from aeronautical use to non-aeronautical use. The purpose of this release is to allow the Colorado Springs Municipal Airport to develop a business park that will allow the airport to diversify revenue. The lease of these parcels 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 Colorado Springs Municipal Airport, 7770 Drennan Road, Suite 50, Colorado Springs, CO 80916.

Issued in Denver, Colorado on February 7, 2006.

Craig Sparks,

Manager, Denver Airports District Office.

[FR Doc. 06–1570 Filed 2–17–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for Tuesday, March 14, 2006, starting at 9 a.m. Eastern Standard Time Arrange for oral presentations by March 10, 2006.

ADDRESSES: The Boeing Company, 1200 Wilson Boulevard, Room CR 234, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer, Office of Rulemaking, ARM–207, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–5174, FAX (202) 267–5075, or e-mail at *john.linsenmeyer@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held March 14, 2006 at The Boeing Company in Arlington, Virginia.

The agenda will include:

- Opening Remarks.
- FAA Report.
- Transport Canada Report.
- European Aviation Safety Agency Report.
- ARAC Executive Committee Report.
- Ice Protection Harmonization Working Group (HWG) Report.
- Airworthiness Assurance HWG Report.
- Avionics HWG Report.
- Summary of Recent Activity on Specific Risk (14 CFR 25.1309).
- Open discussion of topics as requested by TAE Issues Group members.
- Review of Action Items.

Attendance is open to the public, but will be limited to the availability of meeting room space. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than March 10, 2006. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

For persons participating domestically by telephone, the call-in number is (425) 717–7000; the Passcode is "84565#." To insure that sufficient telephone lines are available, please notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section of your intent to participate by telephone by March 10. Anyone calling from outside the Washington, DC metropolitan area will be responsible for paying long-distance charges.

The public must make arrangements by March 10 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the person listed in the **FOR FURTHER INFORMATION CONTACT** section or by providing copies at the meeting. Copies of the document to be presented to ARAC for decision by the FAA may be made available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

If you need assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on February 14, 2006.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. E6–2422 Filed 2–17–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, March 7, 2006.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel will be held Tuesday, March 7, 2006 from 9 a.m. Pacific time to 10:30 a.m. Pacific time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: February 13, 2006.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. E6–2369 Filed 2–17–06; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 71, No. 34
Tuesday, February 21, 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.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 145 and 147

RIN 3038–AC05

Alternative Market Risk and Credit Risk Capital Charges for Futures Commission Merchants and Specified Foreign Currency Forward and Inventory Capital Charges

Correction

In rule document 06–982 beginning on page 5587 in the issue of Thursday, February 2, 2006, make the following correction:

On page 5587, in the second column, in footnote 4, in the eighth and ninth lines, "*http://www.cftc.gov/foia/comment05/foi05__006_1.htm.*" should read "*http://www.cftc.gov/foia/comment05/foi05--006_1.htm.*"

[FR Doc. C6–982 Filed 2–17–06; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Tuesday,
February 21, 2006

Part II

Department of Agriculture

Forest Service

36 CFR Part 251

Land Uses; Special Uses; Recovery of Costs for Processing Special Use Applications and Monitoring Compliance With Special Use Authorizations; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AB36

Land Uses; Special Uses; Recovery of Costs for Processing Special Use Applications and Monitoring Compliance With Special Use Authorizations

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting final regulations for recovering costs associated with processing applications for special use authorizations to use and occupy National Forest System lands and monitoring compliance with these special use authorizations. This final rule provides the agency with the regulatory authority to implement provisions in several statutes that authorize the Forest Service to collect fees to recover administrative costs associated with managing special uses on National Forest System lands. The provisions of this rule apply to applications and authorizations for use of National Forest System lands, including situations in which the land use fee may be waived or exempted, such as facilities financed or eligible to be financed with a loan pursuant to the Rural Electrification Act of 1936, as set forth in Public Law 98–300, and applications and authorizations involving Federal, State, and local governmental entities. The provisions of this rule do not apply to applications and authorizations for noncommercial group uses; applications and authorizations for recreation special uses, identified in Forest Service Handbook 2709.11, Chapter 50, by use codes 111 through 165, requiring 50 hours or less to process or monitor; and other uses specifically exempted by law or regulation. The rates established in this rule are the same as those adopted by BLM in its final right-of-way rule published in the **Federal Register** (70 FR 20969, Apr. 22, 2005).

EFFECTIVE DATE: This rule is effective March 23, 2006.

FOR FURTHER INFORMATION CONTACT: Maryann Kurtinaitis, Lands Staff, (202) 205–1264, or Carolyn Holbrook, Recreation and Heritage Resources Staff, (202) 205–1399, USDA, Forest Service.

SUPPLEMENTARY INFORMATION:

Table of Contents

1. Background

Special Uses Program

Approximately 74,000 special use authorizations are in effect on National Forest System (NFS) lands, authorizing a variety of activities that range from individual private uses to large-scale commercial facilities and public services. Examples of authorized special uses include public and private road rights-of-way, apiaries, domestic water supply conveyance systems, telephone and electric service rights-of-way, oil and gas pipeline rights-of-way, communications facilities, hydroelectric power-generating facilities, ski areas, resorts, marinas, municipal sewage treatment plants, and public parks and playgrounds. The agency estimates that it receives approximately 6,000 applications for special use authorizations each year. Each application is subject to some level of environmental analysis. For many cases, the collection of data, consultations, and scoping associated with the analysis and decisionmaking process can be costly in terms of both time and resources.

Need for Cost Recovery

Requirements of the National Environmental Policy Act, the Wilderness Act of 1964, the Endangered Species Act, the National Historic Preservation Act of 1966, additional requirements of the Federal Land Policy and Management Act of 1976, Executive Order 11990 (Floodplains), and Executive Order 11998 (Wetlands) directly affect the manner in which special use proposals must be evaluated and how authorizations are conditioned and administered. Compliance with these statutory authorities and Executive orders often can require extensive analysis and documentation of the impacts of use and occupancy on a wide array of environmental, cultural, and historical resources. As a result, processing applications for authorizations for new uses and reauthorizing existing uses often can become time-consuming and expensive for the Forest Service, applicants, and holders of authorizations. These impacts were a major factor in the development of amendments to the agency's regulations at 36 CFR part 251, subpart B, promulgated November 30, 1998 (63 FR 65949), to streamline the manner in which proposals and applications for special uses are processed and authorizations are administered.

Despite these streamlining procedures, the agency is finding it increasingly difficult to provide timely reviews and evaluations of special use applications due to limited appropriations and staffing. The result is a growing backlog of applications for new uses and a growing number of expired authorizations for existing uses. The agency is increasingly unable to respond in a manner that meets the needs and expectations of special use applicants and authorization holders.

In the past 10 years, the Government Accountability Office (GAO) and the U.S. Department of Agriculture's Office of Inspector General have conducted more than 15 reviews or audits of various aspects of the Forest Service's special uses program. Two of the more recent audits, GAO Report #RCED–96–84 (April 1996) and GAO Report #RCED–97–16 (December 1996), recommended that the Forest Service (1) operate its special uses program in a more businesslike manner and (2) promulgate regulations to exercise statutory authorities to recover from applicants and holders the agency's costs to process special use applications and monitor compliance with special use authorizations.

In April 1997, the Forest Service completed a reengineering study of its special uses program. The study identified changes needed to manage the program in a more businesslike and customer service-oriented manner. The study also cited the need for regulations enabling the agency to exercise its cost recovery authorities. Recovery of processing and monitoring costs will provide additional funding for the agency to respond more promptly to special use applications, to take action on expired authorizations, to monitor compliance with authorizations more effectively, and to satisfy the needs and expectations of applicants and holders.

Use of Cost Recovery Fees

The Forest Service will use the processing and monitoring fees paid by applicants to fund the time and resources that the agency spends on the decisionmaking process in response to applications for the use and occupancy of NFS lands; to prepare and issue special use authorizations when the agency decides to authorize the proposed use and occupancy; and to monitor compliance with the terms and conditions of special use authorizations.

The final rule will require an applicant or holder to pay a processing fee and, where applicable, a monitoring fee. The final rule will establish categories to be assigned on a case-by-case basis to the processing of each special use application and to the monitoring of compliance with each authorization. These categories are based on the estimated number of hours that agency personnel will spend in conducting activities directly related to processing an application and monitoring compliance with an authorization.

This final Forest Service cost recovery rule is consistent with statutes that authorize the use and occupancy of NFS lands and the Independent Offices Appropriations Act of 1952 (IOAA), as amended (31 U.S.C. 9701). The IOAA provides that Federal agencies should recover the costs they incur in providing specific benefits and services to an identifiable recipient beyond those provided to the general public, with an exception for official government business. Subsequent statutes, such as section 504(g) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1764(g)) and section 28(l) of the Mineral Leasing Act of 1920 (MLA), as amended (30 U.S.C. 184(1)), provide more specific authority to the Forest Service to recover costs associated with processing an application and monitoring an authorization. The Forest Service's processing of a special use application provides a specific benefit and service to applicants for new authorizations and to those proposing modifications to existing authorizations. The service and benefit provided consist of the agency's review and consideration of requests to use and occupy NFS lands. Likewise, monitoring activities for which cost recovery fees are charged, as enumerated in § 251.58(d)(1) of the final rule, provide a specific benefit to holders in the form of actions necessary to ensure, in the case of minor category authorizations, compliance with the terms and conditions of the authorization during construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site and, in the case of major category authorizations, compliance with the terms and conditions of the authorization during all phases of its term. The final processing and monitoring fee schedules are set out in tables in section 3 of this final rule. A comparison of the provisions in the proposed and final rules appears in section 7 at the end of this final rule.

2. Public Comments on the Proposed Rule

Overview

On November 24, 1999, the Forest Service published a proposed rule in the **Federal Register** (64 FR 66342) and sought public comment on adopting regulations for the recovery of costs for processing special use applications and monitoring compliance with special use authorizations. The notice explained that the proposed rule would apply to applications and authorizations for use of NFS lands, including situations where the land use fee may be exempted or waived, and to applications and authorizations involving Federal, State, and local governmental entities. The notice further explained that the proposed rule would not apply to applications or authorizations for noncommercial group uses and other uses specifically exempted, or where processing and monitoring fees were being collected by another Federal agency on behalf of the Forest Service. The notice provided for a 60-day public comment period that ended on January 24, 2000.

During the 60-day comment period, the agency received 11 requests for an extension of the comment period. Respondents indicated that additional time was needed due to the complexity of the proposed regulations and the occurrence of the holiday season. Although the Forest Service did not agree that the proposed regulation was complex, the agency twice extended the comment period by notice in the **Federal Register** (64 FR 72971, Dec. 29, 1999, and 65 FR 10042, Feb. 25, 2000), so that the comment period finally ended on March 9, 2000.

To ensure the widest possible public review of the proposed regulations, the Forest Service conducted a series of eight public meetings between January 4 and March 6, 2000. Forest Service staff at the national and regional levels explained the proposed regulatory provisions and answered questions posed by the attendees. Approximately 250 persons attended those meetings. The agency's regional offices also were encouraged to notify all authorization holders of record of the proposed cost recovery regulations and the dates and times of the regional public meetings. In addition, a list of associations and organizations provided by the Bureau of Land Management (BLM), whose membership includes special use authorization holders, were notified of the proposed regulation by either letter or electronic mail. These addressees were directed to the agency's World Wide Web site where the proposed regulation, press release, and questions and answers pertaining to cost recovery were posted.

The Forest Service received 602 letters or electronic messages in response to the proposed rule. The 602 respondents represented 38 States and the District of Columbia. Each respondent was grouped in one of the following categories:

Respondent category	Number	Percent
Authorization holder ..	275	46
Commercial entity	29	5
Environmental organization	1	<1
Trade/special interest organization	59	10
Private individual	173	29
Forest Service employee	14	2
Federal agency	9	1
State or local governmental agency	34	6
Member of Congress	2	<1
Unknown	6	<1
Total	602	100

Two special use authorization holder groups accounted for the majority of the comments on the proposed rule. The 194 responses from outfitters and guides (those holders providing commercial recreation services on the National Forests) or entities writing in behalf or in support of outfitters and guides represented 32 percent of the total number of responses. Almost all of those 194 responses were in the form of a standardized letter. The 77 responses from holders of authorizations for recreation residences (privately owned homes occupying NFS lands), or entities writing in behalf or in support of recreation residence holders, represented 13 percent of the total number of responses.

Most respondents offered only general comments supporting or not supporting the proposed rule. Twenty-four respondents stated that they supported the proposed rule; 38 stated that they would support the proposed rule if certain modifications were made; 406 respondents stated, or their comments

implied, that they did not support the proposed rule or the general concept of cost recovery; and the remaining 134 respondents were either noncommittal concerning cost recovery or not responsive to the issues presented in the proposed regulation. Responses categorized as nonresponsive to the **Federal Register** notice included comments on other **Federal Register** notices published by the Forest Service, such as the roads policy and the roadless area conservation initiative, or comments expressing a dislike for the Forest Service or the Federal Government in general. Most of those supporting the proposed rule do not hold a special use authorization, while the majority of those opposing the rule were special use authorization holders.

Response to General Comments

In more than 300 comments, respondents offered recommendations in their support of the proposed rule or explained their opposition to the proposed rule. These comments did not address a specific section of the proposed rule, but rather dealt generally with the issue of cost recovery and the Forest Service's special uses program. These comments and the Department's responses have been grouped into 8 major categories.

Comment. Adoption of cost recovery regulations should prompt the agency to conduct the special uses program in a more businesslike, consistent, and equitable manner. Some respondents were concerned that implementation of cost recovery without limits on the amount of fees to be charged would lead to an uncontrolled bureaucracy. Many respondents urged that the agency adopt strong customer service standards to ensure that officials implementing the regulations treat applicants and holders fairly, promptly, and consistently. A timely response to an application was important to respondents, which suggested that the final rule should clarify how the agency would improve its responsiveness and business practices. Several respondents recommended that the agency specify in the final rule how much time the agency would take to process applications.

Response. The Department agrees that improvements in management of the special uses program are needed, and the Forest Service is aggressively working to achieve that goal. The reengineering study of the special uses program conducted by the agency from 1994 through 1997, which is described in the preamble (**SUPPLEMENTARY INFORMATION**) to the proposed rule and referenced in this section of the final rule, provided the impetus for improving the agency's management of its special uses program. One outcome of the study was the adoption of the special uses streamlining regulation on November 30, 1998 (63 FR 65949). That regulation has helped reduce costs to applicants and holders and allows the agency to provide more customer-oriented service. A second product from the study involved the addition of two new special use authorization categorical exclusion categories (69 FR 40591, Jul. 6, 2004) to its procedures for implementing the National Environmental Policy Act (NEPA). These new categorical exclusion categories are intended to simplify documentation and analysis where experience has shown there are no significant environmental effects associated with applications that involve only an administrative change to an existing authorization, thus reducing the time and funding needed to process these types of special use applications. These final cost recovery regulations represent one more step in the agency's continuing effort to streamline its processes and be more responsive to its special uses customers.

Further, the Department is incorporating customer service standards in § 251.58(c)(7) of the final rule that will apply to all applications processed under these cost recovery regulations. Under these customer service standards, the Forest Service will endeavor to make a decision on an application that falls into minor processing category 1, 2, 3, or 4, and that is subject to a categorical exclusion pursuant to NEPA, within 60 calendar days from the date of receipt of the processing fee. If the application cannot be processed within the 60-day period, then prior to the 30th calendar day of the 60-day period, the authorized officer will notify the applicant in writing of the reason why the application cannot be processed within the 60-day period and will provide the applicant with a projected date when the agency plans to complete processing the application. For all other applications, including all applications that require an environmental assessment or an environmental impact statement, the authorized officer will, within 60 calendar days of acceptance of the application, notify the applicant in writing of the anticipated steps and timeframes that will be needed to process the application. The Forest Service will endeavor to process applications that are subject to a waiver of or exempt from cost recovery fees in the same manner as applications subject to cost recovery fees. However, the Forest Service cannot commit to the customer service standards for these applications since the resources necessary to process them will be subject to the availability of appropriated funding.

Comment. The agency must be accountable for the cost recovery funds it receives. Many respondents said that they were skeptical that the Forest Service would be accountable for funds received from cost recovery. Some respondents supported the cost recovery concept with the expectation that the funds collected would result in an increased level of service and equal access by all submitting applications. Others stated that the fees collected must be commensurate with the agency's cost of processing an application or monitoring an authorization.

Response. The Department shares these respondents' concerns. All cost recovery funds will remain at the local agency offices that collect them and will be used specifically for processing applications or monitoring authorizations. The agency will develop performance metrics to measure costs and timeframes for processing applications at the unit level against specified performance standards and report these to Congress as required by Section 331 of the Interior and Related Agencies Appropriations Act of November 29, 1999 (Pub. L. 106–113). The agency will also provide local offices with guidance on fiscal accountability and auditing processes specific to cost recovery. The agency will implement direction and train agency personnel on fiscal and accounting procedures for determining, collecting, and spending cost recovery funds. In addition, applicants and holders will be given the opportunity to dispute assessments of processing and monitoring fees. The final rule will provide applicants and holders with the opportunity to dispute a cost recovery fee, on a case-by-case basis, by submitting a written request to change the fee category or estimated costs to the immediate supervisor of the authorized officer who determined the fee category or estimated costs.

To those respondents who doubted that cost recovery would improve the Forest Service's responsiveness to special use applicants, the Department reiterates its previously stated customer service standards. Under these standards, authorized officers will be directed to communicate with applicants within a specified time frame about the status of processing their applications and to estimate when a

decision will be made regarding their applications.

Comment. Holders already pay a land use fee that should include the costs of application processing and permit monitoring. Many respondents stated that the annual land use fee they pay covers the agency's cost to process their applications and monitor their authorizations. Some respondents believed that cost recovery fees constitute a tax on applicants and holders and suggested that the agency recover its costs through improved efficiency. Recreation residence authorization holders stated that they were being unfairly singled out in the proposed regulation because they must pay a higher annual land use fee due to recent appraisals of the market value of their use of Federal lands, and under the proposed rule also would be expected to pay cost recovery fees. Holders of outfitting and guiding permits noted that they already pay 3 percent of their gross revenues to the agency to operate a business on NFS lands, and that this payment should be adequate to cover the cost to process their applications and monitor their authorizations.

Response. The statutes that authorize cost recovery and Office of Management and Budget (OMB) Circular No. A–25, which implements the IOAA, clearly distinguish between land use fees and administrative costs. Land use fees are charged to the holder of a special use authorization based upon the market value of the holder's use and occupancy of Federal lands. Land use fees do not include the agency's administrative costs to process applications or monitor authorizations. Section 251.58(a) of the final rule specifically states that cost recovery fees are separate from any land use fees charged for the use and occupancy of NFS lands. Additionally, almost all the land use fees the Forest Service collects cannot be retained and expended by the agency and therefore are not available for processing or monitoring special use authorizations.

In most cases, the effect of the cost recovery regulations on recreation residence permit holders will be minimal and considerably less than the effects on applicants for and holders of authorizations for most of the other special uses covered by the final rule. The final rule exempts recreation special use applications or authorizations requiring 50 hours or less to process or monitor. Recreation residences are defined as a recreation special use in the agency's directive system. Recreation residence special use permits are typically issued for a 20-year term. Upon expiration of a recreation residence permit, a new permit is, in all but a few cases, issued to the existing holder with no changes in the current use and occupancy. Thus, in almost every case, an application for a new recreation residence permit will require 50 hours or less to process and will, therefore, be exempt from a processing fee. In addition, under the final rule, a recreation residence permit holder will be assessed a monitoring fee only if monitoring compliance with the holder's authorization requires more than 50 hours.

Comment. Applicants and holders already pay taxes that should cover the agency's cost to process applications and monitor compliance with authorizations. These respondents believed that their Federal taxes, paid into the U.S. Treasury and Congressionally appropriated for Federal programs, should be sufficient for the Forest Service to administer its special uses program. Respondents stated they would be taxed twice if required to pay cost recovery fees. Some respondents believed that cost recovery fees should be levied on commercial or profit-making entities, but that nonprofit entities should not have to pay because they are otherwise relieved of taxation.

Response. The Department disagrees with the respondents. The language in applicable statutes and OMB Circular No. A–25 is clear: identifiable recipients who receive specific benefits or services from a Federal agency beyond those received by the public generally may be charged for those benefits or services. The Department believes that the promulgation of this final rule is fully consistent with applicable law and that no revisions to the rule or other actions are needed to address these concerns. Like other entities, nonprofit entities may qualify for a waiver of cost recovery fees, as described in the section of the preamble pertaining to § 251.58(f) of the final rule.

Comment. The value of cost recovery is limited if the agency is not allowed to keep the funds and use them locally to administer the special uses program. Respondents believed that cost recovery fees would not improve the agency's performance in processing applications or monitoring authorizations if cost recovery fees were not available to the agency or retained at the administrative unit where they were generated. Several respondents said that there should be strict limits on the amount of overhead included in determining cost recovery rates.

Response. The Department agrees with the respondents on these issues. The purpose of the cost recovery regulations is undermined if cost recovery fees are deposited into the U.S. Treasury and cannot be used to process applications more promptly and to monitor authorizations more effectively. The preamble to the proposed rule stated that the Forest Service did not have the authority to retain and spend cost recovery fees collected by the agency. Since the publication of the proposed rule, the agency has obtained statutory authority to retain and spend cost recovery fees it collects pursuant to this rule to cover costs incurred by the agency for processing special use applications and monitoring compliance with special use authorizations. This authority is contained in the Interior and Related Agencies Appropriations Act passed on November 29, 1999 (Pub. L. 106–113), which provides for Forest Service appropriations. Section 331 of the act authorized the Secretary to develop and implement a pilot program for the purpose of enhancing Forest Service administration of rights-of-way and other land uses through September 30, 2004. Section 345 of the Consolidated Appropriations Act for fiscal year 2005 (Pub. L. 108–447, Division E) extended this authority through September 30, 2005. Section 425 of the Interior and Related Agencies Appropriations Act for fiscal year 2006 (Pub. L. 109–54) extended this authority through September 30, 2006. With this pilot authority and upon adoption of this final rule, the agency will have the necessary tools to assess, collect, and spend cost recovery fees at the administrative unit where the special use processing and monitoring work is performed.

The Department agrees with those respondents who expressed a concern about excessive overhead costs associated with cost recovery fees. For minor processing and monitoring categories 1 through 4 in the final rule, overhead costs are included in the flat fee rates established for each category. The only determining factor for establishing the appropriate minor fee category will be the estimated number of agency personnel hours needed to process an application or monitor an authorization. For major category 5 and category 6 processing and monitoring cases, the overhead rate will be established using the current nationwide average overhead rate for the Forest Service. For calendar year 2005, this rate is 17.8 percent. It is the goal of the Forest Service to reduce the overhead rate to approximately 10 percent by 2008. The overhead rate and yearly updates to it will be included in the agency's directive system.

Comment. Adoption of cost recovery regulations will not resolve the delays in processing applications or improve

agency performance; the agency must streamline the application process and reduce the amount of environmental documentation required before reaching a decision on whether to approve an application. This was a significant concern for respondents and generated more comments than any other issue. Respondents believed that the application process was too burdensome, particularly the requirements that stem from NEPA, and stated that the agency should not require applicants to fund this burdensome process. Some respondents believed that cost recovery regulations could be used by the Forest Service, special interest groups, or individuals to prevent or dissuade special use permitting activity on NFS lands. Respondents also referred to "scope creep," a term they used to describe use of processing fees to conduct environmental analysis and documentation beyond that necessary to reach a decision on the application being processed. These respondents urged that the regulations place limits on the scope and cost of environmental studies.

Response. The Department recognizes these respondents' concerns. The Department emphasizes the significance of the amendments made to the special use regulations in November 1998 to 36 CFR part 251, subpart B, and firmly believes that those streamlining regulations should allay most of the respondents' concerns about delays and excessive costs in processing applications. The Department points out that the Government-wide requirements for environmental analysis and documentation for activities that impact Federal lands are well established and must be strictly observed. The agency has implemented those requirements through procedures issued in its directive system. The agency acknowledges that its NEPA procedures regarding special use application processing may not provide sufficient flexibility to expedite processing and prevent excessive analysis. Therefore, the agency revised its environmental analysis requirements by adding two new categorical exclusion categories for certain special use authorization actions to its environmental policy and procedure handbook (FSH 1909.15) on July 6, 2004 (69 FR 40591). This revision streamlines NEPA compliance in the special use application process within the context of statutory and regulatory requirements. Further, the final cost recovery regulations include guidance at 36 CFR 251.58(c) on processing requirements. Additional direction in the agency's directive system, employee training during implementation of the final rule, and internal agency oversight will specifically focus on this concern to ensure consistency in assessing a processing fee that is based only on costs necessary for processing an application.

Comment. Adoption of the cost recovery regulations would violate other Federal laws and would conflict with the Forest Service's own regulations at 36 CFR 251.54(g)(2). Respondents stated that the agency lacks the authority to promulgate cost recovery regulations and in so doing would violate one or more Federal laws. For example, a national trade association stated that the agency violated the Administrative Procedure Act (APA) in not giving notice that it would consider public comments submitted in response to BLM's proposed amendments to its cost recovery regulations.

Another respondent stated the proposed rule would violate the Civil Rights Act of 1964 because it would impose fees on low-income Hispanic families who seek authorizations to gather on NFS lands. Other respondents stated that the regulation would violate the IOAA because costs and activities that benefit a broad segment of the public, such as environmental protection, cannot be passed on to individual applicants and holders. Respondents also cited the IOAA in claiming that water storage facilities on NFS lands are specifically exempted from cost recovery fees.

Several respondents stated that the Forest Service, not the applicant, is responsible for costs associated with NEPA compliance. These respondents supported this position by citing 36 CFR 251.54(g)(2), which states that "the authorized officer shall evaluate the proposed use for the requested site, including effects on the environment."

Response. The IOAA authorizes all agencies of the Federal Government to recover costs associated with providing specific benefits and services to an identifiable recipient. This authority applies to costs incurred by the Forest Service in processing applications for special use authorizations, including costs incurred in completing analyses required by NEPA and the Endangered Species Act. These studies are conducted to meet legal requirements in processing applications and monitoring authorizations, which are submitted on behalf of individuals or entities, not the public. Therefore, the Department disagrees with respondents who stated that the proposed cost recovery rule violates the IOAA. It is appropriate to require applicants for special use authorizations to provide information necessary to process their applications. While the Forest Service must comply with NEPA and other statutes in processing special use applications, the costs associated with complying with those statutory requirements in that context are incurred for the benefit of the applicants.

The IOAA authorizes Federal agencies to recover all types of costs associated with providing goods and services that benefit an identifiable recipient. The IOAA does not limit cost recovery to certain types of goods and services and therefore does not preclude recovery of processing and monitoring costs associated with special use authorizations for water storage facilities. Moreover, the cost recovery provisions in FLPMA also apply to processing and monitoring costs associated with special use authorizations for water storage facilities. FLPMA's cost recovery provisions apply to rights-of-way, which, as defined in FLPMA, include authorizations for water uses.

BLM and the Forest Service published separate proposed cost recovery rules in the **Federal Register** for public notice and comment (64 FR 32106, Jun. 15, 1999 and 64 FR 66342, Nov. 24, 1999, respectively). BLM's proposed rule addressed cost recovery procedures specific to applications and authorizations for rights-of-way authorized by FLPMA and the MLA. Nevertheless, because of the significant overlap in the subject matter of the agencies' proposed rules, each agency notified the public that the Forest Service would consider comments on BLM's proposed rule, which was published first. Therefore, both BLM and the Forest Service complied with the rulemaking requirements in the APA.

Subsequently, BLM published another proposed rule in the **Federal Register** (65 FR 31234, May 16, 2000) for public notice and comment that proposed changes to BLM's cost recovery regulations for special recreation permits. To maximize consistency between the agencies, the Forest Service also considered comments received by BLM regarding cost recovery for special recreation permits. On October 1, 2002, BLM published in the **Federal Register** (67 FR 61732) the final rule amending its cost recovery regulations for special recreation permits. In that rule, BLM changed its threshold for exempting special recreation permit applicants and holders from processing and monitoring fees, from cases where BLM's costs to process an application or monitor an

authorization do not exceed $5,000 to cases where an application or authorization requires more than 50 hours to process or monitor. Applicants for and holders of a BLM special recreation permit are now assessed cost recovery fees only when BLM requires more than 50 hours to process an application or monitor a permit. This final rule establishes the same threshold for assessing a processing or monitoring fee for all Forest Service recreation special uses. A further discussion of consistency between the Forest Service and BLM cost recovery regulations is found in the section of the final rule entitled "Response to Comments on the Supplementary Information Section in the Preamble to the Proposed Rule."

The Department disagrees with the respondent who stated that the cost recovery regulation violates the Civil Rights Act of 1964. Families gathering on NFS lands will not have to pay a processing or monitoring fee under the final rule. A family gathering does not require a special use permit unless it involves 75 or more people (36 CFR 251.50(c)(3) and 251.51). Moreover, such a family gathering would constitute a noncommercial group use, and the final rule exempts noncommercial group uses from cost recovery fees. In addition, any cost recovery fees applicable to other special uses under the final rule will be assessed in a fair and nondiscriminatory manner.

Comment. Adoption of cost recovery regulations will adversely impact small businesses operating on the National Forests and/or will impact the economies of local communities. These respondents, mostly those providing recreation services to the public, believed that the regulations would increase the cost of doing business on NFS lands and would force current and future holders of authorizations off those lands. Other respondents felt the potential loss of business through higher costs would ultimately impact those local communities where the businesses are headquartered. Some respondents suggested that the agency could prevent such an eventuality by asking Congress for the necessary funds to process special use applications and monitor special use authorizations.

Response. The Department recognizes these respondents' concerns but notes that implementation of these regulations, coupled with the recently adopted streamlining regulations, will allow the agency to become more efficient and cost-effective in administering its special uses program. Applicants and holders will directly benefit from these efficiencies.

The final rule exempts individuals and entities, including small businesses, from cost recovery fees for recreation special use applications and authorizations requiring 50 hours or less to process or monitor. The final rule also exempts from processing or monitoring fees those applications or authorizations that take one hour or less to process or monitor. In addition, the basis for assessing a monitoring fee has been limited in the final rule.

For nonrecreation special use applications and authorizations requiring 50 hours or less to process or monitor, the cost recovery fees, which will be determined from the applicable rate in a schedule, will be modest and should not adversely impact small businesses, other entities, or individuals who wish to use Federal lands for personal or commercial gain.

For example, an application that is subject to a categorical exclusion pursuant to FSH 1909.15, section 31, most likely will take 50 hours or less to process. In the absence of extraordinary circumstances, i.e., a significant environmental effect on certain sensitive resource conditions, FSH 1909.15, section 31, categorically exempts from documentation in an environmental assessment or environmental impact statement (1) approval, modification, or continuation of minor, short-term (1-year or less) special uses of NFS lands; (2) approval, modification, or continuation of minor special uses of NFS lands that require less than 5 contiguous acres of land; and (3) issuance, amendment, or replacement of a special use authorization that involves only administrative changes (such as a change in ownership of the authorized facilities or a change in control of the holder) and does not involve any changes in the authorized facilities, an increase in the scope or intensity of the authorized activities, or an extension of the term of the authorization, and the applicant is in full compliance with the terms and conditions of the authorization.

For processing or monitoring fees for more complex applications or authorizations, the authorized officer will estimate the agency's full actual costs. The Forest Service has prepared a cost-benefit analysis of the final rule, which concludes that the final rule could have an economic impact on small businesses if their application or authorization requires a substantial amount of time and expense to process or monitor. These entities could be economically impacted, for example, when they apply for agency approval to expand or change their authorized use, or when an expired authorization prompts them to apply for a new authorization to continue their use and occupancy, and the application requires a substantial amount of time and expense to process.

Because for major category processing and monitoring fees, the authorized officer will estimate the agency's full actual costs, it is difficult to quantify the impacts of those fees programmatically. However, the agency will endeavor to minimize these costs. In addition, the final rule provides all applicants and authorization holders with the opportunity to discuss with the authorized officer determinations that are made to establish a cost recovery fee category (for minor processing and monitoring cases) or estimated costs (for major category processing and monitoring cases). The final rule also provides applicants and authorization holders the opportunity to request that the authorized officer's immediate supervisor review an authorized officer's determination of a fee category or estimated costs. Based on the foregoing, the Department believes that cost recovery fees adopted by this final rule will not broadly impact or pose an economic barrier to local economies.

It is not reasonable to assume that Congress will support additional funding for the agency's special uses program as an alternative to cost recovery. In recent years, Federal agencies' appropriations have remained relatively constant or have decreased. Congress has, however, provided alternative authorities to fund government programs that are equitable and fiscally and administratively sound. The Department firmly believes that the cost recovery provisions contained in this final rule exemplify this approach. Respondents raised a similar issue regarding regulatory impact that is discussed in the following section concerning comments on the preamble to the proposed rule.

Response to Comments on the Supplementary Information Section in the Preamble to the Proposed Rule

Many respondents commented on the supplementary information section in the preamble to the proposed rule, which outlined the agency's expected procedures for implementing cost recovery and explained the provisions of the proposed rule. The preamble also provided readers with a table showing the Forest Service's and BLM's proposed processing and monitoring fee rates.

Comment. The information in the preamble is vague and open-ended. Respondents stated that the descriptions

for the specific sections of the proposed rule were insufficient. A few were concerned that certain types of special uses were not addressed, leaving the respondents uncertain as to whether they would be affected by the proposed rule. Others were uncertain whether cost recovery would apply to existing applications and authorizations on file with the agency. Some respondents cited the need for clarification of certain terms used in the preamble. Several respondents said that the definition for authorized officer gives too much discretion to the deciding official in determining cost recovery fees. Respondents questioned the definition for monitoring in the proposed rule and stated that the term "reasonable costs" as discussed in the preamble and fee schedule was vague. Use of the term "noncommercial group uses" caused confusion among several respondents as to its applicability to special uses. Some respondents commented that the term "right-of-way" in FLPMA refers only to roads, and since the right-of way granted to these respondents is not a road, it is not subject to the cost recovery provisions of FLPMA or any other statute.

Response. The proposed language at 36 CFR 251.58(b) outlined the situations in which a cost recovery fee would be assessed. In response to concerns about the scope of the proposed rule, the Department is tightening and more clearly stating the types of applications and authorizations that will be subject to processing and monitoring fees.

This final rule will be incorporated into existing regulatory text, which already includes the definitions for authorized officer, group use, and noncommercial use or activity at 36 CFR 251.51. Nevertheless, the Department recognizes the need for clarification of some of the terms and processes described in the preamble of the proposed rule. The final rule has been carefully reviewed and revised to ensure that the purpose and intent of cost recovery are fully documented and explained and that respondents' concerns about clarity of terms are addressed.

The authorized officer has a specific role within the Forest Service as the agency official delegated the authority to perform the duties and responsibilities for managing an administrative unit of NFS lands. Specific to the special uses program, the Chief of the Forest Service is responsible for accepting and evaluating special use applications and issuing, amending, renewing, suspending, or revoking special use authorizations. This authority is delegated to the appropriate line officer at the Regional, Forest, or District level as provided in 36 CFR 251.52. This line officer, or authorized officer, has the authority to issue special use authorizations and assess land use fees for use and occupancy of NFS lands and, once this final rule goes into effect, will have the authority to determine and assess processing and monitoring fees associated with issuance and administration of those authorizations. The Department has addressed respondents' concerns that too much authority would rest with the authorized officer in determining processing and monitoring fee categories and estimated costs by providing in the final rule that applicants and holders may request a review of these determinations by the authorized officer's immediate supervisor.

Section 251.51 of the current special use regulations contains definitions for group use and noncommercial use or activity. The term "group use" applies to those activities that involve a group of 75 or more people, either as participants or spectators; the term "noncommercial use or activity" is a use or activity that does not involve the charging of an entry or participation fee or the sale of a good or service as its primary purpose. The phrase "noncommercial group use" in the proposed rule combined the two terms to identify a specific type of special use. This type of activity may involve the exercise of First Amendment rights. Federal court decisions required the Department to amend its special use regulations with regard to this type of activity to meet First Amendment requirements. These revisions were made to 36 CFR 251.51 and 251.54 in accordance with the court decisions (60 FR 45293, Aug. 30, 1995).

The definition for monitoring has been revised in the final rule to address respondents' concerns about the activities included in monitoring, specifically for minor category cases, and is further explained in the specific comments on 36 CFR 251.51.

The term "reasonable cost" is used in section 504(g) of FLPMA, which provides that the Secretary concerned may, by regulations or prior to promulgation of such regulations, require an applicant for or holder of a right-of-way to reimburse the United States for all reasonable administrative and other costs incurred in processing an application for the right-of-way, and in monitoring the construction, operation, and termination of the facilities authorized pursuant to the right-of-way. Applicants for and holders of authorizations issued under the MLA may be required to pay full actual costs instead of full reasonable costs.

Section 4 of the preamble to the proposed rule (64 FR 66342) clearly stated that processing fee provisions would apply to all special use applications, not just to applications for rights-of-way under FLPMA. In addition, section 501(a) of FLPMA defines right-of-way as a reservoir, canal, ditch, flume, lateral, pipe, pipeline, tunnel, facility for the impoundment, storage, transportation, or distribution of water, electronic communications use, road, trail, railroad, tramway, or airway. Therefore, the definition for right-of-way under FLPMA includes more than roads and other linear uses. In addition, FLPMA is just one of the numerous statutes that authorize use and occupancy of NFS lands.

Comment. If a special use provides a public benefit, it is not subject to the cost recovery provisions in the IOAA and FLPMA. Several respondents, commenting on the listing in the preamble of the statutory authorities governing special uses administration, stated that certain water uses and recreation residences are not subject to the cost recovery requirements of the final rule because these uses provide benefits to the public.

Response. This comment relates to the concern addressed previously about violation of Federal statutes. The Department reiterates that this final cost recovery rule is well founded in law. The IOAA authorizes all agencies of the Federal Government to recover costs associated with providing specific benefits and services to an identifiable recipient, including applicants for and holders of water use and recreation residence special use authorizations. Additional authority to recover processing and monitoring costs is provided by section 504(g) of FLPMA and section 28(l) of the MLA. There is no exemption in these statutes for uses that provide a public benefit in addition to benefiting identifiable recipients.

Comment. Facilities authorized on NFS lands that are financed, or eligible to be financed, with a loan pursuant to the Rural Electrification Act of 1936 (REA) should be exempted from cost recovery fees. The preamble to the proposed rule stated that the provisions of the cost recovery regulations would apply in situations where the land use fee may be exempted or waived. The preamble specifically mentioned facilities financed or eligible to be financed under the REA as an example where the land use fee is exempted, but a cost recovery fee would be assessed.

Several REA entities and their national representatives commented that a 1984 amendment to FLPMA specifically exempts REA-financed facilities on NFS lands from cost recovery fees. These respondents believed that it was the intent of Congress, in passing the 1984 amendment to FLPMA, to exempt these facilities from all fees, including cost recovery fees.

Response. The Department disagrees with these respondents. The 1984 amendment to FLPMA explicitly differentiated between a land use fee and an administrative fee and excluded the latter from the fee exemption provided for by that amendment. With respect to administrative fees, the proviso to the amendment stated that "nothing in this sentence shall be construed to affect the authority of the Secretary granting, issuing, or renewing the right-of-way to require reimbursement of reasonable administrative and other costs pursuant to the second sentence of this subsection" (43 U.S.C. 1764(g), as amended by Pub. L. 98–300). The Department also notes that BLM has been collecting cost recovery fees from holders of rights-of-way for these facilities on public lands for many years under its cost recovery regulations. No revision to 36 CFR 251.51(g) of the final rule has been made to respond to this concern.

Comment. Processing and monitoring fees should be displayed in separate schedules. Several respondents stated that displaying both processing and monitoring fees in the same schedule was confusing because it appeared to link the two fees, when in fact they were not linked. They recommended that the two types of fees be displayed in separate schedules.

Response. The Department concurs with this recommendation. The processing and monitoring fees that appear in section 3 of the preamble are displayed in separate schedules. These separate schedules will be incorporated into the Forest Service's directive system.

Comment. The proposed regulations constitute a significant rule. Several respondents disagreed with the agency's conclusion in the preamble that the proposed rule is not significant and would not have an annual effect of $100 million or more on the economy or adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. These respondents believed that the proposed regulations could impose substantial financial burdens on small businesses and their customers, which could hurt local economies. Therefore, the proposed regulations should be subject to OMB review. In a related concern, a few respondents stated that the agency failed to consider the economic impacts of the proposed rule on small entities pursuant to the Regulatory Flexibility Act.

Response. The criteria for determining whether a proposed rule is significant are prescribed by United States Department of Agriculture procedures and Executive Order 12866 on regulatory planning and review. The Department has estimated that the annual cost recovery fees collected under the provisions of this final rule will be less than $10 million, well below the $100 million threshold for significance of a rule.

The Forest Service's final rule has been deemed significant under the EO 12866. Accordingly, the agency has prepared a programmatic cost-benefit analysis and a threshold Regulatory Flexibility Act analysis for the final rule, as referenced in section 5 of the supplementary information section in the preamble of this rule. The threshold Regulatory Flexibility Act analysis was conducted to ascertain if the final rule would have a significant economic impact on a substantial number of small entities and if so, if more detailed analyses were required pursuant to the Regulatory Flexibility Act. Based on the cost-benefit and threshold Regulatory Flexibility Act analyses, the Department believes that the final rule will not have a significant economic impact on a substantial number of small entities.

Comment. Greater use should be made of master agreements. Some respondents, particularly large commercial entities holding several authorizations involving several sites on NFS lands, advocated use of master agreements to allow for processing multiple applications and monitoring multiple authorizations through a single document. These respondents suggested that master agreements should be issued for a 10-year period and should cover an entire Forest Service administrative unit, up to and including a Regional unit. Some suggested that master agreements provide for monitoring by the holder, rather than by the Forest Service.

Response. The Department agrees that there should be greater use of master agreements. The Forest Service, as part of its efforts to increase the efficiency and cost-effectiveness of its special uses program, will seek to expand use of master agreements with the implementation of this final rule. In addition, the final rule has been modified to include provisions for master agreements in the monitoring fee schedules. The Department does not believe, however, that master agreements should provide for monitoring solely by the holder, rather than by the Forest Service. Master agreements may provide for some monitoring tasks to be performed by the holder. Any monitoring tasks performed by the holder under a master agreement will not be subject to cost recovery fees under the final rule.

Comment. Greater consistency is needed between the Forest Service and BLM on cost recovery. Respondents stated that there were inconsistencies between the regulations proposed by each agency and urged that the final regulations be made consistent. The inconsistency that respondents mentioned most often was that under its proposed rule, BLM would not assess cost recovery fees for outfitters and guides operating on BLM-administered lands. The same respondents believed that BLM is more responsive to requests to use BLM-administered lands.

Response. The Forest Service and BLM sought consistency between the Forest Service's proposed cost recovery rule (64 FR 66342, Nov. 24, 1999) for special uses and BLM's proposed cost recovery rule for its right-of-way program (64 FR 32106, Jun. 15, 1999) in terms of schedule categories, rates, definitions, and other matters relating to implementation of cost recovery. However, the Department agrees that there can be greater consistency between the Forest Service's and BLM's cost recovery rules, and the final rules of both agencies have been modified to achieve that goal, as discussed below.

Subsequent to publication of the Forest Service's proposed cost recovery rule for special uses and BLM's proposed regulations for its right-of-way program, BLM published another proposed cost recovery rule in the **Federal Register** (65 FR 31234, May 16, 2000) to amend cost recovery requirements for its special recreation permit program in 43 CFR part 2900. In their proposed rule, BLM proposed to change its threshold for exempting special recreation permit applicants and holders from processing and monitoring fees where BLM's costs to process an application or monitor an authorization do not exceed $5,000, to cases where an application or authorization requires more than 50 hours to process or monitor. The proposed rule also stated that full costs would be charged for special recreation permit applications or authorizations that require over 50 hours to process or monitor. A final cost recovery rule for BLM's special recreation permits that adopted this new

threshold was published in the **Federal Register** on October 1, 2002 (67 FR 61732).

To maximize consistency with BLM, the Department is adopting the same approach for Forest Service recreation special uses in this final rule. Recreation special uses are identified in FSH 2709.11, chapter 50, by use codes 111 through 165. Recreation special use applications or authorizations that require 50 hours or less to process or monitor will be exempt from cost recovery fees. This change from the proposed rule also addresses the concerns that many small businesses expressed regarding the financial hardship that would be created by the cost recovery rule if it were adopted as originally proposed. Other revisions to the final rule that provide for greater consistency between the Forest Service and BLM are addressed in the response in the following comment.

Comment. Some respondents recommended that the fee rates and schedules be revised. There were 7 respondents who thought the proposed fees were acceptable, 20 who thought the fees were too high, and 4 who thought the fees were too low. Forty-one respondents offered other comments on the proposed cost recovery fees presented in the schedules in the preamble of the proposed rule. Several respondents stated that the fees for category A, the minimal impact processing fee category in the proposed rule, were too high considering the processing effort required. A fee of $25 was suggested as an alternative. Others suggested that subcategories of category A be established that would recognize that some actions have substantially no impact. Others suggested that issuance of a temporary permit (with less than a 1-year term), issuance of a new permit due to a change in ownership, and renewal of a permit were actions with minimal impact that should have a flat processing fee of $75. One respondent stated that there is a disparity in the hourly rate for each processing and monitoring category when that rate is determined by dividing the rate in each category by the maximum number of hours for each category. Respondents also suggested that the table display a fee in the proposed policy for monitoring category B–IV and that monitoring fees be limited to construction or reconstruction activities. Several respondents suggested that the Department add a master agreement category for monitoring.

Response. The Forest Service proposed two separate fee schedules to track the two separate fee schedules in BLM's cost recovery rule for its right-of-way program: One for applications and authorizations subject to the MLA, and one for applications and authorizations subject to FLPMA. Separate fee schedules were established because of the differences in the legal standard for calculating cost recovery fees under the MLA and FLPMA. The preamble of the proposed rule also stated that the Forest Service proposed to adopt cost recovery fee rates similar to BLM's proposed fee rates for processing applications and monitoring authorizations because (1) the Forest Service's costs to process applications and monitor authorizations for use and occupancy of NFS lands are comparable to BLM's costs to process applications and monitor authorizations for rights-of-way on BLM-administered lands and (2) the public is better served by maintaining consistency in administration of special uses and rights-of-way by the Forest Service and BLM. To maximize interagency consistency, the fee schedules and rates established in this final rule are the same as those adopted by BLM in its final right-of-way rule published in the **Federal Register** (70 FR 20969, Apr. 22, 2005). Changes to the fee schedules and rates in the Forest Service's proposed rule are discussed below.

In the preamble of its final rule, BLM acknowledged that in establishing processing and monitoring fees under FLPMA, the agency is required to consider the reasonableness factors in section 304(b) of FLPMA. These factors include an agency's actual costs, the monetary value of the rights and privileges sought, that portion of the costs which may be incurred for the benefit of the general public interest, the public service provided, the efficiency of the Government processing involved, and other factors relevant to determining the reasonableness of costs.

However, BLM also stated that in its proposed rule (64 FR 32110) it recognized that "for all but complex projects * * * the reasonability factors have little or no effect on actual costs." BLM's final rule reflects this conclusion. In its final rule, BLM determined that for categories 1 through 4, processing and monitoring fees under FLPMA are identical to processing and monitoring fees under the MLA, which does not require consideration of reasonableness factors in establishing cost recovery fees. For example, a category 2 processing fee for applications submitted under authorities other than the MLA is identical to a category 2 processing fee for applications submitted under the MLA. A category 3 monitoring fee for authorizations issued under authorities other than the MLA is identical to a category 3 monitoring fee for authorizations issued under the MLA.

BLM supported this analysis by citing a 1996 Solicitor's Opinion on cost recovery (M–36987), entitled "BLM's Authority to Recover Costs of Minerals Document Processing." That opinion clarified that "[a] factor such as the 'monetary value of the rights and privileges sought by the applicant' could, when that value is greater than BLM's processing costs, be weighed as an enhancing factor, offsetting a diminution due to another factor such as 'the public service provided' " (see M–36987 at 36).

Conversely, BLM's final rule acknowledged that there is more likely to be a disparity between FLPMA and MLA fees for category 5 and category 6 cases, which are equivalent to the agency's full costs. Accordingly, BLM's final rule establishes one schedule for minor category processing fees and one schedule for minor category monitoring fees, both of which are based on actual costs. In addition, BLM's final rule establishes two schedules for major category processing fees and two schedules for major category monitoring fees to differentiate between applications or authorizations subject to the MLA, for which full actual costs will be charged, and applications and authorizations subject to FLPMA, for which full reasonable costs will be charged.

In the preamble of its proposed rule, the Department acknowledged that the proposed fee schedules and rates for categories B–I through B–IV (categories 1 through 4 in the final rule), would be identical to those proposed by BLM and are based on the cost data that BLM has collected to support those schedules and rates. Therefore, it is logical for the Department to adopt the same fee schedules and rates established in BLM's final rule. Thus, the Department's final rule establishes one schedule for minor category processing fees and one schedule for minor category monitoring fees, both of which are based on actual costs. Also consistent with BLM, the Department's final rule establishes two schedules for major category processing fees and two schedules for major category monitoring fees to differentiate between applications or authorizations subject to the MLA, for which full actual costs will be charged, and applications or authorizations subject to other authorities, for which full reasonable costs will be charged.

Several respondents thought that the rates in the Department's proposed rule (64 FR 66342) were either too high or too low. However, none of these

respondents offered documentation or other information as to what the rates should be.

The Department concurs with the respondent who expressed concern about disparity among the hourly rates for the minor categories in the processing and monitoring fee schedules. BLM received a similar comment on its proposed regulations for its right-of-way program (64 FR 32106). In response to those comments, BLM and the Department revised their minor category rates.

In its final rule, BLM defined each minor processing and monitoring category by the estimated number of hours needed to process or monitor an application or authorization. In doing so, BLM needed to determine a mean hour or average number of hours for processing and monitoring for each category. For example, for category 1 the mean hour is 4.5; for category 2 the mean hour is 16; for category 3 the mean hour is 30; and for category 4 the mean hour is 43.

BLM derived a mean per-hour rate using category 4 (which in the Forest Service proposed rule was processing Category B–III) and determined the mean per-hour rate to be $21.46 (which reflects actual costs based on BLM field studies). BLM then multiplied the mean hour in each category by the same mean per-hour rate, to ensure that each minor category is cost-weighted the same. Multiplying the mean hour for each category by the mean per-hour rate produced the fee for each category. For example, the mean hour for minor category 2 (> 8 and ≤ 24 hours) is 16. Thus, the rate for minor category 2 is $21.46 multiplied by 16, or $343. As another example, the mean hour for minor category 4 (> 36 and ≤ 50 hours) is 43. Thus, the rate for that category is $21.46 multiplied by 43, or $923. The Department reiterates that it is adopting in this final rule the same rates and the same rationale for those rates as BLM (70 FR 20969, Apr. 22, 2005) and considers the changes to be within the scope of public comment on both agencies' proposed cost recovery rules.

In justification of the mean hour and mean per-hour rate for each category, BLM stated in the preamble of its final right-of-way rule that the $21.46 mean per-hour rate for processing and monitoring fees would approximate the hourly wage in 2005 for an employee at the GS–9, Step 3, level. These rates compare favorably with BLM's 1987 minor category processing rates. These rates, if adjusted to a mean per-hour rate, would average $11 per mean hour, which was the hourly wage earned by a BLM employee in 1987 at the GS–9, Step 2, level, according to the 1987 General Schedule. Most of BLM's right-of-way applications and authorizations are processed and monitored by employees who are at the GS–9 to GS–11 levels and who will earn between $20.02 (GS–9, Step 1) and $31.48 (GS–11, Step 10) per hour in 2005.

The Department is adding a new processing fee category 1 (> 1 and ≤ 8 hours) (formerly category A for applications processed under authorities other than the MLA) to its minor category processing fee schedule to exempt those applications that require 1 hour or less to process and is also adding a new minor category monitoring fee category 1 (> 1 and ≤ 8 hours, paragraph (d)(2)(i)) to its monitoring fee schedule, to provide consistency between the processing and monitoring fee schedules. With the addition of the new category 1 (> 1 and ≤ 8 hours) to the monitoring fee schedule, the range of hours for monitoring fee category 2 in the final rule is revised to more than 8 and up to and including 24 hours.

The Department agrees with some of the concerns regarding the $75 minimal impact category. Revisions to the minimal impact category are discussed further in the next section in the response to comments on 36 CFR 251.58(b), (d), and (f) of the proposed rule. The Department also agrees with those who suggested the need for a master agreement category for monitoring, and one has been added in 36 CFR 251.58(d)(2)(v) of the final rule.

Additional changes to the processing and monitoring fee schedules in the final rule include enumerating categories by Arabic numerals instead of alpha-Roman numerals, establishing one minor category processing fee schedule and one minor category monitoring fee schedule, clarifying the criteria in the minimal impact processing category, and distinguishing between minor and major fee categories. The final processing and monitoring fee schedules and rates are set out in section 3 of the preamble. As displayed, all minor category fee rates are consistent with those established by BLM in its final rule and have been indexed using the cumulative rate of change from the calendar year (CY) 2004 second quarter to the CY 2005 second quarter in the Implicit Price Deflator-Gross Domestic Product (IPD–GDP) index to reflect CY 2006 rates. This approach is consistent with the indexing of these minor category fee rates that was identified in the proposed rule, and will be used to index these minor category processing and monitoring fee rates annually for CY 2007 and beyond.

The following tables have been prepared to display the differences between the proposed and final processing and monitoring fee categories:

Proposed rule processing category	Final rule processing category
Processing Fees for Minor Category Applications	
None proposed	No processing fee ≤ 1 hour.
(A) Minimal Impact < 8 hours.	(1) Minimal Impact > 1 and ≤ 8 hours.
(B–I) > 8 and ≤ 24 hours.	(2) > 8 and ≤ 24 hours.
(B–II) > 24 and ≤ 36 hours.	(3) > 24 and ≤ 36 hours.
(B–III) > 36 and ≤ 50 hours.	(4) > 36 and ≤ 50 hours.
Processing Fees for Major Category Applications	
(C) Master Agreement.	(5) Master Agreement.
(B–IV) > 50 hours	(6) > 50 hours.
Monitoring Fees for Minor Category Authorizations	
None proposed	No monitoring fee ≤ 1 hour.
(A) Minimal Impact <8 hours.	(1) Minimal Impact >1 and ≤ 8 hours.
(B–I) > 8 and ≤ 24 hours.	(2) > 8 and ≤ 24 hours.
(B–II) > 24 and ≤ 36 hours.	(3) > 24 and ≤ 36 hours.
(B–III) > 36 and ≤ 50 hours.	(4) > 36 and ≤ 50 hours.
Monitoring Fees for Major Category Authorizations	
None proposed	(5) Master Agreement.
(B–IV) > 50 hours	(6) > 50 hours.

Response to Comments on Specific Sections of the Proposed Rule

The following are comments on specific sections of the proposed rule and the Department's responses.

Section 251.51 Definitions. The proposed rule added a definition for monitoring to ensure consistency in the identification of activities subject to a monitoring fee and in the determination of monitoring fee categories and amounts. The term encompassed monitoring of construction and reconstruction activities and on-site inspections of facilities and activities to ensure compliance with an authorization, and excluded costs associated with routine administrative actions. Activities that would be

included in determining monitoring costs were identified in § 251.58(d)(1) of the proposed rule.

Comment. Several respondents stated that the definition was too broad and provided too much discretion to the authorized officer. Some stated that it should be revised to exempt routine compliance inspections of authorized activities and that it should be limited to construction activities. Others believed that the definition as proposed would limit cost recovery for monitoring to 1 year, and that it should instead be an annual event for the life of the authorization.

Response. The Department agrees that the term "monitoring" in the proposed rule was unclear and that the activities that would be covered by that term could be interpreted differently than intended. In the proposed rule, "monitoring" was intended to include actions required to ensure compliance during construction or reconstruction of facilities and the estimated time needed to inspect the authorized facility or operations during a 1-year period. This latter provision concerning the estimated time needed to ensure compliance during a 1-year period seemed to create the most confusion. Therefore, the final rule distinguishes between monitoring in general and the basis for charging monitoring fees. In the final rule, monitoring, which is an activity that occurs in administration of the special uses program generally, is defined as "actions needed to ensure compliance with the terms and conditions in a special use authorization." The basis for charging a monitoring fee for minor category cases has been limited in the final rule to include only those activities required to monitor construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site. The 1-year restriction on charging monitoring fees has been removed, and a minimal impact monitoring fee category 1 (>1 and ≤8) has been added. With the addition of the minimal impact category 1 to the monitoring fee schedule, the range of hours in category 2 has been modified to >8 and ≤24, which is consistent with the range of hours established for processing fees.

In the final rule, major category 5 and category 6 monitoring fees may include the agency's estimated cost to ensure compliance with the terms and conditions of the authorization during all phases of its term, including, but not limited to, monitoring to ensure compliance with the authorization during the construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site. For example, monitoring fees may be charged for communications site engineering inspections, ski area tramway inspections, water quality monitoring, or threatened or endangered species habitat monitoring. For major category 5 and category 6 cases, the authorized officer will estimate the agency's full actual monitoring costs.

Monitoring for all categories does not include billings, maintenance of case files, annual performance evaluations, or scheduled inspections to determine compliance generally with the terms and conditions of an authorization.

Based on the respondents' concerns with the provisions of § 251.58(c), the Department believes that the categories for processing and monitoring fees need to be clarified. Accordingly, definitions for major category and minor category have been added to this section. A minor category in the final rule refers to actions in processing categories 1 through 4 (in the proposed rule, categories A through B–III for applications other than those authorized under the MLA, and B–1 through B–III for applications authorized under the MLA) and monitoring categories 1 through 4 (in the proposed rule monitoring categories A through B–III for authorizations other than those issued under the MLA, and B–1 through B–III for authorizations issued under the MLA). This revision to the final rule incorporates several changes to § 251.58(c) and (d) to ensure that the processing and monitoring fee categories are correctly identified.

Section 251.58 Cost Recovery

Section 251.58(a) Assessment of fees to recover agency processing and monitoring costs. This section of the rule provides an overview of the cost recovery concept. This section states that the agency shall assess processing and monitoring fees and that those fees are to be separate from any fees charged for use and occupancy of NFS lands. This section also provides broad guidance on how these fees are to be determined.

Comment. Respondents asked for clarification of the provisions on several points. Several requested that agency overhead costs not be included in the fee calculation; that current authorizations, including renewals, be exempted from the regulations; and that authorizations issued annually for the same activity to the same holder, such as some outfitting and guiding permits, be charged a one-time processing fee covering a 5-year period. Finally, one respondent recommended that processing fees not include costs incurred in compiling baseline information and resource data.

Response. The Department acknowledges these concerns, but notes that this section provides broad guidance and that the subsequent sections of the rule set forth detailed requirements. Thus, these issues are addressed in the response to comments in several of the following sections. Several other sections have been revised in response to these comments, and § 251.58(a) of the final rule has been revised as needed for consistency with the revised text of those other sections.

The provision in § 251.58(b)(3) of the proposed rule requiring applicants and holders to submit sufficient information for the authorized officer to assess the number of hours required to process their applications or monitor their authorizations was revised in the final rule for clarity and moved to § 251.58(a) because this requirement relates to processing and monitoring fees generally, not just to processing fees charged under § 251.58(b)(3).

The Department has removed provisions in § 251.58(a) regarding fee categories and rates because they are addressed in § 251.58(c)(2), (d)(2), and (i).

Section 251.58(b) Special use applications and authorizations subject to cost recovery requirements. This section of the final rule describes those situations in which processing and monitoring fees will be assessed.

Comment. Many respondents commented on this section. Nearly all stated that cost recovery should not apply to those special uses that are currently authorized on NFS lands, including modifications of existing authorizations and issuance of new authorizations when existing authorizations terminate according to their terms or when there is a change in ownership or control of the authorized facilities or the holder of the authorization. For example, recreation residence holders stated that their authorization does not require them to apply for a new authorization upon termination of their existing authorization. Therefore, they should not be subject to a processing fee each time they seek a new authorization to continue their use and occupancy of NFS lands. Several respondents stated that authorizations the agency issues annually, such as many outfitting and guiding permits, should not be subject to an annual processing fee. Several other respondents suggested that cost recovery not apply to applications the agency accepted prior to adoption of the final rule. Some respondents stated that

cost recovery fees should apply only to commercial activities, or that the fees should be credited back to the holder upon payment of the annual land use fee. In addition, some respondents believed that the minimal impact processing fee in the proposed regulation was excessive in some situations. Several respondents suggested that special uses that take very little time to process or have minimal impact should not be subject to a $75 processing fee, or to any processing fee at all.

Response. The Department believes that a number of these recommendations have merit. Applications that are being processed with funding provided by the applicant under the terms of a collection agreement negotiated by the agency and the applicant should proceed and not be disrupted by the provisions of the final rule. Similarly, in cases where the agency has started processing an application before adoption of the final rule, it is fair to complete processing the application with appropriated funds. However, the Department believes that where a proposal has been formally accepted as an application and the Forest Service has not yet initiated processing the application, the cost recovery regulations should apply. Accordingly, the final rule at § 251.58(b)(1) has been revised to state that the processing fee provisions of the final rule will not apply to or supersede written agreements providing for recovery of processing costs executed by the agency and applicants prior to adoption of the final rule. Further, § 251.58(b)(1) now states that proposals accepted as applications which the agency has commenced processing prior to adoption of the final rule will not be subject to processing fees.

The Department also has revised § 251.58(g) of the final rule regarding exemptions from cost recovery. The Department has amended the proposed rule to exempt from cost recovery all recreation special use applications and authorizations that require 50 hours or less to process or monitor. This change, as previously mentioned, is consistent with BLM's cost recovery rule for special recreation permits on BLM-administered lands. This change will alleviate the concerns expressed by most holders of recreation residence special use permits, as an application for a new permit to replace an expiring permit often will require 50 hours or less to process.

The Department does not agree, however, with those respondents who wish to exempt from cost recovery noncommercial activities other than noncommercial group uses (which may involve First Amendment activities and therefore are already properly exempted), or special uses that are currently authorized on NFS lands. The Department points out that it is inappropriate to exempt these types of uses, as they generate the same administrative costs to the agency as other uses. Applicants and holders who benefit from having the agency process their applications or monitor their authorizations should have to pay the costs of those government services. Therefore, the Department has not changed the provisions in the final rule for charging cost recovery fees for these uses.

However, the Department has revised § 251.58(b)(2) to clarify that the cost recovery provisions also apply to agency actions to amend a special use authorization, not just to proposals submitted by an applicant or holder to amend a special use authorization.

Section 251.58(b)(3) of the final rule clarifies that the cost recovery provisions apply to agency actions to issue a special use authorization, such as situations where an authorization does not specifically require submission of an application to request continuation of the authorized use upon termination of the authorization, as is the case with recreation residence permits. In addition, § 251.58(b)(3) of the final rule provides that cost recovery fees apply to applications for issuance of a new special use authorization after termination of an existing special use authorization. Section 251.58(b)(3) gives examples of events triggering termination, including expiration, a change in ownership or control of the authorized facilities, or a change in ownership or control of the holder of the authorization. The final rule adds the example of termination due to a change in ownership or control of the holder of the authorization.

The Department concurs that applications and authorizations that take very little time to process or monitor, that is, 1 hour or less, should not be charged a processing or monitoring fee. The Department has revised the final rule at § 251.58(c)(2) and (d)(2) to provide, in concert with BLM, that an application or authorization taking 1 hour or less to process or monitor is not subject to a cost recovery fee.

Section 251.58(c) Processing fee requirements. This section describes those agency actions that would require applicants to pay processing fees. It sets forth 6 processing fee categories; describes how processing fees are handled when multiple related applications are submitted, such as when the agency solicits applications for special uses, and when unsolicited proposals are submitted and competitive interest exists; and describes how refunds of processing fees are handled.

Comment. This section generated many comments that generally focused on the need to clarify what agency costs are properly included in cost recovery. Many respondents had concerns about what constitutes "reasonable costs" as set forth in the fee schedule for category B–IV (> 50 hours) for processing and monitoring fees in the proposed rule. Several respondents asked for clarification concerning those situations where applicants respond to a Forest Service prospectus and stated that cost recovery should not apply in those situations. Several respondents stated that applicants should not be required to pay processing fees for environmental analysis, since it is the Federal Government's responsibility, or for environmental documentation beyond the scope of the application. Some respondents suggested that the agency might overcharge or overestimate processing costs and inappropriately use those funds to complete unfunded field studies or assessments not pertinent to the applicant's request but important to the agency. In a related concern, respondents stated that processing fees should be reduced when an applicant provides data or studies relevant to the environmental documentation needed to process an application.

Respondents holding authorizations in the National Forests in Alaska concluded that all processing activities in Alaska would fall into proposed categories B–IV (> 50 hours) and C (master agreement), which the respondents believed would increase already burdensome paperwork requirements. Some respondents asked that bills for payment of cost recovery fees be due and payable in 60 days, rather than the 30 days set forth in the proposed regulation. Several respondents asked that processing fees for proposed categories A (minimal impact) through B–III (> 36 and ≤ 50 hours) be refunded to the applicant when payments exceed the agency's costs, as they would be in proposed categories B–IV and C, and that processing fees for proposed category B–IV (≥ 50 hours) applications remaining after withdrawal of an application be refunded to the applicant.

Response. The Department recognizes respondents' concerns about the scope of environmental documentation

required and what would be considered reasonable costs. As stated earlier, some level of environmental analysis pursuant to NEPA must be conducted with respect to the environmental effects of a proposed use and occupancy. This analysis considers the use proposed by the applicant, and includes a cumulative effects analysis with respect to other activities related to the proposed use. There is also a need, however, to place limits on how far the environmental analysis should go, and to identify where the responsibility of the applicant ends and the public benefit begins. Therefore, the Department has incorporated in the final rule direction that the processing fee for an application be based only on costs necessary for processing that application.

Some examples of where the responsibility of the applicant ends and the public benefit begins include studies to determine the capacity of the land and its resources to accommodate a type of use in an area, analysis and development of a habitat management plan, and utility corridor studies. In general, cost recovery fees should not be charged for studies that relate to management programs that affect more than one applicant and that could involve amendment of a land management plan.

The Department believes that clearer direction on this point is needed and has modified § 251.58(c)(1) to state that the processing fee for an application will be based only on costs necessary for processing an application and will not include costs for studies for programmatic planning or analysis or other agency management objectives, unless they are necessary for the application being processed. The processing fee for an application shall be based on costs for studies relating to programmatic planning or analysis or other agency management objectives to the extent these costs are necessary for the application to be processed. "Necessary for" means that but for the application, the costs would not have been incurred and that the costs cover only those activities without which the application cannot be processed.

In the first sentence of the provision governing the basis for processing fees, the Department is changing the phrase "the amount of time that the Forest Service spends" to "the costs that the Forest Service incurs" because in major category cases the basis for the processing fee may in some instances be based on costs other than agency time. In the eighth sentence, governing processing work conducted by the applicant or a third party, the Department is adding the phrase "contracted by the applicant" to distinguish between costs incurred by the applicant and costs incurred by the Forest Service.

In addition, the Department has reorganized and revised § 251.58(c)(1) to clarify how processing fees are determined and to provide for reconciliation of category 5 and category 6 processing fees.

For category 6 applications submitted under authorities other than the MLA, the Department has clarified in § 251.58(c)(1)(ii)(A) that the Forest Service will determine whether actual costs should be reduced based upon an analysis submitted by the applicant or holder of the factors relevant to determining the reasonableness of the costs, and will notify the applicant or holder in writing of this determination.

For category 5 applications, the Department has clarified in § 251.58(c)(2)(v), consistent with BLM, that in signing a master agreement for a major category application submitted under authorities other than the MLA, an applicant waives the right to request a reduction of the processing fee based upon the factors relevant to determining the reasonableness of the costs.

The Department disagrees with the comment that cost recovery fees should not be charged in the case of agency-driven solicitations. Solicitations come in many forms, from simple campground concession offerings to complex offerings that require two levels of environmental analysis spread over several years of implementation. The Department accepts responsibility for the programmatic level of environmental analysis to determine whether the concept of the agency offering is environmentally acceptable. Under the proposed rule at § 251.58(c)(3)(ii), when the agency solicited applications for the use and occupancy of NFS lands, the agency would be responsible for the costs of environmental analyses conducted prior to issuance of the prospectus. The selected applicant would pay a processing fee that would cover only the agency's costs to process the selected applicant's proposal, including any subsequent project-level environmental analysis and documentation.

To address this comment and to distinguish solicitations driven by the agency from solicitations driven by multiple applications for a limited number of authorizations, § 251.58(c)(3) in the final rule has been retitled "multiple applications other than those covered by master agreements (category 5)." Paragraphs (i) through (iii) under § 251.58(c)(3) also have been added to the final rule to address different cases of multiple related applications.

Paragraph (i) deals with multiple unsolicited applications where there is no competitive interest. Processing costs that are incurred in processing more than one of these applications, such as the cost of environmental analysis or printing an environmental impact statement that relates to all of the applications, must be paid by each applicant in equal shares or on a prorated basis, as deemed appropriate by the authorized officer.

Paragraph (ii) covers unsolicited proposals where competitive interest exists. Under this scenario, a prospectus will be issued, and all proposals accepted pursuant to the solicitation will be processed as applications. The applicants will be responsible for the costs of environmental analyses that are necessary for their applications and that are conducted prior to issuance of the prospectus. Processing fees for these cases will be determined pursuant to the procedures for establishing a category 6 (> 50 hours) processing fee and will include such costs as those incurred in printing and mailing the prospectus; having parties other than the Forest Service review and evaluate applications; establishing a case file; recording data; conducting financial reviews; and, for selected applicants, any additional environmental analysis required in connection with their applications. The processing fee determined by the authorized officer will be paid in equal shares or on a prorated basis, as deemed appropriate by the authorized officer, by all parties who submitted proposals that were processed as applications pursuant to the solicitation.

Paragraph (iii) covers agency-solicited applications. The agency will be responsible for the cost of environmental analyses conducted prior to issuance of the prospectus. All proposals accepted pursuant to that solicitation will be processed as applications. Processing fees for these cases will be determined pursuant to the procedures for establishing a category 6 processing fee and will include such costs as those incurred in printing and mailing the prospectus; having parties other than the Forest Service review and evaluate applications; establishing a case file; recording data; conducting financial reviews; and, for selected applicants, any additional environmental analysis required in connection with their applications. Processing fees will be paid in equal or prorated shares, as deemed appropriate by the authorized officer, by all parties who submitted proposals that were

processed as applications pursuant to the solicitation.

Provisions have been added in the final rule to address applications for recreation special uses that individually are exempt from cost recovery because the estimated time to process each of them is 50 hours or less but, when combined with other similar applications for a single project or type of use, the cumulative processing time exceeds 50 hours. In those situations, a cost recovery fee will be assessed, but the costs associated with processing all applications for a single project or type of use will be spread evenly among all the applicants.

The Department does not agree with respondents from Alaska who stated that the proposed processing fees would perpetuate burdensome paperwork requirements. The process for determining cost recovery fees is not overly complex and is based upon information that the applicant is already required to submit to the Forest Service for purposes of determining the appropriateness of the request. The Department acknowledges that costs for all goods and services are generally more expensive in Alaska. However, the Department reiterates that the minor category fee rates are reasonable costs and that all applicants may elevate disputes in processing fee determinations to the next higher administrative level within the Forest Service.

The Department has added a statement in § 251.58(c)(4)(i) that a processing fee will be assessed when the authorized officer is prepared to process the application. This provision clarifies that a processing fee will not be assessed until the Forest Service is ready to process the application.

The provisions in § 251.58(c)(4)(ii) of the proposed rule dealing with revision of processing fees has been modified in the final rule to state that minor category processing fees will not be reclassified into a higher level minor category once the processing fee category has been determined.

The Department also considered the request by respondents that the billing period during which cost recovery fees are due and payable be expanded from 30 to 60 days. Thirty days is the standard billing period used in the special uses program for other fees (such as land use fees). The Department does not believe that there are any compelling reasons for changing the billing period for cost recovery fees. Therefore, no changes have been made in the final rule to the billing period in which cost recovery fees are due and payable.

The Department does not agree with respondents who requested that unspent processing fees for categories A through B–III in the proposed rule be refunded to the applicant. The fee rates for the minor processing categories are designed to provide efficiencies in the assessment and collection of cost recovery fees, one aspect of which is avoiding a separate accounting for every application that falls into these categories. Separate accounting would be necessary to track case-by-case costs and provide for refunds, and would be burdensome and expensive.

The Department has added provisions to § 251.58(c)(5)(ii) and (c)(6)(ii) of the final rule to provide for underpayment and overpayment of category 5 processing fees. Under § 251.58(c)(5)(ii), when estimated processing costs are lower than the final processing costs for applications covered by a master agreement, the applicant will pay the difference between the estimated and final processing costs. Under § 251.58(c)(6)(ii), if payment of the processing fee exceeds the agency's final processing costs the applications covered by a master agreement, the agency either will refund the excess payment to the applicant or, at the applicant's request, will credit it towards monitoring fees due.

The Department has clarified provisions in § 251.58(c)(5)(iii) and (c)(6)(iii) governing underpayment and overpayment of category 6 processing fees to provide that reconciliation of those fees will not be based upon full reasonable costs for applications submitted under authorities other than the MLA when the applicant has waived payment of reasonable costs.

Section 251.58(d) Monitoring fee requirements. This section of the rule describes those agency actions that would require payment of monitoring fees and sets forth the fee categories.

Comment. Many respondents commented on this section of the proposed rule. They indicated significant concern with and misunderstanding of this provision. Most respondents were concerned about the activities that would be monitored and stated that monitoring should not be conducted annually or for ongoing operations. Several respondents noted that BLM has exempted outfitting and guiding authorizations from monitoring fees and suggested that the Forest Service do the same. Some respondents recommended that all unspent monitoring fees be refunded to the holder.

Response. Most of the issues respondents identified have been addressed in the revision to the definition for monitoring, which was discussed previously in the response to comments on § 251.51, "Definitions." Section 251.58(d) of the final rule has been revised to narrow the basis for monitoring fees. In addition, the Department has reorganized and revised § 251.58(d)(1) to clarify how monitoring fees are determined and to provide for reconciliation of category 5 and category 6 monitoring fees.

For category 6 authorizations issued under authorities other than the MLA, the Department has clarified in § 251.58(d)(1)(ii)(A) that the Forest Service will determine whether actual costs should be reduced based upon an analysis submitted by the holder of the factors relevant to determining the reasonableness of the costs, and will notify the holder in writing of this determination.

For category 5 authorizations, the Department has clarified in § 251.58(d)(2)(v), consistent with BLM, that in signing a master agreement for a major category authorization issued under authorities other than the MLA, a holder waives the right to request a reduction of the monitoring fee based upon the factors relevant to determining the reasonableness of the costs.

The Department has added provisions in § 251.58(d)(3)(ii) and (d)(4)(ii) of the final rule to provide for underpayment and overpayment of category 5 monitoring fees. Under § 251.58(d)(3)(ii), when estimated monitoring costs are lower than the final monitoring costs for authorizations covered by a master agreement, the holder will pay the difference between the estimated and final monitoring costs. Under § 251.58(d)(4)(ii), if payment of the monitoring fee exceeds the agency's final monitoring costs for the authorizations covered by a master agreement, the agency either will adjust the next periodic payment to reflect the overpayment or will refund the excess payment to the holder.

The Department has clarified provisions in § 251.58(d)(3)(iii) and (d)(4)(iii) governing underpayment and overpayment of category 6 monitoring fees to provide that reconciliation of those fees will not be based upon full reasonable costs for authorizations issued under authorities other than the MLA when the holder has waived payment of reasonable costs.

Several other revisions have been made to this section of the final rule to ensure correct application of the monitoring fee categories; to clarify the descriptions of the monitoring fee categories; and to make the categories for processing and monitoring fees consistent.

Section 251.58(e) Applicant and holder disputes concerning processing or monitoring fee assessments; requests for changes in fee categories or estimated fee amounts. This section of the rule describes the actions the agency will take when an applicant or holder disagrees with a processing or monitoring fee category or estimated fee amount assigned by an authorized officer.

Comment. Several respondents took issue with the provisions at paragraphs (e)(2)(i) and (e)(3) that would suspend processing an application or suspend an authorization while a dispute is being resolved. Many respondents expressed concern that the authorized officer who assigned the fee category or estimated fee amount would be the same official who would review the dispute. Some respondents suggested that an entity other than the Forest Service should review disputed cost recovery fee determinations.

Response. The Department concurs with these respondents' concerns. The regulation should allow the applicant or holder to dispute the determined fee category or estimated costs without suspension of the application or authorization and should provide for a Forest Service officer other than the one who determined the fee category or estimated costs to review cost recovery disputes. However, the Department does not believe it is appropriate for cost recovery disputes to be reviewed outside the agency. The final rule at § 251.58(e)(1)–(4) has been revised to provide the applicant or holder with one level of review. Before a disputed fee is due, the applicant or holder may submit a written request for substitution of an alternative fee category or alternative estimated costs to the immediate supervisor of the authorized officer who determined the fee category or estimated costs. The applicant or holder must provide documentation that supports the alternative fee category or estimated costs. The supervisory officer must make a decision within 30 calendar days of receipt of the written request disputing the fee category or estimated costs. The dispute will be decided in favor of the applicant or holder if the supervisory officer does not respond to the written request within 30 days of receipt (paragraph (e)(4)).

Paragraphs (e)(2)(i)–(ii) of the final rule have been revised to remove the reference to suspension and to set forth new provisions describing agency action when the applicant or holder (1) has paid the disputed processing fee or (2) has failed or refuses to pay the disputed processing fee. In the former case, the authorized officer will not interrupt the processing while the dispute is being reviewed and the supervisory officer is making a decision, unless the applicant requests it. In the latter case, the authorized officer will suspend processing pending the supervisory officer's consideration of the dispute and determination of an appropriate fee. Paragraph (e)(3) dealing with monitoring fee disputes has been revised to remove the reference to suspension and to make revisions similar to those described above for processing fees (paragraphs (e)(2)(i)–(ii)).

Section 251.58(f) Waivers of processing and monitoring fees. This section of the rule provides for applicant or holder requests for fee waivers and describes criteria for the authorized officer to use in granting full or partial waivers of processing and monitoring fees.

Comment. This section prompted more comments than any other section of the proposed rule. Most respondents sought to clarify or expand the criteria for granting fee waivers, particularly to benefit applicants for or holders of authorizations for nonprofit activities. However, other respondents insisted that nonprofit status alone should not be the criterion for granting a fee waiver. A principal concern of these respondents was the application of the public benefit criterion in paragraph (f)(1)(vi)(B). Respondents asked that it be broadened to allow waiver of processing fees for environmental analysis considered beyond the scope of the proposed activity. Respondents also were concerned that the authorized officer would have sole authority to grant fee waivers. State and local governmental entities recommended that the fee waiver criteria be clarified to ensure that activities they conduct on NFS lands qualify for a fee waiver.

Response. The nature of the responses indicates that the public is not familiar with the distinction between the terms "waiver" and "exemption." Although their effect may be the same, there is a difference between them.

A fee waiver may occur after the authorized officer has determined the appropriate fee category or estimated costs for a processing or monitoring activity. When one or more of the fee waiver criteria are met, the authorized officer may waive all or part of the cost recovery fee.

A fee exemption occurs when the authorized officer determines that the application or authorization is not subject to processing or monitoring fees based on law or regulation. In those situations, the authorized officer has no discretion in exempting the application or authorization from a cost recovery fee.

The Department has declined to broaden the criteria for fee waivers because the agency's processing of a special use application or monitoring of a special use authorization provides a specific benefit or service to the applicant or holder beyond that provided to the general public. The Department also believes that it is not appropriate to identify specific special use activities that are eligible for fee waiver, and thus has not done so in the final rule.

Section 251.58(f)(vi) of the proposed rule would authorize waiver of a processing fee for nonprofit entities when "(A) [t]he studies undertaken in connection with processing their application have a public benefit or (B) [t]he proposed facility or project will provide a free service to the public or a program of the Secretary of Agriculture." The Department is removing § 251.58(f)(vi)(A), redesignating § 251.58(f)(vi)(B) as § 251.58(f)(vi), and clarifying its text. The Department believes that the waiver provision in proposed § 251.58(f)(vi)(A) is unnecessary because § 251.58(c)(1) of the final rule states that processing fees shall not include costs for studies for programmatic planning or analysis or other agency management objectives, unless they are necessary for the application being processed. Thus, under the final rule, processing fees for all applicants, not just nonprofit applicants, will not include studies for programmatic planning or analysis or other agency management objectives that are not necessary for an application. When these studies are necessary for an application, they are providing a specific benefit or service to the applicant beyond that provided to the general public and therefore may be included in a cost recovery fee. Section 251.58(c)(1) of the final rule addresses the comment that the nonprofit status of an applicant alone should not qualify an entity for a fee waiver.

The Department has given careful consideration to the recommendations by State and local governmental agencies and other Federal agencies regarding full fee waivers. The Department recognizes that the criteria in proposed paragraph (f)(1)(i) describe only those situations where reciprocity between the governmental entity and the Forest Service exists. In situations where the agency has no reciprocal business dealings or relationships with the Federal, State, or local governmental agency, there is no opportunity for that entity to demonstrate that it would

waive similar fees that it might assess the Forest Service in such dealings. Thus, the final rule has been revised at paragraph (f)(1)(i) to state that the Forest Service may waive a processing or monitoring fee for a local, State, or Federal governmental entity that does not or would not charge processing or monitoring fees for comparable services the entity provides or would provide to the Forest Service. The comparability of fees charged will not be based on the dollar amount, but rather on the type of services for which the fees are charged.

Section 251.58(g) Exemptions from processing or monitoring fees. This section of the rule sets forth direction regarding those uses and activities that are exempted from paying processing and monitoring fees.

Comment. This section of the proposed rule prompted many comments. Nearly all respondents who commented advocated that a particular use, activity, or group be exempted, such as recreation residences, houseboats, scientific studies, private clubs, and traditional Native American groups. Several respondents stated that rights-of-way granted under the Alaska National Interest Lands Conservation Act (ANILCA) across NFS lands to reach non-Federal land should be exempt from cost recovery fees because section 1323(a) of ANILCA gives those who own non-Federal land adjoining Federal land a right of access across the Federal land. In addition, many respondents claimed that authorized water storage facilities on NFS lands should be exempted from cost recovery fees.

Response. As outlined in the discussion of § 251.58(f), exemptions will be granted only as provided by law or regulation. Relief from cost recovery fees for any special use that is not specifically exempted will be considered under the criteria for fee waivers set forth in § 251.58(f).

The summary of the proposed rule stated that cost recovery would not apply where processing and monitoring fees were being collected by another Federal agency on behalf of the Forest Service. The Department has removed this provision from the summary of the final rule because it relates to collection, rather than assessment, of cost recovery fees. The Forest Service has cooperative agreements with BLM for administration of some special uses. The Forest Service's final cost recovery rule will apply to these special uses, but the cost recovery fees in some instances may be collected by BLM and remitted to the Forest Service.

In response to concerns raised by the public, and to enhance interagency consistency between the Forest Service and BLM, the Department has exempted from cost recovery all applications and authorizations for recreation special uses that require 50 hours or less to process or monitor. Applications and authorizations for recreation special uses requiring more than 50 hours to process or monitor are subject to the cost recovery provisions of the final rule.

The Department has considered the respondents' recommendation that rights-of-way granted under section 1323(a) of ANILCA be exempted from processing and monitoring fees. Section 1323(a) of ANILCA provides that land owners have a right of access to their property across NFS lands for the reasonable use and enjoyment of the property, subject to such terms and conditions as the Forest Service may prescribe. The Department believes that the cost recovery regulations are a reasonable term and condition applicable to applicants for and holders of authorizations for rights-of-way granted under section 1323(a) of ANILCA. Accordingly, the Department has not modified the final rule to exempt rights-of-way granted under section 1323(a) of ANILCA from cost recovery.

The Department disagrees with those who stated that authorized water storage facilities on NFS lands are specifically exempted from cost recovery fees. There are currently no provisions in law that specifically exempt this type of use from cost recovery. Therefore, the final rule will not provide for a specific exemption for water storage facilities. A waiver for this use may still be considered under the provisions set forth in § 251.58(f) of the final rule.

In the fall of 1999, the Forest Service commissioned a national task force to conduct a broad review of the agency's programs and policies involving Tribal governments and to recommend a unified policy regarding the need for a special use authorization for Tribal use and occupancy of NFS lands for traditional or cultural purposes. Until the agency adopts such a policy, it would be premature to exempt these uses from cost recovery fees. Moreover, once such a policy is adopted, whether a special use authorization is required, and if so, the nature of the use, will determine whether cost recovery fees are required in this context.

The Department is modifying the exemption relating to closure orders by stating that it applies to "a noncommercial activity," rather than "activities," that are exempt from a closure order to make it clear that the exemption does not apply to commercial activities that are exempt from a closure order.

The Department is adding an exemption for applications and authorizations for water systems authorized by section 501(c) of FLPMA (43 U.S.C. 1761(c)). Section 501(c) of FLPMA precludes cost recovery for these applications and authorizations. In addition, the Department is adding an exemption for a use or activity conducted by a Federal agency that is not authorized under Title V of FLPMA (43 U.S.C. 1761–1771); the MLA (30 U.S.C. 185); the National Historic Preservation Act (NHPA), 16 U.S.C. 470h–2; or the statute governing authorizations for commercial filming (16 U.S.C. 460*l*–6d). The Forest Service does not have the authority to require cost recovery from Federal agencies that apply for and hold special use authorizations issued under statutes other than FLPMA, the MLA, the NHPA, and the commercial filming statute.

Section 251.58(h) Appeal of decisions. This section of the rule provides that a decision by the authorized officer to assess a processing or monitoring fee and the determination of a fee category or estimated costs are not subject to administrative appeal.

Comment. This section received many comments, all stating that there should be an appeal process. Without such a process, the respondents believed that they were denied due process. Some respondents stated that this regulation should provide an applicant or holder the opportunity to appeal to the next higher agency line officer or to a board or individual who was not involved in the initial fee determination. Respondents believed that agency action on an application or authorization should not be suspended while an appeal is being decided.

Response. The Department believes that the determination of cost recovery fees should be kept separate from the review process required by the Department's administrative appeal regulations. To make that process available to applicants and holders would reduce the value of cost recovery to special use applicants, authorization holders, and the agency, as it would surely lead to delays in processing applications and monitoring authorizations while the authorized officer's attention is diverted to responding to appeals.

The Department, however, recognizes the importance of providing administrative recourse to those who dispute the authorized officer's determination of a cost recovery fee category or estimated costs. Thus, the Department has revised § 251.58(e) in

the final rule to allow an applicant or holder to submit a written request before the disputed fee is due for substitution of an alternative fee category or alternative estimated costs to the authorized officer's immediate supervisor. The applicant or holder must provide documentation that supports the alternative fee category or estimated costs. Further, unless requested by the applicant or holder, or unless the applicant or holder fails to pay the full disputed fee, the revised dispute resolution process will not result in the agency suspending action on the application or authorization while the dispute is being addressed. The authorized officer's immediate supervisor must render a decision on a disputed processing or monitoring fee within 30 calendar days of receipt of the written request from the applicant or holder. The dispute will be decided in favor of the applicant or holder if the immediate supervisor does not respond to the written request within 30 days of receipt. The Department believes that these revisions are sufficient to allay respondents' concerns regarding review of cost recovery determinations.

Section 251.58(i) Processing and monitoring fee schedules. This section provides that the agency will place its processing and monitoring fee schedules in its directives system, and will review the rates in the schedules 5 years after the effective date of the final rule.

Comment. The only comment received on this section was the suggestion that the fee schedules appear in the Code of Federal Regulations (CFR), rather than in the agency's directive system.

Response. The Department disagrees with the suggestion that the CFR is the appropriate place to post and update cost recovery fee schedules. The fee schedules will be updated annually using the IPD–GDP index. It would be cumbersome to go through the regulatory process annually to amend the CFR to revise the cost recovery rates based on changes in the IPD–GDP. It is appropriate to post cost recovery fee schedules in the agency's directive system. Currently, all other Forest Service fee schedules are found in the directive system. Directives are easily amended, which is particularly important when fee schedules need to be updated annually. Additionally, these directives are available at all administrative levels within the agency and are accessible to the public through the agency's World Wide Web directive home page (*http://www.fs.fed.us/im/directives*). Therefore, the provision in the proposed rule for posting cost recovery fee schedules in the Forest Service's directives system remains unchanged in the final rule.

The Forest Service, in discussions with BLM, has determined that it should not necessarily wait 5 years to review its cost recovery fee schedules. The agency believes that it should have the latitude to evaluate consistency between the fee schedules and its actual costs of doing business at any point after adoption of the final rule. The Department concurs that the agency should review and, if necessary, revise the minor category fee rates to make them commensurate with the agency's cost to process applications and monitor authorizations. The Department affirms, however, that any evaluation of fee schedules will be based on case-specific samplings of costs that the agency will collect following implementation of the final rule. Therefore, § 251.58(i)(2) of the final rule has been revised to state that the agency will review the cost recovery rates within 5 years of the effective date of the final rule.

3. Final Processing and Monitoring Fee Schedules

The following schedules contain the fee categories and rates for cost recovery that are adopted by this final rule. As displayed, all minor category fee rates have been indexed to reflect CY 2005 rates using the cumulative rate of change from the CY 2003 second quarter to the CY 2004 second quarter in the IPD–GDP index, as discussed earlier in section 2 under "Response to General Comments" and are consistent with the rates adopted by BLM in its final regulations for its right-of-way program (70 FR 20969, Apr. 22, 2005). The Forest Service will incorporate these fee schedules in its internal directive system.

CALENDAR YEAR 2006 PROCESSING FEES

Category	Hours	Rate*
Processing Fee Schedule for Minor Category Applications		
1 (Minimal Impact)	>1 and up to and including 8	$100.
2	>8 and up to and including 24	$354.
3	>24 and up to and including 36	$665.
4	>36 and up to and including 50	$953.

Category	Hours	Rate
Processing Fee Schedule for Major Category Applications, Other Than Those Authorized Under the Mineral Leasing Act		
5 (Master Agreement)		As specified in the agreement.
6	>50	Full reasonable costs as determined case by case.

Category	Hours	Rate
Processing Fee Schedule for Major Category Applications Authorized Under the Mineral Leasing Act		
5 (Master Agreement)		As specified in the agreement.
6	>50	Full actual costs as determined case by case.

*Pursuant to 36 CFR 251.58(g), no processing fee shall be charged for:

- Applications that require 1 hour or less for the agency to process.
- Applications for recreation special uses that require 50 hours or less to process.
- Applications for a noncommercial group use (36 CFR 251.51).
- Applications to exempt a noncommercial activity from a closure order, except for applications for access to non-Federal lands within the boundaries of the National Forest System granted under section 1323(a) of ANILCA (16 U.S.C. 3210(a)).
- Applications for water systems authorized by section 501(c) of FLPMA (43 U.S.C. 1761(c)).

• Applications submitted by a Federal agency under authorities other than Title V of FLPMA (43 U.S.C. 1761–1771); the MLA (30 U.S.C. 185); the NHPA (16 U.S.C. 470h-2); or the Act of May 26, 2000 (16 U.S.C. 460*l*–6d).

CALENDAR YEAR 2006 MONITORING FEES

Category	Hours	Rate*
Monitoring Fee Schedule for Minor Category Authorizations		
1 (Minimal Impact)	> 1 and up to and including 8	$100.
2	> 8 and up to and including 24	$354.
3	> 24 and up to and including 36	$665.
4	> 36 and up to and including 50	$953.
Monitoring Fee Schedule for Major Category Authorizations, Other Than Those Issued Under the Mineral Leasing Act		
Category	Hours	Rate
5 (Master Agreement)		As specified in the agreement.
6	> 50	Full reasonable costs as determined case by case.
Monitoring Fee Schedule for Major Category Authorizations Issued Under the Mineral Leasing Act		
Category	Hours	Rate
5 (Master Agreement)		As specified in the agreement.
6	> 50	Full actual costs as determined case by case.

* Pursuant to 36 CFR 251.58(g), no monitoring fee shall be charged for:
• Authorizations that require 1 hour or less for the agency to monitor.
• Authorizations for recreation special uses that require 50 hours or less to monitor.
• Authorizations for a noncommercial group use (36 CFR 251.51).
• Authorizations to exempt a noncommercial activity from a closure order, except for authorizations for access to non-Federal lands within the boundaries of the National Forest System granted under section 1323(a) of ANILCA (16 U.S.C. 3210(a)).
• Authorizations for water systems authorized by section 501(c) of FLPMA (43 U.S.C. 1761(c)).
• Authorizations issued to a Federal agency under authorities other than Title V of FLPMA (43 U.S.C. 1761–1771); the MLA (30 U.S.C. 185); the NHPA (16 U.S.C. 470h–2); or the Act of May 26, 2000 (16 U.S.C. 460*l*–6d).

4. Authority

Laws or administrative directives that authorize the Forest Service to recover costs include:

1. *Independent Offices Appropriations Act of 1952, as amended (IOAA; 31 U.S.C. 9701).* Title V of this act provides that each Federal agency may charge for specific benefits and services the agency provides to an identifiable recipient, with an exception for official government business. Such charges must be fair and must be based on the costs to the Federal Government and the value of the specific benefits and services provided to the recipient.

2. *Office of Management and Budget (OMB) Circular No. A–25, as revised July 15, 1993.* This circular provides Federal agencies with specific direction for implementing the cost recovery provisions of Title V of the IOAA. Section 4a specifies that the circular covers all Federal activities that convey specific benefits or services to identifiable recipients beyond those accruing to the general public.

3. *Section 28(l) of the Mineral Leasing Act of 1920, as amended (MLA; 30 U.S.C. 185(l)).* The 1973 amendment to section 28 of this act authorizes oil and gas pipeline uses; requires that an applicant for an oil and gas right-of-way or permit reimburse the Federal Government for actual administrative and other costs incurred in processing the application (such as the cost of preparing environmental impact statements, including environmental analyses and biological evaluations for Endangered Species Act compliance); and requires that a holder of an oil and gas right-of-way or permit reimburse actual administrative and other costs incurred by the Federal Government in monitoring the construction, operation, maintenance, and termination of any pipeline and related facilities within the scope of the right-of-way or permit. The legislative history of the 1973 amendment to the MLA states that the reimbursement for these administrative and other costs is in addition to fees charged for use and occupancy of land within the scope of the right-of-way.

4. *Section 504(g) of the Federal Land Policy and Management Act of 1976 (FLPMA; 43 U.S.C. 1764(g)).* Section 504(g) of FLPMA provides for reimbursement of administrative and other costs in addition to the collection of a land use fee. The act authorizes agencies to require reimbursement of the Federal Government for all reasonable administrative and other costs incurred in processing right-of-way applications and in monitoring right-of-way authorizations. Factors that must be considered in establishing such reasonable costs under FLPMA include actual costs, the monetary value of the rights and privileges sought, that portion of the costs incurred for the benefit of the general public interest, the public service provided, the efficiency of the Government processing involved, and other factors relevant to determining the reasonableness of processing or monitoring costs. The act also provides a concise statement of Congressional intent concerning cost recovery generally.

Public Law 98–300 amended section 504(g) of FLPMA to exempt certain facilities financed under the Rural Electrification Act from Federal land use fees, but notably retains the authority of agencies to require reimbursement of reasonable administrative and other costs related to processing applications and monitoring authorizations for such facilities.

5. *Section 110(g) of the National Historic Preservation Act of 1966 (NHPA; 16 U.S.C. 470h–2(g)).* Section 110(g) of this act provides that Federal agencies may require prospective licensees and permittees to pay for the Federal Government's cost of preservation activities as a condition of issuance of a license or permit.

6. *Section 331 of the Interior and Related Agencies Appropriations Act of*

November 29, 1999 (Pub. L. 106–113) and Section 345 of the Consolidated Appropriations Act for fiscal year 2005 (Pub. L. 108–447, Division E), and Section 425 of the Interior and Related Agencies Appropriations Act of August 2, 2005 (Pub. L. 109–54). Section 331 of this act allows the Forest Service to retain and spend funds collected under its existing statutory authorities for cost recovery for fiscal years 2000 through 2004 to cover the costs incurred by the agency in processing special use applications and monitoring compliance with special use authorizations. Section 345 of the Consolidated Appropriations Act for fiscal year 2005 (Pub. L. 108–447, Division E) extended this authority through September 30, 2005. Section 425 of the *Interior and Related Agencies Appropriations Act for fiscal year 2006 (Pub. L. 109–54) extended this authority through September 30, 2006.*

7. Section 1(b) of *the Act of May 26, 2000 (16 U.S.C. 460l–6d(b)).* Section 1(b) of this act authorizes the Forest Service to recover any costs incurred as a result of commercial filming or similar projects, including, but not limited to, administrative and personnel costs.

5. Regulatory Certifications

Environmental Impact

This final rule establishes administrative fee categories and procedures for processing special use applications and monitoring special use authorizations on National Forest System (NFS) lands. Section 31b of Forest Service Handbook 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or environmental impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The Department's assessment is that this final rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

In accordance with OMB's determination that this final rule is significant, it has been subject to OMB review under Executive Order 12866. In addition, the Forest Service has prepared a cost-benefit analysis and a threshold Regulatory Flexibility Act analysis of this final rule to identify its effects on applicants for and holders of special use authorizations and on the agency's management of its special uses program.

Cost-Benefit Analysis

In this analysis, the Forest Service concluded that implementation of the final rule will result in a change in the agency's management of its special uses program. The most significant change will be experienced by those applicants for and holders of special use authorizations who have previously never been exposed to cost recovery and who will be required to pay cost recovery fees pursuant to the final rule. A summary of the key costs and benefits of the final rule for applicants, holders, and the Forest Service follows.

Primary Costs Associated With Implementing the Final Rule

1. The economic impacts of the final rule will not be evenly distributed among applicants and holders.

2. Those who may be most impacted by the added costs resulting from the final rule include:

a. Individuals or entities that need to have an authorization to secure access to their lands within the NFS, especially in those cases where the application will require a considerable amount of time to process due to the magnitude of the proposal or the environmental sensitivity of the proposed use. These applicants will have little or no opportunity to pass cost recovery fees on to clients or customers.

b. Some small businesses or individuals who apply for or hold special use authorizations, if their application for a new authorization or for modification of an existing authorization will require more than 50 hours to process. However, under the final rule, recreation special use applications and authorizations (such as for outfitting and guiding, resorts, or marinas) that require 50 hours or less to process or monitor are exempt from cost recovery fees.

3. The final rule gives the authorized officer the discretion to grant a waiver to local, State, and Federal governmental entities that do not or would not charge processing or monitoring fees for comparable services they provide or would provide to the Forest Service.

Primary Benefits Associated With Implementing the Final Rule

1. In return for assessing a processing fee from applicants for and holders of special use authorizations, the Forest Service is establishing customer service standards in its directives system that direct the authorized officer to communicate with applicants and holders about the status of application processing.

2. The Forest Service will have additional resources to fund a more skilled and efficient workforce, which will enhance the agency's ability to satisfy the needs and expectations of applicants for and holders of special use authorizations.

3. In some cases, more timely processing of applications will reduce opportunity costs and allow applicants to plan and operate in a more business-like manner.

4. Taxpayers will benefit from having governmental services that are currently being provided with appropriated funds but that are benefiting identifiable recipients, rather than the general public, paid for instead by the recipients of those services.

5. The public also will benefit from the reduction in the backlog of applications, which in turn will reduce the liability of the United States arising from uses and occupancies that continue on NFS lands under expired special use authorizations.

6. NFS lands will benefit, in that the agency will have the resources needed to issue new authorizations with terms and conditions that mitigate environmental impacts for thousands of uses and occupancies that are continuing under expired authorizations.

Regulatory Flexibility Act Analysis

The Department concludes that this final rule will not have a significant economic impact on a substantial number of small entities, based upon a cost-benefit analysis and a threshold Regulatory Flexibility Act analysis prepared for this final rule. Therefore, certification of no significant economic impact on a substantial number of small entities is appropriate, and further analysis pursuant to the Regulatory Flexibility Act is not required.

Basis for Charging Cost Recovery Fees

This cost recovery rule establishes the procedures to charge applicants for and holders of special use authorizations for the cost of processing applications and monitoring authorizations. The processing fee for an application will be based only on costs necessary for processing that application and will not include costs for studies for programmatic planning or analysis (such as species viability, the recreational carrying capacity of a wilderness area, or analysis associated with designating a multi-user communications site) or other agency management objectives, unless they are necessary for the application being processed.

Entities Affected by Cost Recovery

The cost recovery rule will apply to individuals, large and small businesses, large and small nonprofit entities, and local, State, and Federal governmental entities that are applicants for or holders of special use authorizations.

Scope of Impacts

a. *Business Entities.* Large, complex projects are most commonly proposed by larger companies and corporations, which are most able to absorb the higher cost recovery fees that will be associated with these larger, more complex projects, and which in many cases can pass these fees on to a broad base of clients and customers. Conversely, smaller business entities and individuals commonly propose smaller, less complex projects on NFS lands and therefore more often will be assessed lower cost recovery fees than large businesses and corporations. The primary type of small business affected by the proposed cost recovery rule would be outfitters and guides, who provide outdoor recreation opportunities on the National Forests. Approximately 5,700 of these businesses operate partially or entirely on NFS lands. To address the concern expressed by these entities that they would be unduly burdened by this rule, as well as to enhance consistency with BLM's cost recovery regulations, the Department is establishing an exemption from cost recovery fees for recreation special use applications and authorizations that require 50 hours or less to process or monitor.

b. *Nonprofit Entities.* As with larger versus smaller business entities, the larger, more complex projects that will have higher cost recovery fees are usually associated with larger nonprofit entities, and the smaller, less complex projects that will have lower cost recovery fees are associated with smaller nonprofit entities.

c. *Governmental Entities.* The correlation between the size of a governmental entity and the size of a proposed special use project is not as direct as it is with nongovernmental entities. Some small governmental entities propose large public works projects that will have high cost recovery fees. Conversely, some Federal projects are small and will prompt low cost recovery fees.

Mitigation of Impacts on Small Entities

The Forest Service has taken several steps to mitigate impacts on small entities in this final cost recovery rule. Revisions to the final rule were made in response to written comments received during the public comment period (November 27, 1999, through March 9, 2000); concerns voiced at public meetings held by the Forest Service in various locations throughout the United States in January and February 2000; and the need to enhance consistency between the Forest Service's and BLM's cost recovery rules.

Revisions to the final rule to mitigate impacts on small entities include:

1. The provision governing the basis for processing fees has been clarified to state that the processing fee for an application will be based solely on costs necessary for processing that application and will not include costs for studies for programmatic planning or analysis or other agency management objectives, unless they are necessary for the application being processed. This revision addresses a major concern expressed by outfitters and guides and other small businesses with respect to the scope of the basis for charging a processing fee.

2. Cost recovery fees may be waived for individuals and all types of entities, not just nonprofit entities, when the proposed facility, project, or use will provide, without user or customer charges, a valuable benefit to the general public or to the programs of the Secretary of Agriculture.

3. The basis for charging monitoring fees has been narrowed. The basis for charging a monitoring fee for minor category cases will include only those activities required to ensure compliance with an authorization during construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site. As a result of this change, monitoring fees will not be assessed for most outfitting and guiding operations.

4. Processing and monitoring fees have been eliminated for recreation special use applications and authorizations that require 50 hours or less to process or monitor. Processing and monitoring fees have been eliminated for any other applications or authorizations that take 1 hour or less to process or monitor.

5. The processing fee schedule in the proposed rule for applications other than those authorized under the MLA included a minimal impact rate of $75 for applications that take up to and including 8 hours to process. The minimal impact category has been modified in the processing fee schedule for minor category applications in the final rule and added to the monitoring fee schedule for minor category authorizations in the final rule. The minimal impact category now includes applications or authorizations that take more than 1 hour, but less than or equal to 8 hours, to process or monitor. This revision provides relief for individuals and small businesses by exempting from cost recovery fees those applications or authorizations that require 1 hour or less to process or monitor.

6. The agency has revised the dispute resolution process by providing that applicants and holders may submit a written request for substitution of an alternative fee category or alternative estimated costs to the immediate supervisor of the authorized officer who determined the fee category or estimated costs.

7. The agency has retained modest fees in the fixed rate processing and monitoring categories 1 through 4. For major category 5 and category 6 cases, the authorized officer will estimate the agency's full actual processing and monitoring costs.

The threshold Regulatory Flexibility Act analysis concludes that the economic impact of the final rule on small entities will be insignificant for the following additional reasons:

1. Most small entities' applications will fall into minor categories. Recreation special use applications that fall into minor categories are exempt from processing fees. The estimated average minor category processing fee for non-recreation special uses is $491, which is minimal. The estimated average major category processing fee is $3,500 for non-recreation special use applications and $2,500 for recreation special use applications. Since processing fees are not assessed annually, but rather assessed only when an application covered by the cost recovery rule is submitted, minor and major category fees can be amortized over the term of a special use authorization for business planning purposes. The cost per year associated with an amortized processing fee generally will be minimal.

2. Facilities or services that are already authorized will continue to operate without the imposition of costs recovery fees, unless the authorization for those facilities or services terminates or the holder proposes a new or modified use.

3. Small governmental entities that do not or would not impose similar fees for comparable processing or monitoring services they provide or would provide to the Forest Service will qualify for a full or partial waiver of cost recovery fees under the final rule.

4. Some small entities that propose large-scale projects that fall into major categories could be impacted by the final rule. However, the Forest Service's

special use regulations require that applicants for special use authorizations consult with Forest Service officials concerning applicable requirements before submitting a special use application and that applicants be financially and technically capable of providing the services or facilities they propose. In most cases, a cost recovery fee associated with processing an application for a major undertaking will constitute a small percentage of the total investment needed to conduct that activity on NFS lands.

5. The Forest Service has developed its final cost recovery rule to be consistent with the cost recovery requirements imposed by BLM for its right-of-way and special recreation permit programs. These programs are comparable to the Forest Service's lands and recreation special use programs. BLM has been exercising its statutory authority to recover costs from its customers, including small entities, for nearly 20 years. In its proposed and final cost recovery rules for special recreation permits (65 FR 31234, May 16, 2000, and 67 FR 61732, Oct. 1, 2002) and in its proposed and final cost recovery rules for its right-of-way program (64 FR 32106, Jun. 15, 1999, and 70 CFR 20969, Apr. 22, 2005), BLM concluded that the imposition of cost recovery fees would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

6. Applicants for new uses may structure their applications to avoid areas with significant environmental concerns, thus reducing the costs associated with evaluating the environmental effects of a proposed use. In addition, applicants will be encouraged to fulfill as many of the application requirements as possible from sources other than the Forest Service. Doing so will minimize the processing fee by reducing the Forest Service's cost to process the application.

Benefits of the Final Rule

Any minimal economic impacts on small entities are more than offset by the benefits associated with this rule, including the agency's establishment of customer service standards for processing applications subject to these cost recovery regulations; the agency's enhanced ability to satisfy the needs and expectations of applicants for and holders of special use authorizations; and reduction of environmental impacts and the liability of the United States associated with uses and occupancies that are continuing under expired authorizations. Moreover, if the agency fails to adopt this rule, many holders will continue to operate in a short-term manner under expired authorizations and will forego opportunities for long-term stability until the agency is appropriated the resources to conduct the analyses needed to issue longer-term authorizations.

Final Rule Certification

Based on the cost-benefit and threshold Regulatory Flexibility Act analyses conducted for this rulemaking, the Department has determined that this final rule will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act because it will not impose recordkeeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

Federalism

The Department has considered this final rule under the requirements of Executive Order 13132 on federalism. The Department has made a final assessment that the rule conforms with the federalism principles set out in this Executive Order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Moreover, the cost recovery processing and monitoring fees set out in this final rule may be waived for local and State governmental entities that do not or would not charge processing or monitoring fees for comparable services they provide or would provide to the Forest Service. No further consultation with State and local governments is necessary upon adoption of this final rule.

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630. It has been determined that this rule does not pose the risk of a taking of private property.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988 on civil justice reform. After adoption of this final rule, (1) all State and local laws and regulations that conflict with this rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

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

Energy Effects

This final rule has been reviewed under Executive Order 13211 of May 18, 2001, "Actions Concerning Regulations That Significantly Affect the Energy Supply." It has been determined that this final rule will not have an adverse effect on the supply, distribution, or use of energy. Conversely, the Department believes that this final rule will allow the Forest Service to respond more expeditiously to industry requests for use of NFS lands for energy and energy-related facilities by providing the Forest Service with additional resources to process applications for these facilities.

Consultation With Tribal Governments

This final rule has been reviewed under Executive Order 13175 of November 6, 2000, "Consultation and Coordination with Indian Tribal Governments." It has been determined that this final rule does not implicate the consultation provisions of that Executive Order.

Controlling Paperwork Burdens on the Public

This final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 U.S.C. part 1320 that are not already required by law or not already approved for use. The information collection required as a result of this rule has been approved by OMB and assigned control number 0596–0082. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Government Paperwork Elimination Act Compliance

The Forest Service 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.

6. Revisions to 36 CFR Part 251, Subpart B

List of Subjects in 36 CFR Part 251

Administrative practice and procedure, Electric power, National Forests, Public lands rights-of-way, Reporting and recordkeeping requirements, and Water resources.

■ Therefore, for the reasons set forth in the preamble, amend part 251, subpart B, to read as follows:

PART 251—LAND USES

Subpart B—Special Uses

■ 1. The authority citation for part 251, subpart B, is revised to read as follows:

Authority: 16 U.S.C. 460l–6a, 460l–6d, 472, 497b, 497c, 551, 580d, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

■ 2. Amend § 251.51 by adding definitions for *major category, minor category,* and *monitoring* in alphabetical order, to read as follows:

§ 251.51 Definitions.

* * * * *

Major category—A processing or monitoring category requiring more than 50 hours of agency time to process an application for a special use authorization (processing category 6 and, in certain situations, processing category 5) or more than 50 hours of agency time to monitor compliance with the terms and conditions of an authorization (monitoring category 6 and, in certain situations, monitoring category 5). Major categories usually require documentation of environmental and associated impacts in an environmental assessment and may require an environmental impact statement.

Minor category—A processing or monitoring category requiring 50 hours or less of agency time to process an application for a special use authorization (processing categories 1 through 4 and, in certain situations, processing category 5) or 50 hours or less of agency time to monitor compliance with the terms and conditions of an authorization (monitoring categories 1 through 4 and, in certain situations, monitoring category 5). Minor categories may require documentation of environmental and associated impacts in an environmental assessment.

Monitoring—Actions needed to ensure compliance with the terms and conditions in a special use authorization.

* * * * *

■ 3. Add § 251.58 to read as follows:

§ 251.58 Cost recovery.

(a) *Assessment of fees to recover agency processing and monitoring costs.* The Forest Service shall assess fees to recover the agency's processing costs for special use applications and monitoring costs for special use authorizations. Applicants and holders shall submit sufficient information for the authorized officer to estimate the number of hours required to process their applications or monitor their authorizations. Cost recovery fees are separate from any fees charged for the use and occupancy of National Forest System lands.

(b) *Special use applications and authorizations subject to cost recovery requirements.* Except as exempted in paragraphs (g)(1) through (g)(4) of this section, the cost recovery requirements of this section apply in the following situations to the processing of special use applications and monitoring of special use authorizations issued pursuant to this subpart:

(1) *Applications for use and occupancy that require a new special use authorization.* Fees for processing an application for a new special use authorization shall apply to any application formally accepted by the agency on or after March 23, 2006 and to any application formally accepted by the agency before March 23, 2006, which the agency has not commenced processing. Proposals accepted as applications which the agency has commenced processing prior to March 23, 2006 shall not be subject to processing fees. The cost recovery provisions of this section shall not apply to or supersede written agreements providing for recovery of processing costs executed by the agency and applicants prior to March 23, 2006.

(2) *Changes to existing authorizations.* Processing fees apply to proposals that require an application to amend or formally approve specific activities or facilities as identified in an existing authorization, operating plan, or master development plan. Processing fees also apply to agency actions to amend a special use authorization.

(3) *Agency actions to issue a special use authorization and applications for issuance of a new special use authorization due to termination of an existing authorization, including termination caused by expiration, a change in ownership or control of the authorized facilities, or a change in ownership or control of the holder of the authorization.* Upon termination of an existing authorization, a holder shall be subject to a processing fee for issuance of a new authorization, even if the holder's existing authorization does not require submission of an application for a new authorization.

(4) Monitoring of authorizations issued or amended on or after March 23, 2006.

(c) *Processing fee requirements.* A processing fee is required for each application for or agency action to issue a special use authorization as identified in paragraphs (b)(1) through (b)(3) of this section. Processing fees do not include costs incurred by the applicant in providing information, data, and documentation necessary for the authorized officer to make a decision on the proposed use or occupancy pursuant to the provisions at § 251.54.

(1) *Basis for processing fees.* The processing fee categories 1 through 6 set out in paragraphs (c)(2)(i) through (c)(2)(vi) of this section are based upon the costs that the Forest Service incurs in reviewing the application, conducting environmental analyses of the effects of the proposed use, reviewing any applicant-generated environmental documents and studies, conducting site visits, evaluating an applicant's technical and financial qualifications, making a decision on whether to issue the authorization, and preparing documentation of analyses, decisions, and authorizations for each application. The processing fee for an application shall be based only on costs necessary for processing that application. "Necessary for" means that but for the application, the costs would not have been incurred and that the costs cover only those activities without which the application cannot be processed. The processing fee shall not include costs for studies for programmatic planning or analysis or other agency management objectives, unless they are necessary for the application being processed. For example, the processing fee shall not include costs for capacity studies, use allocation decisions, corridor or communications site planning, and biological studies that address species diversity, unless they are necessary for the application. Proportional costs for analyses, such as capacity studies, that are necessary for an application may be included in the processing fee for that application. The costs incurred for processing an application, and thus the processing fee, depend on the complexity of the project; the amount of information that is necessary for the authorized officer's decision in response to the proposed use and occupancy; and

the degree to which the applicant can provide this information to the agency. Processing work conducted by the applicant or a third party contracted by the applicant minimizes the costs the Forest Service will incur to process the application, and thus reduces the processing fee. The total processing time is the total time estimated for all Forest Service personnel involved in processing an application and is estimated case by case to determine the fee category.

(i) *Processing fee determinations.* The applicable fee rate for processing applications in minor categories 1 through 4 (paragraphs (c)(2)(i) through (c)(2)(iv) of this section) shall be assessed from a schedule. The processing fee for applications in category 5, which may be either minor or major, shall be established in the master agreement (paragraph (c)(2)(v) of this section). For major category 5 (paragraph (c)(2)(v) of this section) and category 6 (paragraph (c)(2)(vi) of this section) cases, the authorized officer shall estimate the agency's full actual processing costs. The estimated processing costs for category 5 and category 6 cases shall be reconciled as provided in paragraphs (c)(5)(ii) and (iii) and (c)(6)(ii) and (iii) of this section.

(ii) *Reduction in processing fees for certain category 6 applications.* For category 6 applications submitted under authorities other than the Mineral Leasing Act, the applicant:

(A) May request a reduction of the processing fee based upon the applicant's written analysis of actual costs, the monetary value of the rights and privileges sought, that portion of the costs incurred for the benefit of the general public interest, the public service provided, the efficiency of the agency processing involved, and other factors relevant to determining the reasonableness of the costs. The agency will determine whether the estimate of full actual costs should be reduced based upon this analysis and will notify the applicant in writing of this determination; or

(B) May agree in writing to waive payment of reasonable costs and pay the actual costs incurred in processing the application.

(2) *Processing fee categories.* No fee is charged for applications taking 1 hour or less for the Forest Service to process. Applications requiring more than 1 hour for the agency to process are covered by the fee categories 1 through 6 set out in the following paragraphs i through vi.

(i) *Category 1: Minimal Impact: More than 1 hour and up to and including 8 hours.* The total estimated time in this minor category is more than 1 hour and up to and including 8 hours for Forest Service personnel to process an application.

(ii) *Category 2: More than 8 and up to and including 24 hours.* The total estimated time in this minor category is more than 8 and up to and including 24 hours for Forest Service personnel to process an application.

(iii) *Category 3: More than 24 and up to and including 36 hours.* The total estimated time in this minor category is more than 24 and up to and including 36 hours for Forest Service personnel to process an application.

(iv) *Category 4: More than 36 and up to and including 50 hours.* The total estimated time in this minor category is more than 36 and up to and including 50 hours for Forest Service personnel to process an application.

(v) *Category 5: Master agreements.* The Forest Service and the applicant may enter into master agreements for the agency to recover processing costs associated with a particular application, a group of applications, or similar applications for a specified geographic area. This category is minor if 50 hours or less are needed for Forest Service personnel to process an application and major if more than 50 hours are needed. In signing a master agreement for a major category application submitted under authorities other than the Mineral Leasing Act, an applicant waives the right to request a reduction of the processing fee based upon the reasonableness factors enumerated in paragraph (c)(1)(ii)(A) of this section. A master agreement shall at a minimum include:

(A) The fee category or estimated processing costs;

(B) A description of the method for periodic billing, payment, and auditing;

(C) A description of the geographic area covered by the agreement;

(D) A work plan and provisions for updating the work plan;

(E) Provisions for reconciling differences between estimated and final processing costs; and

(F) Provisions for terminating the agreement.

(vi) *Category 6: More than 50 hours.* In this major category more than 50 hours are needed for Forest Service personnel to process an application. The authorized officer shall determine the issues to be addressed and shall develop preliminary work and financial plans for estimating recoverable costs.

(3) *Multiple applications other than those covered by master agreements (category 5). (i) Unsolicited applications where there is no competitive interest.* Processing costs that are incurred in processing more than one of these applications (such as the cost of environmental analysis or printing an environmental impact statement that relates to all of the applications) must be paid in equal shares or on a prorated basis, as deemed appropriate by the authorized officer, by each applicant, including applicants for recreation special uses that are otherwise exempt under paragraph (g)(3) of this section when the Forest Service requires more than 50 hours in the aggregate to process the applications submitted in response to the prospectus.

(ii) *Unsolicited proposals where competitive interest exists.* When there is one or more unsolicited proposals and the authorized officer determines that competitive interest exists, the agency shall issue a prospectus. All proposals accepted pursuant to that solicitation shall be processed as applications. The applicants are responsible for the costs of environmental analyses that are necessary for their applications and that are conducted prior to issuance of the prospectus. Processing fees for these cases shall be determined pursuant to the procedures for establishing a category 6 processing fee and shall include costs such as those incurred in printing and mailing the prospectus; having parties other than the Forest Service review and evaluate applications; establishing a case file; recording data; conducting financial reviews; and, for selected applicants, any additional environmental analysis required in connection with their applications. Processing fees shall be paid in equal shares or on a prorated basis, as deemed appropriate by the authorized officer, by all parties who submitted proposals that were processed as applications pursuant to the solicitation, including applicants for recreation special uses that are otherwise exempt under paragraph (g)(3) of this section when the Forest Service requires more than 50 hours in the aggregate to process the applications submitted in response to the prospectus.

(iii) *Solicited applications.* When the Forest Service solicits applications through the issuance of a prospectus on its own initiative, rather than in response to an unsolicited proposal or proposals, the agency is responsible for the cost of environmental analyses conducted prior to issuance of the prospectus. All proposals accepted pursuant to that solicitation shall be processed as applications. Processing fees for these cases shall be determined pursuant to the procedures for establishing a category 6 processing fee and shall include costs such as those incurred in printing and mailing the

prospectus; having parties other than the Forest Service review and evaluate applications; establishing a case file; recording data; conducting financial reviews; and, for selected applicants, any additional environmental analysis required in connection with their applications. Processing fees shall be paid in equal shares or on a prorated basis, as deemed appropriate by the authorized officer, by all parties who submitted proposals that were processed as applications pursuant to the solicitation, including applicants for recreation special uses that are otherwise exempt under paragraph (g)(3) of this section when the Forest Service requires more than 50 hours in the aggregate to process the applications submitted in response to the prospectus.

(4) *Billing and revision of processing fees.* (i) *Billing.* When the Forest Service accepts a special use application, the authorized officer shall provide written notice to the applicant that the application has been formally accepted. The authorized officer shall not bill the applicant a processing fee until the agency is prepared to process the application.

(ii) *Revision of processing fees.* Minor category processing fees shall not be reclassified into a higher minor category once the processing fee category has been determined. However, if the authorized officer discovers previously undisclosed information that necessitates changing a minor category processing fee to a major category processing fee, the authorized officer shall notify the applicant or holder of the conditions prompting a change in the processing fee category in writing before continuing with processing the application. The applicant or holder may accept the revised processing fee category and pay the difference between the previous and revised processing categories; withdraw the application; revise the project to lower the processing costs; or request review of the disputed fee as provided in paragraphs (e)(1) through (e)(4) of this section.

(5) *Payment of processing fees.* (i) Payment of a processing fee shall be due within 30 days of issuance of a bill for the fee, pursuant to paragraph (c)(4) of this section. The processing fee must be paid before the Forest Service can initiate or, in the case of a revised fee, continue with processing an application. Payment of the processing fee by the applicant does not obligate the Forest Service to authorize the applicant's proposed use and occupancy.

(ii) For category 5 cases, when the estimated processing costs are lower than the final processing costs for applications covered by a master agreement, the applicant shall pay the difference between the estimated and final processing costs.

(iii) For category 6 cases, when the estimated processing fee is lower than the full actual costs of processing an application submitted under the Mineral Leasing Act, or lower than the full reasonable costs (when the applicant has not waived payment of reasonable costs) of processing an application submitted under other authorities, the applicant shall pay the difference between the estimated and full actual or reasonable processing costs.

(6) *Refunds of processing fees.* (i) Processing fees in minor categories 1 through 4 are nonrefundable and shall not be reconciled.

(ii) For category 5 cases, if payment of the processing fee exceeds the agency's final processing costs for the applications covered by a master agreement, the authorized officer either shall refund the excess payment to the applicant or, at the applicant's request, shall credit it towards monitoring fees due.

(iii) For category 6 cases, if payment of the processing fee exceeds the full actual costs of processing an application submitted under the Mineral Leasing Act, or the full reasonable costs (when the applicant has not waived payment of reasonable costs) of processing an application submitted under other authorities, the authorized officer either shall refund the excess payment to the applicant or, at the applicant's request, shall credit it towards monitoring fees due.

(iv) For major category 5 and category 6 applications, an applicant whose application is denied or withdrawn in writing is responsible for costs incurred by the Forest Service in processing the application up to and including the date the agency denies the application or receives written notice of the applicant's withdrawal. When an applicant withdraws a major category 5 or category 6 application, the applicant also is responsible for any costs subsequently incurred by the Forest Service in terminating consideration of the application.

(7) *Customer service standards.* The Forest Service shall endeavor to make a decision on an application that falls into minor processing category 1, 2, 3, or 4, and that is subject to a categorical exclusion pursuant to the National Environmental Policy Act, within 60 calendar days from the date of receipt of the processing fee. If the application cannot be processed within the 60-day period, then prior to the 30th calendar day of the 60-day period, the authorized officer shall notify the applicant in writing of the reason why the application cannot be processed within the 60-day period and shall provide the applicant with a projected date when the agency plans to complete processing the application. For all other applications, including all applications that require an environmental assessment or an environmental impact statement, the authorized officer shall, within 60 calendar days of acceptance of the application, notify the applicant in writing of the anticipated steps that will be needed to process the application. These customer service standards do not apply to applications that are subject to a waiver of or exempt from cost recovery fees under §§ 251.58(f) or (g).

(d) *Monitoring fee requirements.* The monitoring fee for an authorization shall be assessed independently of any fee charged for processing the application for that authorization pursuant to paragraph (c) of this section. Payment of the monitoring fee is due upon issuance of the authorization.

(1) *Basis for monitoring fees.* Monitoring is defined at § 251.51. For monitoring fees in minor categories 1 through 4, authorization holders are assessed fees based upon the estimated time needed for Forest Service monitoring to ensure compliance with the authorization during the construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site. Major category 5 and category 6 monitoring fees shall be based upon the agency's estimated costs to ensure compliance with the terms and conditions of the authorization during all phases of its term, including but not limited to monitoring to ensure compliance with the authorization during the construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site. Monitoring for all categories does not include billings, maintenance of case files, annual performance evaluations, or scheduled inspections to determine compliance generally with the terms and conditions of an authorization.

(i) *Monitoring fee determinations.* The applicable fee rate for monitoring compliance with authorizations in minor categories 1 through 4 (paragraphs (d)(2)(i) through (d)(2)(iv) of this section) shall be assessed from a schedule. The monitoring fee for authorizations in category 5, which may be minor or major, shall be established

in the master agreement (paragraph (d)(2)(v) of this section). For major category 5 (paragraph (d)(2)(v) of this section) and category 6 (paragraph (d)(2)(vi) of this section) cases, the authorized officer shall estimate the agency's full actual monitoring costs. The estimated monitoring costs for category 5 and category 6 cases shall be reconciled as provided in paragraphs (d)(3)(ii) and (iii) and (d)(4)(ii) and (iii) of this section.

(ii) *Reductions in monitoring fees for certain category 6 authorizations.* For category 6 authorizations issued under authorities other than the Mineral Leasing Act, the holder:

(A) May request a reduction of the monitoring fee based upon the holder's written analysis of actual costs, the monetary value of the rights or privileges granted, that portion of the costs incurred for the benefit of the general public interest, the public service provided, the efficiency of the agency monitoring involved, and other factors relevant to determining the reasonableness of the costs. The agency will determine whether the estimate of full actual costs should be reduced based upon this analysis and will notify the holder in writing of this determination; or

(B) May agree in writing to waive payment of reasonable costs and pay the actual costs incurred in monitoring the authorization.

(2) *Monitoring fee categories.* No monitoring fee is charged for authorizations requiring 1 hour or less for the Forest Service to monitor. Authorizations requiring more than1 hour for the agency to monitor are covered by fee categories 1 through 6 set out in the following paragraphs (d)(2)(i) through (vi) of this section.

(i) *Category 1: Minimal Impact: More than 1 hour and up to and including 8 hours.* This minor category requires more than1 hour and up to and including 8 hours for Forest Service personnel to monitor compliance with a special use authorization during construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site.

(ii) *Category 2: More than 8 and up to and including 24 hours.* This minor category requires more than 8 and up to and including 24 hours for Forest Service personnel to monitor compliance with a special use authorization during construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site.

(iii) *Category 3: More than 24 and up to and including 36 hours.* This minor category requires more than 24 and up to and including 36 hours for Forest Service personnel to monitor compliance with a special use authorization during construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site.

(iv) *Category 4: More than 36 and up to and including 50 hours.* This minor category requires more than 36 and up to and including 50 hours for Forest Service personnel to monitor compliance with a special use authorization during construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site.

(v) *Category 5: Master agreements.* The Forest Service and the holder of an authorization may enter into a master agreement for the agency to recover monitoring costs associated with a particular authorization or by a group of authorizations for a specified geographic area. This category is minor if 50 hours or less are needed for Forest Service personnel to monitor compliance with an authorization and major if more than 50 hours are needed. In signing a master agreement for a major category authorization issued under authorities other than the Mineral Leasing Act, a holder waives the right to request a reduction of the monitoring fee based upon the reasonableness factors enumerated in paragraph (d)(1)(ii)(A) of this section. A master agreement shall at a minimum include:

(A) The fee category or estimated monitoring costs;

(B) A description of the method for periodic billing, payment, and auditing of monitoring fees;

(C) A description of the geographic area covered by the agreement;

(D) A monitoring work plan and provisions for updating the work plan;

(E) Provisions for reconciling differences between estimated and final monitoring costs; and

(F) Provisions for terminating the agreement.

(vi) *Category 6: More than 50 hours.* This major category requires more than 50 hours for Forest Service personnel to monitor compliance with the terms and conditions of the authorization during all phases of its term, including, but not limited, to monitoring compliance with the authorization during the construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site.

(3) *Billing and payment of monitoring fees.* (i) The authorized officer shall estimate the monitoring costs and shall notify the holder of the required fee. Monitoring fees in minor categories 1 through 4 must be paid in full before or at the same time the authorization is issued. For authorizations in major category 5 and category 6, the estimated monitoring fees must be paid in full before or at the same time the authorization is issued, unless the authorized officer and the applicant or holder agree in writing to periodic payments.

(ii) For category 5 cases, when the estimated monitoring costs are lower than the final monitoring costs for authorizations covered by a master agreement, the holder shall pay the difference between the estimated and final monitoring costs.

(iii) For category 6 cases, when the estimated monitoring fee is lower than the full actual costs of monitoring an authorization issued under the Mineral Leasing Act, or lower than the full reasonable costs (when the holder has not waived payment of reasonable costs) of monitoring an authorization issued under other authorities, the holder shall pay the difference in the next periodic payment or the authorized officer shall bill the holder for the difference between the estimated and full actual or reasonable monitoring costs. Payment shall be due within 30 days of receipt of the bill.

(4) *Refunds of monitoring fees.* (i) Monitoring fees in minor categories 1 through 4 are nonrefundable and shall not be reconciled.

(ii) For category 5 cases, if payment of the monitoring fee exceeds the agency's final monitoring costs for the authorizations covered by a master agreement, the authorized officer shall either adjust the next periodic payment to reflect the overpayment or refund the excess payment to the holder.

(iii) For category 6 cases, if payment of the monitoring fee exceeds the full actual costs of monitoring an authorization issued under the Mineral Leasing Act, or the full reasonable costs (when the holder has not waived payment of reasonable costs) of monitoring an authorization issued under other authorities, the authorized officer shall either adjust the next periodic payment to reflect the overpayment or refund the excess payment to the holder.

(e) *Applicant and holder disputes concerning processing or monitoring fee assessments; requests for changes in fee categories or estimated costs.* (1) If an applicant or holder disagrees with the processing or monitoring fee category

assigned by the authorized officer for a minor category or, in the case of a major processing or monitoring category, with the estimated dollar amount of the processing or monitoring costs, the applicant or holder may submit a written request before the disputed fee is due for substitution of an alternative fee category or alternative estimated costs to the immediate supervisor of the authorized officer who determined the fee category or estimated costs. The applicant or holder must provide documentation that supports the alternative fee category or estimated costs.

(2) In the case of a disputed processing fee:

(i) If the applicant pays the full disputed processing fee, the authorized officer shall continue to process the application during the supervisory officer's review of the disputed fee, unless the applicant requests that the processing cease.

(ii) If the applicant fails to pay the full disputed processing fee, the authorized officer shall suspend further processing of the application pending the supervisory officer's determination of an appropriate processing fee and the applicant's payment of that fee.

(3) In the case of a disputed monitoring fee:

(i) If the applicant or holder pays the full disputed monitoring fee, the authorized officer shall issue the authorization or allow the use and occupancy to continue during the supervisory officer's review of the disputed fee, unless the applicant or holder elects not to exercise the authorized use and occupancy of National Forest System lands during the review period.

(ii) If the applicant or holder fails to pay the full disputed monitoring fee, the authorized officer shall not issue the applicant a new authorization or shall suspend the holder's existing authorization in whole or in part pending the supervisory officer's determination of an appropriate monitoring fee and the applicant's or holder's payment of that fee.

(4) The authorized officer's immediate supervisor shall render a decision on a disputed processing or monitoring fee within 30 calendar days of receipt of the written request from the applicant or holder. The supervisory officer's decision is the final level of administrative review. The dispute shall be decided in favor of the applicant or holder if the supervisory officer does not respond to the written request within 30 days of receipt.

(f) *Waivers of processing and monitoring fees.* (1) All or part of a processing or monitoring fee may be waived, at the sole discretion of the authorized officer, when one or more of the following criteria are met:

(i) The applicant or holder is a local, State, or Federal governmental entity that does not or would not charge processing or monitoring fees for comparable services the applicant or holder provides or would provide to the Forest Service;

(ii) A major portion of the processing costs results from issues not related to the project being proposed;

(iii) The application is for a project intended to prevent or mitigate damage to real property, or to mitigate hazards or dangers to public health and safety resulting from an act of God, an act of war, or negligence of the United States;

(iv) The application is for a new authorization to relocate facilities or activities to comply with public health and safety or environmental laws and regulations that were not in effect at the time the authorization was issued;

(v) The application is for a new authorization to relocate facilities or activities because the land is needed by a Federal agency or for a Federally funded project for an alternative public purpose; or

(vi) The proposed facility, project, or use will provide, without user or customer charges, a valuable benefit to the general public or to the programs of the Secretary of Agriculture.

(2) An applicant's or holder's request for a full or partial waiver of a processing or monitoring fee must be in writing and must include an analysis that demonstrates how one or more of the criteria in paragraphs (f)(1)(i) through (f)(1)(vi) of this section apply.

(g) *Exemptions from processing or monitoring fees.* No processing or monitoring fees shall be charged when the application or authorization is for a:

(1) Noncommercial group use as defined in § 251.51, or when the application or authorization is to exempt a noncommercial activity from a closure order, except for an application or authorization for access to non-Federal lands within the boundaries of the National Forest System granted pursuant to section 1323(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3210(a)).

(2) Water systems authorized by section 501(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761(c)).

(3) A use or activity conducted by a Federal agency that is not authorized under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761–1771); the Mineral Leasing Act of 1920 (30 U.S.C. 185); the National Historic Preservation Act of 1966 (16 U.S.C. 470h–2); or the Act of May 26, 2000 (16 U.S.C. 460*l*–6d).

(4) Recreation special use as defined in the Forest Service's directive system and requires 50 hours or less for Forest Service personnel to process, except for situations involving multiple recreation special use applications provided for in paragraph (c)(3) of this section. No monitoring fees shall be charged for a recreation special use authorization that requires 50 hours or less for Forest Service personnel to monitor.

(h) *Appeal of decisions.* (1) A decision by the authorized officer to assess a processing or monitoring fee or to determine the fee category or estimated costs is not subject to administrative appeal.

(2) A decision by an authorized officer's immediate supervisor in response to a request for substitution of an alternative fee category or alternative estimated costs likewise is not subject to administrative appeal.

(i) *Processing and monitoring fee schedules.* (1) The Forest Service shall maintain schedules for processing and monitoring fees in its directive system (36 CFR 200.4). The rates in the schedules shall be updated annually by using the annual rate of change, second quarter to second quarter, in the Implicit Price Deflator-Gross Domestic Product (IPD–GDP) index. The Forest Service shall round the changes in the rates either up or down to the nearest dollar.

(2) Within 5 years of the effective date of this rule, March 23, 2006, the Forest Service shall review these rates:

(i) To determine whether they are commensurate with the actual costs incurred by the agency in conducting the processing and monitoring activities covered by this rule and

(ii) To assess consistency with processing and monitoring fee schedules established by the United States Department of the Interior, Bureau of Land Management.

Dated: November 9, 2005.

David P. Tenny,

Deputy Under Secretary, Natural Resources and Environment.

Note: The following table will not appear in 36 CFR part 251, subpart B.

7. Summary and Comparison of Provisions in the Proposed and Final Rules

Provision	Proposed Rule	Final Rule
§ 251.51—Definitions	(1) The definition for monitoring was based on the total number of hours required to ensure compliance with the terms and conditions of an authorization during construction or reconstruction activities and the time needed to monitor the operational phase of the authorized use for 1 year.	(1) Revises the definition for monitoring to reflect that this action occurs in administration of special uses generally. Narrows the scope of monitoring fees in § 251.58(d)(1) (see below).
	(2) Definitions were included for different types of processing and monitoring categories.	(2) Adds definitions for major and minor processing and monitoring fee categories.
§ 251.58(a)—Assessment of fees to recover agency processing and monitoring costs.	Provided an overview of cost recovery	No change.
§ 251.58(b)—Special use applications and authorizations subject to cost recovery requirements.	(1) § 251.58(b)(1) through (b)(3) described situations in which the processing fee would be applied.	(1) Clarifies that existing cost recovery agreements between the Forest Service and applicants and holders will not be affected by this rule and that no cost recovery fees will be assessed for proposals accepted as applications which the agency has commenced processing prior to adoption of the final rule.
	(2) § 251.58(b)(4) specified that monitoring fees would be applied to special use authorizations issued or amended on or after the date of adoption of the final rule.	(2) No change.
§ 251.58(c)—Processing fee requirements	(1) § 251.58(c)(1) described agency actions that would require applicants to pay processing fees.	(1) More clearly enumerates those actions that are the applicant's responsibility to fund under NEPA and provides examples to illustrate the costs for which the applicant is responsible and costs for which the agency is responsible.
		(2) § 251.58(c)(2) provided for a schedule of 6 processing fee categories
		(2) Retains all categories in the final rule, except that the final rule enumerates fee categories with Arabic numbers instead of alpha-Roman numerals; adds catgory 1, minimal impact (> 1 and < 8 hours) for applications processed under the MLA; renumbers the previous processing fee category B–IV (> 50 hours) as processing fee category 6; and redesignates the previous processing fee category C. Master Agreements, as category 5, master agreements.
	(3) § 251.58(c)(3) addressed how processing costs would be assessed when two or more applicants apply and compete for one use.	(3) Changes the paragraph heading to "Multiple applications other than those covered by master agreements (category 5)" and provides clearer direction involving situations in which multiple applications are being processed for the same or similar uses and occupancies.
	(4) § 251.58(c)(4) described determination, billing, and revision of processing fees.	(4) Modifies this provision to state that minor category processing fees will not be reclassified into a higher minor category after the processing fee category has been determined.
	(5) § 251.58(c)(5) described the procedures for paying processing fees.	(5) Inserts a provision, paragraph (c)(54)(ii), to address underpayment of category 5 processing fees.
	(6) § 251.58(c)(6) described the procedures for refunding processing fees.	(6) Inserts a provision, paragraph (c)(6)(ii), to address overpayment of category 5 processing fees.
§ s251.58(d)—Monitoring fee requirements	(1) § 251.58(d)(1) described the basis for monitoring fees.	(1) Limits the basis for assessment of monitoring fees for minor categories to the agency's time to monitor construction or reconstruction of facilities and rehabilitation of the construction or reconstruction site. For major categories, authorizes monitoring fees to be charged for the agency's time required to ensure compliance with the terms and conditions of an authorization during all phases of its term.

Provision	Proposed Rule	Final Rule
	(2) § 251.58(d)(2) provided for a schedule of 5 monitoring fee categories for non-MLA authorizations and 4 monitoring fee categories for MLA authorizations.	(2) Like the processing fee schedules, provides for 6 monitoring fee categories. Adds a category 1, minimal impact (> 1 and ≤ 8 hours), and adjusts the hourly range for monitoring fee category 2 to > 8 and ≤ 24 hours for both monitoring fee schedules. The final rule enumerates fee categories with Arabic numbers instead of alpha-Roman numerals; adds a master agreement monitoring fee category 5 for all uses; and redesignates the former category B–IV (> 50 hours) as category 6.
	(3) § 251.58(d)(3) allowed the holder to pay the monitoring fee in installments.	(3) Inserts a provision, paragraph (d)(3)(ii), to address underpayment of category 5 monitoring fees.
	(4) § 251.58(d)(4) specified that monitoring fees in categories B–1 through B–III are nonrefundable and enumerated the conditions under which monitoring category B–IV fees would be refunded.	(4) Inserts a provision, paragraph (d)(4)(ii), to address overpayment of category 5 monitoring fees. Redesignates the category references.
§ 251.58(e)—Applicant and holder disputes concerning processing and monitoring fee assessments; requests for changes in fee categories or estimated costs.	(1) § 251.58(e)(1) provided that the applicant or holder may submit a written request to the authorized officer to change the fee category or estimated costs.	(1) Allows the applicant or holder to submit a written request before the disputed fee is due for substitution of an alternative fee category or alternative estimated costs to the immediate supervisor of the authorized officer who determined the fee category or estimated costs.
	(2) § 251.58(e)(2) and (e)(3) suspended processing of the application or the authorized use and occupancy when a processing or monitoring fee is disputed.	(2) Revises these paragraphs to provide that the supervisory officer must make a decision on the disputed fee within 30 calendar days of receipt of the written request from the applicant or holder. The dispute will be decided in favor of the applicant or holder if the supervisory officer does not respond to the written request within 30 days of receipt. In addition, provides that authorizations and processing of applications will not be suspended pending review if the holder or applicant pays the disputed fee in full.
§ 251.58(f)—Waivers of processing and monitoring fees.	(1) § 251.58(f)(1)(i) provided waiver to local, State, or Federal governmental entities that waive fees for comparable services provided to the Forest Service.	(1) Clarifies when waivers to governmental entities are appropriate.
	(2) § 251.58(f)(1)(ii) authorized a waiver when a major portion of the processing costs results from issues not related to the project being proposed.	(2) No change.
	(3) § 251.58(f)(1)(iii) authorized a waiver of processing fees for proposals to mitigate damage to real property or hazards to public health and safety resulting from an act of God, an act of war, or negligence of the United States.	(3) No change.
	(4) § 251.58(f)(1)(iv)–(v) authorized a waiver of processing fees for applications for new authorizations to relocate facilities or activities to comply with public health and safety or environmental laws and regulations that were not in effect at the time the authorization was issued, or because the land is needed by a Federal agency or a Federally funded project for an alternative public purpose.	(4) No change.
	(5) § 251.58(f)(1)(vi)(A) and (B) authorized waivers to nonprofit entities in processing their applications when the studies undertaken had a public benefit or the proposed facility or project provided a free service to the public or supported a program of the Secretary of Agriculture.	(5) Removes nonprofit status as a criterion for waivers of processing fees under this provision. Removes § 251.58(f)(vi)(A), redesignates § 251.58(f)(vi)(B) as § 251.58(f)(vi), and clarifies its text.
	(6) § 251.58(f)(2) required that requests for waivers be made in writing.	(6) No change.

Provision	Proposed Rule	Final Rule
§ 251.58(g)—Exemptions from processing or monitoring fees.	§ 251.58(g) provided a processing and monitoring fee exemption for noncommercial group uses and activities otherwise prohibited by a closure order, other than access to non-Federal lands within the boundaries of the National Forest System granted pursuant to section 1323(a) of ANILCA.	Add an exemption from processing and monitoring fees for applications and authorizations for water systems authorized by 43 U.S.C. 1761(c). Adds an exemption from processing and monitoring fees for applications and authorizations for recreation special uses, as defined in FSM 2700, that require 50 hours or less to process or monitor.
§ 251.58(h)—Appeal of decisions	§ 251.58(h) provided that assessment of processing and monitoring fees is not subject to the Forest Service's administrative appeal process for special uses.	No change.
§ 251.58(i)—Processing and monitoring fee schedules.	(1) § 251.58(i)(1) provided that processing and monitoring fee schedules will be maintained in the Forest Service's directive system and will be updated annually using the IPD–GDP.	(1) No change.
	(2) § 251.58(i)(2) provided for a review of the cost recovery rates on the 5-year anniversary of the effective date of the final rule.	(2) Amends this paragraph to provide for a review of the rates within 5 years of the effective date of the final rule.

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Cable operators; direct broadcast satellite service providers; Internet website addresses display and commercial matter definition; comments due by 3-1-06; published 1-3-05 [FR 04-28174]

HEALTH AND HUMAN SERVICES DEPARTMENT
Quarantine, inspection, and licensing:
Communicable diseases control; comments due by 3-1-06; published 1-27-06 [FR E6-01048]

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Resources and Services Administration
Grants and cooperative agreements; availability, etc.:
Maternal and Child Health Federal Set-Aside Program—
Healthy Tomorrows Partnership for Children; comments due by 2-27-06; published 12-27-05 [FR 05-24444]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
New York; comments due by 3-1-06; published 1-30-06 [FR 06-00855]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Importation, exportation, and transportation of wildlife:
Captive Wildlife Safety Act; implementation; comments due by 3-2-06; published 1-31-06 [FR E6-01191]

INTERIOR DEPARTMENT
Minerals Management Service
Outer Continental Shelf operations:
Alternate energy-related uses; comments due by 2-28-06; published 12-30-05 [FR E5-08119]

INTERIOR DEPARTMENT
National Park Service
Special regulations:
Cape Lookout National Seashore, NC; personal watercraft use; comments due by 2-27-06; published 12-29-05 [FR E5-08003]

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land

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. 4636/P.L. 109–173

Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (Feb. 15, 2006)

Last List February 15, 2006

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1	(869-056-00001-4)	5.00	Jan. 1, 2005
*2	(869-060-00002-0)	5.00	Jan. 1, 2006
3 (2003 Compilation and Parts 100 and 101)	(869-056-00003-1)	35.00	[1] Jan. 1, 2005
4	(869-056-00004-9)	10.00	[4] Jan. 1, 2005
5 Parts:			
1-699	(869-056-00005-7)	60.00	Jan. 1, 2005
700-1199	(869-060-00006-2)	50.00	Jan. 1, 2006
1200-End	(869-056-00007-3)	61.00	Jan. 1, 2005
6	(869-060-00008-9)	10.50	Jan. 1, 2006
7 Parts:			
1-26	(869-056-00009-0)	44.00	Jan. 1, 2005
27-52	(869-056-00010-3)	49.00	Jan. 1, 2005
53-209	(869-056-00011-1)	37.00	Jan. 1, 2005
210-299	(869-056-00012-0)	62.00	Jan. 1, 2005
300-399	(869-056-00013-8)	46.00	Jan. 1, 2005
400-699	(869-056-00014-6)	42.00	Jan. 1, 2005
700-899	(869-056-00015-4)	43.00	Jan. 1, 2005
900-999	(869-056-00016-2)	60.00	Jan. 1, 2005
*1000-1199	(869-060-00017-8)	22.00	Jan. 1, 2006
1200-1599	(869-056-00018-9)	61.00	Jan. 1, 2005
1600-1899	(869-056-00019-7)	64.00	Jan. 1, 2005
1900-1939	(869-056-00020-1)	31.00	Jan. 1, 2005
1940-1949	(869-056-00021-9)	50.00	Jan. 1, 2005
1950-1999	(869-056-00022-7)	46.00	Jan. 1, 2005
2000-End	(869-056-00023-5)	50.00	Jan. 1, 2005
8	(869-056-00024-3)	63.00	Jan. 1, 2005
9 Parts:			
1-199	(869-056-00025-1)	61.00	Jan. 1, 2005
200-End	(869-060-00026-7)	58.00	Jan. 1, 2006
10 Parts:			
1-50	(869-056-00027-8)	61.00	Jan. 1, 2005
51-199	(869-056-00028-6)	58.00	Jan. 1, 2005
200-499	(869-056-00029-4)	46.00	Jan. 1, 2005
500-End	(869-056-00030-8)	62.00	Jan. 1, 2005
11	(869-056-00031-6)	41.00	Jan. 1, 2005
12 Parts:			
*1-199	(869-060-00032-1)	34.00	Jan. 1, 2006
200-219	(869-056-00033-2)	37.00	Jan. 1, 2005
220-299	(869-056-00034-1)	61.00	Jan. 1, 2005
300-499	(869-056-00035-9)	47.00	Jan. 1, 2005
500-599	(869-060-00036-4)	39.00	Jan. 1, 2006
600-899	(869-056-00037-5)	56.00	Jan. 1, 2005
900-End	(869-056-00038-3)	50.00	Jan. 1, 2005
13	(869-056-00039-1)	55.00	Jan. 1, 2005
14 Parts:			
1-59	(869-056-00040-5)	63.00	Jan. 1, 2005
60-139	(869-056-00041-3)	61.00	Jan. 1, 2005
140-199	(869-056-00042-1)	30.00	Jan. 1, 2005
200-1199	(869-056-00043-0)	50.00	Jan. 1, 2005
1200-End	(869-056-00044-8)	45.00	Jan. 1, 2005
15 Parts:			
*0-299	(869-060-00045-3)	40.00	Jan. 1, 2006
300-799	(869-056-00046-4)	60.00	Jan. 1, 2005
800-End	(869-056-00047-2)	42.00	Jan. 1, 2005
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1000-End	(869-056-00049-9)	60.00	Jan. 1, 2005
17 Parts:			
1-199	(869-056-00051-1)	50.00	Apr. 1, 2005
200-239	(869-056-00052-9)	58.00	Apr. 1, 2005
240-End	(869-056-00053-7)	62.00	Apr. 1, 2005
18 Parts:			
1-399	(869-056-00054-5)	62.00	Apr. 1, 2005
400-End	(869-056-00055-3)	26.00	[6] Apr. 1, 2005
19 Parts:			
1-140	(869-056-00056-1)	61.00	Apr. 1, 2005
141-199	(869-056-00057-0)	58.00	Apr. 1, 2005
200-End	(869-056-00058-8)	31.00	Apr. 1, 2005
20 Parts:			
1-399	(869-056-00059-6)	50.00	Apr. 1, 2005
400-499	(869-056-00060-0)	64.00	Apr. 1, 2005
500-End	(869-056-00061-8)	63.00	Apr. 1, 2005
21 Parts:			
1-99	(869-056-00062-6)	42.00	Apr. 1, 2005
100-169	(869-056-00063-4)	49.00	Apr. 1, 2005
170-199	(869-056-00064-2)	50.00	Apr. 1, 2005
200-299	(869-056-00065-1)	17.00	Apr. 1, 2005
300-499	(869-056-00066-9)	31.00	Apr. 1, 2005
500-599	(869-056-00067-7)	47.00	Apr. 1, 2005
600-799	(869-056-00068-5)	15.00	Apr. 1, 2005
800-1299	(869-056-00069-3)	58.00	Apr. 1, 2005
1300-End	(869-056-00070-7)	24.00	Apr. 1, 2005
22 Parts:			
1-299	(869-056-00071-5)	63.00	Apr. 1, 2005
300-End	(869-056-00072-3)	45.00	Apr. 1, 2005
23	(869-056-00073-1)	45.00	Apr. 1, 2005
24 Parts:			
0-199	(869-056-00074-0)	60.00	Apr. 1, 2005
200-499	(869-056-00074-0)	50.00	Apr. 1, 2005
500-699	(869-056-00076-6)	30.00	Apr. 1, 2005
700-1699	(869-056-00077-4)	61.00	Apr. 1, 2005
1700-End	(869-056-00078-2)	30.00	Apr. 1, 2005
25	(869-056-00079-1)	63.00	Apr. 1, 2005
26 Parts:			
§§ 1.0-1-1.60	(869-056-00080-4)	49.00	Apr. 1, 2005
§§ 1.61-1.169	(869-056-00081-2)	63.00	Apr. 1, 2005
§§ 1.170-1.300	(869-056-00082-1)	60.00	Apr. 1, 2005
§§ 1.301-1.400	(869-056-00083-9)	46.00	Apr. 1, 2005
§§ 1.401-1.440	(869-056-00084-7)	62.00	Apr. 1, 2005
§§ 1.441-1.500	(869-056-00085-5)	57.00	Apr. 1, 2005
§§ 1.501-1.640	(869-056-00086-3)	49.00	Apr. 1, 2005
§§ 1.641-1.850	(869-056-00087-1)	60.00	Apr. 1, 2005
§§ 1.851-1.907	(869-056-00088-0)	61.00	Apr. 1, 2005
§§ 1.908-1.1000	(869-056-00089-8)	60.00	Apr. 1, 2005
§§ 1.1001-1.1400	(869-056-00090-1)	61.00	Apr. 1, 2005
§§ 1.1401-1.1550	(869-056-00091-0)	55.00	Apr. 1, 2005
§§ 1.1551-End	(869-056-00092-8)	55.00	Apr. 1, 2005
2-29	(869-056-00093-6)	60.00	Apr. 1, 2005
30-39	(869-056-00094-4)	41.00	Apr. 1, 2005
40-49	(869-056-00095-2)	28.00	Apr. 1, 2005
50-299	(869-056-00096-1)	41.00	Apr. 1, 2005

Title	Stock Number	Price	Revision Date
300–499	(869–056–00097–9)	61.00	Apr. 1, 2005
500–599	(869–056–00098–7)	12.00	[5]Apr. 1, 2005
600–End	(869–056–00099–5)	17.00	Apr. 1, 2005
27 Parts:			
1–199	(869–056–00100–2)	64.00	Apr. 1, 2005
200–End	(869–056–00101–1)	21.00	Apr. 1, 2005
28 Parts:			
0–42	(869–056–00102–9)	61.00	July 1, 2005
43–End	(869–056–00103–7)	60.00	July 1, 2005
29 Parts:			
0–99	(869–056–00104–5)	50.00	July 1, 2005
100–499	(869–056–00105–3)	23.00	July 1, 2005
500–899	(869–056–00106–1)	61.00	July 1, 2005
900–1899	(869–056–00107–0)	36.00	[7]July 1, 2005
1900–1910 (§§ 1900 to 1910.999)	(869–056–00108–8)	61.00	July 1, 2005
1910 (§§ 1910.1000 to end)	(869–056–00109–6)	58.00	July 1, 2005
1911–1925	(869–056–00110–0)	30.00	July 1, 2005
1926	(869–056–00111–8)	50.00	July 1, 2005
1927–End	(869–056–00112–6)	62.00	July 1, 2005
30 Parts:			
1–199	(869–056–00113–4)	57.00	July 1, 2005
200–699	(869–056–00114–2)	50.00	July 1, 2005
700–End	(869–056–00115–1)	58.00	July 1, 2005
31 Parts:			
0–199	(869–056–00116–9)	41.00	July 1, 2005
200–499	(869–056–00117–7)	33.00	July 1, 2005
500–End	(869–056–00118–5)	33.00	July 1, 2005
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
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1–190	(869–056–00119–3)	61.00	July 1, 2005
191–399	(869–056–00120–7)	63.00	July 1, 2005
400–629	(869–056–00121–5)	50.00	July 1, 2005
630–699	(869–056–00122–3)	37.00	July 1, 2005
700–799	(869–056–00123–1)	46.00	July 1, 2005
800–End	(869–056–00124–0)	47.00	July 1, 2005
33 Parts:			
1–124	(869–056–00125–8)	57.00	July 1, 2005
125–199	(869–056–00126–6)	61.00	July 1, 2005
200–End	(869–056–00127–4)	57.00	July 1, 2005
34 Parts:			
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300–399	(869–056–00129–1)	40.00	[7]July 1, 2005
400–End & 35	(869–056–00130–4)	61.00	July 1, 2005
36 Parts:			
1–199	(869–056–00131–2)	37.00	July 1, 2005
200–299	(869–056–00132–1)	37.00	July 1, 2005
300–End	(869–056–00133–9)	61.00	July 1, 2005
37	(869–056–00134–7)	58.00	July 1, 2005
38 Parts:			
0–17	(869–056–00135–5)	60.00	July 1, 2005
18–End	(869–056–00136–3)	62.00	July 1, 2005
39	(869–056–00139–1)	42.00	July 1, 2005
40 Parts:			
1–49	(869–056–00138–0)	60.00	July 1, 2005
50–51	(869–056–00139–8)	45.00	July 1, 2005
52 (52.01–52.1018)	(869–056–00140–1)	60.00	July 1, 2005
52 (52.1019–End)	(869–056–00141–0)	61.00	July 1, 2005
53–59	(869–056–00142–8)	31.00	July 1, 2005
60 (60.1–End)	(869–056–00143–6)	58.00	July 1, 2005
60 (Apps)	(869–056–00144–4)	57.00	July 1, 2005
61–62	(869–056–00145–2)	45.00	July 1, 2005
63 (63.1–63.599)	(869–056–00146–1)	58.00	July 1, 2005
63 (63.600–63.1199)	(869–056–00147–9)	50.00	July 1, 2005
63 (63.1200–63.1439)	(869–056–00148–7)	50.00	July 1, 2005
63 (63.1440–63.6175)	(869–056–00149–5)	32.00	July 1, 2005
63 (63.6580–63.8830)	(869–056–00150–9)	32.00	July 1, 2005
63 (63.8980–End)	(869–056–00151–7)	35.00	[7]July 1, 2005
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72–80	(869–056–00153–5)	62.00	July 1, 2005
81–85	(869–056–00154–1)	60.00	July 1, 2005
86 (86.1–86.599–99)	(869–056–00155–0)	58.00	July 1, 2005
86 (86.600–1–End)	(869–056–00156–8)	50.00	July 1, 2005
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136–149	(869–056–00159–2)	61.00	July 1, 2005
150–189	(869–056–00160–6)	50.00	July 1, 2005
190–259	(869–056–00161–4)	39.00	July 1, 2005
260–265	(869–056–00162–2)	50.00	July 1, 2005
266–299	(869–056–00163–1)	50.00	July 1, 2005
300–399	(869–056–00164–9)	42.00	July 1, 2005
400–424	(869–056–00165–7)	56.00	[8]July 1, 2005
425–699	(869–056–00166–5)	61.00	July 1, 2005
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1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
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9		13.00	[3]July 1, 1984
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18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–056–00169–0)	24.00	July 1, 2005
101	(869–056–00170–3)	21.00	July 1, 2005
102–200	(869–056–00171–1)	56.00	July 1, 2005
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42 Parts:			
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400–429	(869–056–00174–6)	63.00	Oct. 1, 2005
430–End	(869–056–00175–4)	64.00	Oct. 1, 2005
43 Parts:			
1–999	(869–056–00176–2)	56.00	Oct. 1, 2005
1000–end	(869–056–00177–1)	62.00	Oct. 1, 2005
44	(869–056–00178–9)	50.00	Oct. 1, 2005
45 Parts:			
1–199	(869–056–00179–7)	60.00	Oct. 1, 2005
200–499	(869–056–00180–1)	34.00	Oct. 1, 2005
500–1199	(869–056–00171–9)	56.00	Oct. 1, 2005
1200–End	(869–056–00182–7)	61.00	Oct. 1, 2005
46 Parts:			
1–40	(869–056–00183–5)	46.00	Oct. 1, 2005
41–69	(869–056–00184–3)	39.00	[9]Oct. 1, 2005
70–89	(869–056–00185–1)	14.00	[9]Oct. 1, 2005
90–139	(869–056–00186–0)	44.00	Oct. 1, 2005
140–155	(869–056–00187–8)	25.00	Oct. 1, 2005
156–165	(869–056–00188–6)	34.00	[9]Oct. 1, 2005
166–199	(869–056–00189–4)	46.00	Oct. 1, 2005
200–499	(869–056–00190–8)	40.00	Oct. 1, 2005
500–End	(869–056–00191–6)	25.00	Oct. 1, 2005
47 Parts:			
0–19	(869–056–00192–4)	61.00	Oct. 1, 2005
20–39	(869–056–00193–2)	46.00	Oct. 1, 2005
40–69	(869–056–00194–1)	40.00	Oct. 1, 2005
70–79	(869–056–00195–9)	61.00	Oct. 1, 2005
80–End	(869–056–00196–7)	61.00	Oct. 1, 2005
48 Chapters:			
1 (Parts 1–51)	(869–056–00197–5)	63.00	Oct. 1, 2005
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2 (Parts 201–299)	(869–056–00199–1)	50.00	Oct. 1, 2005
3–6	(869–056–00200–9)	34.00	Oct. 1, 2005
7–14	(869–056–00201–7)	56.00	Oct. 1, 2005
15–28	(869–056–00202–5)	47.00	Oct. 1, 2005

Title	Stock Number	Price	Revision Date
29–End	(869–056–00203–3)	47.00	Oct. 1, 2005
49 Parts:			
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100–185	(869–056–00205–0)	63.00	Oct. 1, 2005
186–199	(869–056–00206–8)	23.00	Oct. 1, 2005
200–299	(869–056–00207–6)	32.00	Oct. 1, 2005
300–399	(869–056–00208–4)	32.00	Oct. 1, 2005
400–599	(869–056–00209–2)	64.00	Oct. 1, 2005
600–999	(869–056–00210–6)	19.00	Oct. 1, 2005
1000–1199	(869–056–00211–4)	28.00	Oct. 1, 2005
1200–End	(869–056–00212–2)	34.00	Oct. 1, 2005
50 Parts:			
1–16	(869–056–00213–1)	11.00	Oct. 1, 2005
17.1–17.95(b)	(869–056–00214–9)	32.00	Oct. 1, 2005
17.95(c)–end	(869–056–00215–7)	32.00	Oct. 1, 2005
17.96–17.99(h)	(869–056–00215–7)	61.00	Oct. 1, 2005
17.99(i)–end and 17.100–end	(869–056–00217–3)	47.00	Oct. 1, 2005
18–199	(869–056–00218–1)	50.00	Oct. 1, 2005
200–599	(869–056–00218–1)	45.00	Oct. 1, 2005
600–End	(869–056–00219–0)	62.00	Oct. 1, 2005
CFR Index and Findings Aids	(869–056–00050–2)	62.00	Jan. 1, 2005
Complete 2006 CFR set		1,398.00	2006
Microfiche CFR Edition:			
Subscription (mailed as issued)		332.00	2006
Individual copies		4.00	2006
Complete set (one-time mailing)		325.00	2005
Complete set (one-time mailing)		325.00	2004

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2004, through January 1, 2005. The CFR volume issued as of January 1, 2004 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2005. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2004, through April 1, 2005. The CFR volume issued as of April 1, 2004 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

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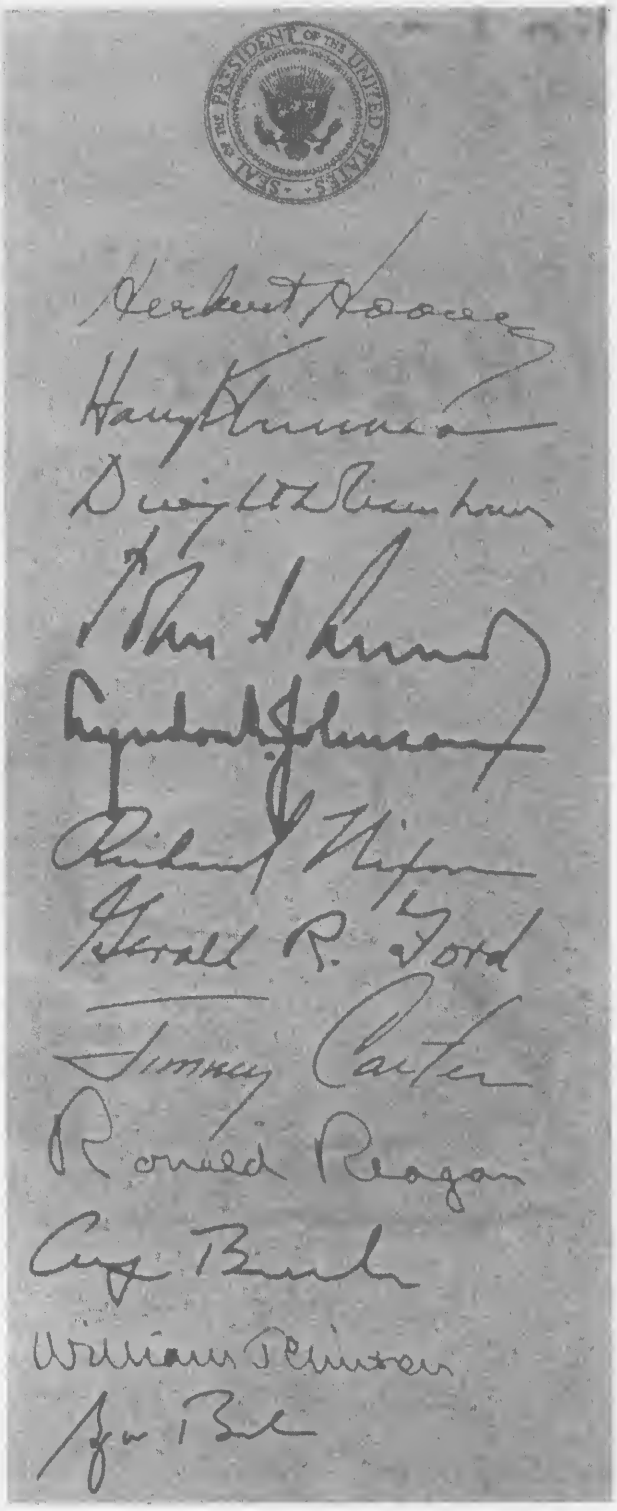

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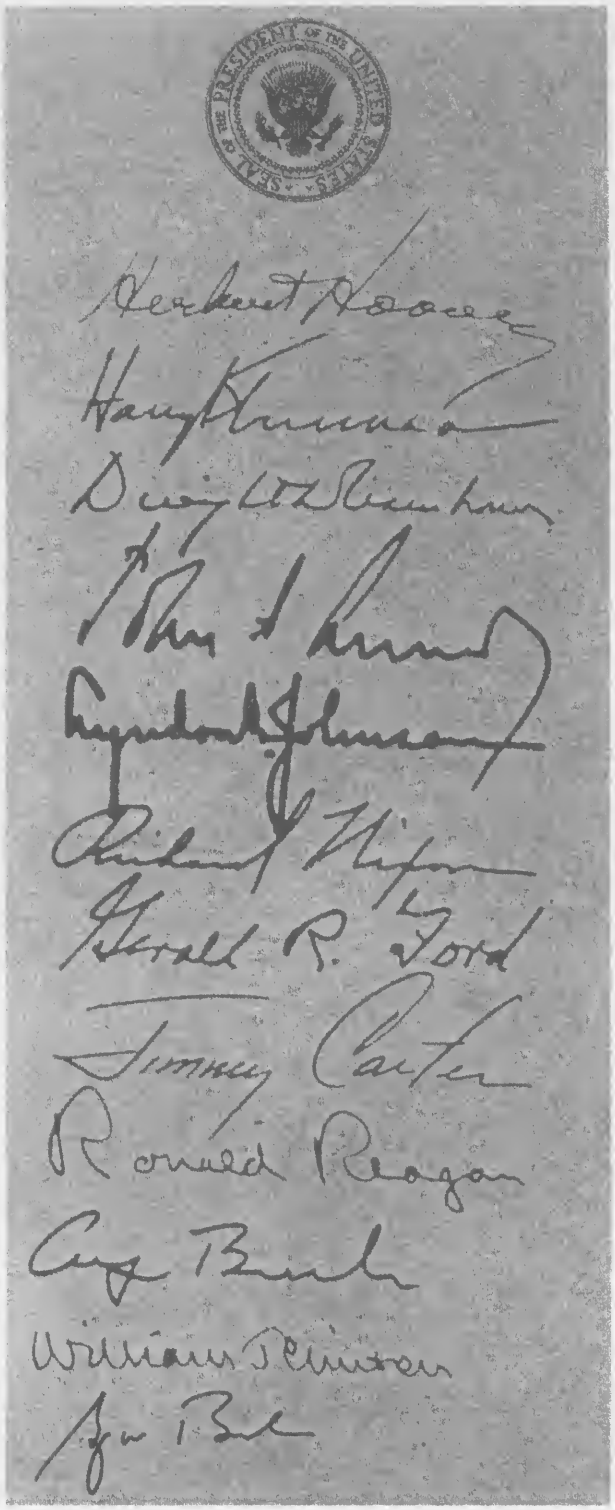

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